

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5607 OF 2024

Sheth Chatrabhuj Jeevandas
Religious and Charitable Trust
through its Trustee-Rameshchandra
Daramdas Mehta

...Petitioner

V/s.

The State of Maharashtra and Ors.

...Respondents

WITH
WRIT PETITION NO. 6503 OF 2024

M/s. Dhara Developers

...Petitioner

V/s.

Haveli Co.op. Hsg. Soc. Ltd. and
Ors.

...Respondents

Mr. Vijay Patil *i/b. Mr. Yogesh Patil for the Petitioner in
WP/5607/2024.*

Mr. Pradeep Thorat *with Mr. Niranjan Jagtap i/b. M/s.
Niranjan Jagtap and Co. for Petitioner in WP/6503/2024.*

Mr. S.D. Rayrikar, *AGP for Respondent Nos.1 and 2-State.*

Mr. Kini *with Mr. Suresh Dubey i/b. Ms Bhavana Umredkar for
Respondent -society.*

P.C. :

1) The Petitions challenge common order dated 17 October 2022 passed by the Competent Authority (District Deputy Registrar), Co-operative Department (2), Eastern Suburb, Mumbai, granting Unilateral Deemed Conveyance in respect of the land admeasuring 1553.60 sq.mtr. out of total land admeasuring 5959 sq.mtr. in favour of Respondent -Society.

2) I have heard Mr. Thorat and Mr. Patil the learned counsel appearing for the Petitioners in respective Petitions, Mr. Kini, the learned counsel appearing for the Respondent -Society and Mr. Rayrikar, the learned AGP for Respondent- State.

3) Perusal of the flat purchase Agreement would prima facie indicate that the land taken up for development is 1870 sq.mtr. and not 5959 sq.mtr. Perusal of the Architect's certificate dated 24 May 2022 relied upon by the Respondent-Society would indicate that the Society's Architect made calculations on a presumption that total plot area is of 5959 sq.mtr. The certificate does not indicate that the Architect applied her mind to the plot area of 1870 sq.mtr., which was taken up for development. Furthermore, it is the contention of Petitioners that they have undertaken development of third building- Wing 'C', for which plans have been sanctioned by the Planning Authority. Architect's certificate dated 24 May 2022 does not indicate that the Architect has taken into consideration the fact

that FSI while sanctioning for plans for building- Wing 'C' has also been consumed.

4) I am therefore, of the view that order of Deemed Conveyance is passed on the basis of faulty certificate of the Architect dated 24 May 2022, which is a reason why Application filed by the Society for Deemed Conveyance deserves fresh decision. Remand of the proceedings would also take care of argument sought to be raised by the Petitioners that they did not get proper opportunity of defending Application of the Society.

5) Accordingly, order dated 17 October 2022 passed by the Competent Authority (District Deputy Registrar), Co-operative Department (2), Eastern Suburb, Mumbai, is set aside and the Application filed by the Respondent -Society for grant of Certificate of Unilateral Deemed Conveyance is restored on the file of the Competent Authority, who shall proceed to decide the same afresh. It would not be necessary for the Competent Authority to issue fresh notices while conducting hearing of the Application.

6) Parties shall appear before the Competent Authority on 3 February 2025 and obtain necessary directions for fixation of date of hearing of the Application. Rival parties shall be entitled to file further documents including fresh Architect certificate in support of their respective claims. The Respondent-Society would be at liberty to amend its Application to bring the

same in consonance with the fresh Architect certificate that it intends to procure.

7) With the above directions the Writ Petitions are partly allowed and disposed of.

8) All rights and contentions of the parties on merits are expressly kept open.

[SANDEEP V. MARNE, J.]