

(2014) 02 BOM CK 0009

In the Bombay High Court

Case No : Writ Petition No. 1585 of 2013

M/s. Sawant Constructions and Another

APPELLANT

Vs

Shri Guruchhaya Cooperative Housing Society Ltd. and
Others

RESPONDENT

Date of Decision : 05-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale,
Management and Transfer) Act, 1963 — Section 10 11

Citation : (2014) 2 ABR 530 : (2014) 3 ALLMR 563 : (2015) 2 BomCR 808 :
(2014) 3 MhLj 896

Hon'ble Judges : V.M. Kanade, J;G.S. Kulkarni, J

Bench : Division Bench

Advocate : V.A. Thorat, R.D. Soni, S.N. Gawade and Vaibhav Sugdhare
instructed by Shree and Co, for the Appellant; S.G. Surana instructed by , M.S.
Surana for Respondent No. 1 and Mr. G.W. Mattos, AGP for Respondent Nos. 2
and 3, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Kanade, J.—Heard the learned senior counsel appearing on behalf of the Petitioners, learned counsel appearing on behalf of Respondent No. 1 and the learned AGP appearing for Respondent Nos. 2 and 3. The Petitioners are aggrieved by an order passed by the District Dy. Registrar, Co-operative Societies, Mumbai (3) i.e. Respondent No. 2 herein, dated 21st June, 2013, which was passed u/s 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short "the MOFA Act"), thereby issuing certificate of deemed conveyance in favour of Respondent No. 1 Society. Rule. Rule made returnable forthwith. By consent of parties, matter is taken up for final hearing.

2. Brief facts, which are relevant for the purpose of deciding the petition, are as under:

? Petitioner is a partnership firm, duly registered under the Indian Partnership Act, 1932 and is carrying on business as a developer and contractor. Respondent No. 1 is a housing Society, registered under the Co-operative Societies Act, 1960. There are two plots of land viz. Final Plot No. 51 (bearing CTS No. 514, 514/1 to 6) admeasuring 478.4 sq. mtrs., and Final Plot No. 52 (bearing CTS No. 515, 515/1 to 5) admeasuring 492.4 sq. mtrs. The first plot of land was owned by one Pralhad Krishnarao Kavatkar, and the second plot of land was owned by Mrs. Hirabai V. Solunki. The Petitioners initially entered into an agreement to sale with said Pralhad Kavatkar in respect of Final Plot No. 51, dated 4.9.1978. By the said agreement, the said owner agreed to sell the said property. The Petitioners submitted the development plan for development of the said property on Final Plot No. 51 and the Mumbai Municipal Corporation had issued IOD and commencement certificate. The Petitioner entered into an agreement for sale with Mrs. Hirabai Solunki in respect of final Plot No. 52, which is the property adjoining to Final Plot No. 51.

3. The Petitioner constructed a ground + 4 storied building on Final Plot No. 51 and the flats in the said building were sold to intending purchasers, who later on formed the Society which is Respondent No. 1. A certificate of deemed conveyance under subsections (3) and (4) of Section 11 of the MOFA Act was issued. The District Dy. Registrar (Respondent No. 2, herein) after hearing both the parties and going through the evidence, which was produced before him, came to the conclusion that Respondent No. 1 Society was entitled to get a certificate of deemed conveyance in respect of Final Plot No. 51 as well as Final Plot No. 52. Being aggrieved by the said order, the Petitioners have approached this Court. The grievance of the Petitioners is that though Final Plot No. 52 was not to be conveyed to the Society, the District Dy. Registrar, without giving adequate reasons, had come to the conclusion that Respondent No. 1 Society was also entitled to get the certificate of deemed conveyance in respect of Final Plot No. 52. The learned senior counsel fairly and candidly submitted that the Petitioners did not have any grievance in respect of certificate of the deemed conveyance granted in respect of Final Plot No. 51. He, however, submitted that Respondent No. 2 had in two paragraphs viz. sub paragraphs (o) and (p) of paragraph 12 of the impugned order had discussed this issue and had concluded that Final Plot No. 52 also had to be conveyed to the Society. The learned senior counsel invited our attention to the Agreement dated 26.9.1979. By the said agreement, entered between the Petitioner and flat purchaser, Petitioners had agreed to convey only Final Plot No. 51, which was described in first Schedule of the said Agreement. He submitted that though in the Second Schedule of the said Agreement, there was a reference in respect of Final Plot No. 52, there was no agreement between the parties to convey the said plot to the Society. Our attention was invited to the various clauses of the said Agreement, and more particularly to clause 19 of the said Agreement, which refers to the area of the land described in First Schedule. It is submitted that a passing reference was made in respect of Final Plot No. 52 in the Agreement. There was no such

reference in respect of Final Plot No. 52. It is submitted that, therefore, there being no agreement between the parties to convey Final Plot No. 52, it is not open for the District Dy. Registrar to pass an order granting certificate of deemed conveyance in respect of the said plot. It is submitted that it was not open for the District Dy. Registrar to go into the question of title between the parties, when there being dispute between the parties in respect of the said title. He further submitted that the parties had clearly understood that Final Plot No. 52 was not to be conveyed. Learned senior counsel invited our attention to a letter dated 28.6.1991, written by the Chairman of the Society to the Petitioner, in which it was mentioned that a compound wall should be put up by the Petitioner, so that Final Plot No. 52 would be separated from the building, which was constructed on Final Plot No. 51.

