

Bombay High Court

Angeline Randolph Pereira And Ors vs Suyog Industrial Estate Premises ... on 11 April, 2018

Bench: R.D. Dhanuka

ppn

1

wp-4373.17(j).doc

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4373 OF 2017

1. Angeline Randolph Pereira having her )  
address at 47/52 Ceazar Road, Next to R.C. )  
Church Kevni, Andheri (W), Mumbai-58. )

2. Florie Barney Paereira )  
her address at Joseline House, )  
Near Medinee Niketan Bamanwada PO Sahar )  
Andheri (E), Mumbai 400 099. )

3. Jessie Ivan Farro )  
her address at C S 102, Farro House )  
Ground floor, Dr.Lazarus Road, )  
Thane (W), Mumbai 400 601. )

4. Elizabeth Nelson D'Mello )  
her address at D'Mello Villa House No.M/2/304 )  
Maroli Village, Chembur, Mumbai - 400 074.)

5. Pius Alex Remedios (deceased) )  
5a. Ursual Pius Remedios )  
5b. Samian Pius Remedios )  
5c. Sinead Pius Remedios )  
5a to 5c are the legal heirs of )  
Pius Alex Remedios )

::: Uploaded on - 11/04/2018

ppn

2

::: Downloaded on - 12/04/2018 02:18:38 :::

wp-4373.17(j).doc

6. Damian Alex Remedios )  
the legal heirs of Alex Simon Remedios )  
Partners of M/s.Remedios Brothers Brick )  
Manufacturing Co. (M/s.RemediosBrothers) )  
a Partnership firm duly registered under )  
Partnership Act, 1956 No.5, 5a, 5b, 5c and 6 )  
having their address at Police Patil House )  
Vikhroli (E), Mumbai 400 083. )

.. Petitioners

Versus

1. Suyog Industrial Estate Premises )  
Co-operative Society Ltd., a Co-operative )  
Society registered under the Co-operative )  
Societies Act, 1960 having its address at )  
L B S Marg, Vikhroli (W), Mumbai - 83. )

2a. Pratapsingh Shoorji Vallabhdas )  
2b. Dilippsingh Shoorji Vallabhdas )  
2c. R.Vikramsingh )  
2a. Jayalakshmi Shoorji Vallabhdas )  
Nos.2(a) to 2(d), all of Mumbai Indian )  
Inhabitant having their address at 707 )  
Parmeshwari Center, 18 Dalmia Estate )  
Mumbai (W), Mumbai - 400 0 80. )

3. M/s. Remedios Brothers Brick )  
Manufacturing Co.(M/s.Remedios Brothers) )

::: Uploaded on - 11/04/2018  
ppn 3

::: Downloaded on - 12/04/2018 02:18:38 :::  
wp-4373.17(j).doc

a partnership firm duly registered under the )  
Partnership Act, 1956 having its address at )  
Police Patil House, Vikhroli (E), )  
Mumbai 400 079. )

4a. Blanche Vincent Remedios (deceased) )  
4b. Maxie Vincent Remedios )  
4c. Angello Vincent Remedios )  
Nos.4(a) to 4(c), all of Mumbai Indian )  
inhabitants having their address at )  
Remedios House Room Nos.9 and 10, )  
Opposite Vikhroli Station, Vikhroli (E) )  
Mumbai 400 083. )

4d. Vianney Vincent Remedios )  
AVK Compound Kaunsa Mumbra )  
Old Bombay Pune Road )

4e. Genevieve Wendell Hendricks )  
BPCL Colony, Flat No.289 Aziz Baug )  
Chembur, Mumbai 400 071. )

4f. Helen Eugene Remedios )  
Prafullata Shankar Lane, Malad (W) )  
Mumbai 400 064. )  
Legal heirs representatives of )  
Vincent Simon Remedios Partners of )

::: Uploaded on - 11/04/2018  
ppn 4

::: Downloaded on - 12/04/2018 02:18:38 :::  
wp-4373.17(j).doc

M/s.Remedios Brothers Brick Manufacturing)  
Co. (M/s.Remedios Brothers) )

5. M/s.Suyog Enterprise, a partnership firm)  
duly registered under the Partnership Act,1956)  
having its address at G-1, Meera Shayam, )  
Gaushala Road, Mulund (W), )  
Mumbai - 400 080. )

6. The District Deputy Registrar )  
Co-operative Society, the competent authority)  
u/s 5A of the Maharashtra Ownership Flats )  
(Regulation of the Promotion of Construction )  
Sale, management and Transfer Act, 1968) )  