4. Reliance is placed on the judgment of the learned Single Judge of this Court in the case of- Mazda Construction Company, Maredia Enterprises and Sultanabad CHS Ltd. (Proposed) Vs. Sultanabad Darshan CHS Ltd. and Others, . There is no dispute regarding ratio of this judgment. However, it has no application to the facts of the present case.

5. On the other hand, Mr. S.G. Surana, counsel appearing on behalf of Respondent No. 1 Society submitted that the agreement in terms had made a reference to recitals of Final Plot No. 52. He submitted that in the recital it was clearly mentioned that the Petitioner had proposed either to demolish and reconstruct the existing structures, standing on plot belonging to the second original vendor viz. Mrs. Hirabai Solunki, and/or to utilise the balance Floor Space Index available on the piece or parcel of the land in the building, which was proposed to be constructed on the piece and parcel of land belonging to the First Original Vendor. He submitted that the said Final Plot has been mentioned and referred in the Second Schedule of the Agreement. He submitted that it is an admitted position that the FSI of Final Plot No. 52 has been utilized on Final Plot No. 51. He submitted that the Petitioner had amalgamated said two plots. He has invited our attention to the order of amalgamation. He submitted that even occupation certificate dated 25th February, 1991 was granted in respect of building on Final Plot Nos. 51 and 52. It is contended that therefore there was a clear understanding between the parties that the FSI on Final Plot No. 52 was to be utilised on the final Plot No. 51, where the building was constructed. It is submitted that the District Dy. Registrar had, after having perused all the documents produced on record, recorded the finding to that effect, and there was no question of any dispute regarding the agreement entered into between the parties in respect of ownership of the land.

6. After having heard both the counsel appearing on behalf of Petitioners and Respondent No. 1, we are of the view that it will not be possible to accept the submissions made by the learned senior counsel appearing on behalf of the Petitioners. It will be useful to have a look at the relevant provisions viz. sub-section (3) and (4) of Section 11 of the MOFA Act, which reads as under:

11. Promoter to convey title, etc., and execute documents, according to agreement

(1) ...

(2) ...

(3) If the promoter fails to execute the conveyance in favour of the co-operative society formed u/s 10 or, as the case may be, the company or the association of apartment owners, as provided by sub-section (1), within the prescribed period, the members of such co-operative society or, as the case may be, the company or the association of apartment owners may, make an application, in writing, to the concerned Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the society or company or the association, who have purchased the flats and all other relevant documents (including the occupation certificate, if any), for issuing a certificate that such society, or as the case may be, company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.

(4) The Competent Authority, on receiving such application, within reasonable time and in any case not later than six months, after making such enquiry as deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, shall issue a certificate to the Sub-registrar or any other appropriate Registration Officer under the Registration Act, 1908, certifying that it is a fit case for enforcing unilateral execution of conveyance deed conveying the right, title and interest of the promoter in the land and building in favour of the applicant, as deemed conveyance.

7. Perusal of the said clauses reveals that the District Dy. Registrar is authorised to make an enquiry which was submitted before him to find out whether there was agreement between the parties to convey the property and if it is found that though the obligation, which is cast on the developer or builder or contractor or promoter under sub-section (1) of Section 11 to convey the property to the flat purchasers of all Society, the developer or the promoter does not fulfill the said obligation, then in that event after enquiry, as contemplated under sub-section (3) and (4) of Section 11 of the MOFA Act, the District Dy. Registrar has been authorised to issue certificate of deemed conveyance. The said provision has been made when it is found that developers and builders after having sold the flats to the individual flat purchasers, refused to convey the property to the housing society or to the association of flat purchasers. Taking into consideration the situation which had arisen in metropolitan area, the legislature was constrained to make suitable amendments to the provisions of Section 11 and authorise the District Dy. Registrar to hold an enquiry. In the present case, in our view, the District Dy. Registrar, after having gone through the documentary

evidence on record, had arrived at a conclusion that there was an agreement to convey both the plots to the Society, and accordingly has recorded a finding to that effect. The Schedule which is annexed to the Agreement to Sale, which was entered into between the Petitioner and the flat purchasers, clearly stipulates that the Petitioner was obliged to convey both the Final plots to the Society. It is not in dispute that FSI on Final Plot No. 52 has been utilised for the construction of the building on Final Plot No. 51. Taking into consideration all the aforesaid facts, we are of the view that the District Dy. Registrar has not committed any error of law, either apparent on the face of record or any material irregularity, in referring the documentary evidence, which was produced before him. We are, therefore, not inclined to interfere with the impugned order dated 21st June, 2013, which is passed by the District Dy. Registrar, while exercising our writ jurisdiction under Article 226 of the Constitution of India. Writ petition is, therefore, dismissed and rule is discharged. At this stage, learned senior counsel appearing on behalf of the Petitioner has submitted that interim order, which was passed during pendency of the petition should be continued for a period of four weeks. On the other hand, the learned counsel appearing on behalf of Respondent No. 1 has submitted that the Petitioner, in the mean time, has filed consent terms in the Small Causes Court in the suit which was filed for eviction of the tenant. From perusal of the said consent terms, it does appear that despite the status-quo order dated 13.11.2013 having passed by this Court, the Petitioner has proceeded and obtained the decree in terms of consent terms dated 17.12.2013. In these circumstances, we are not inclined to continue the order of status-quo.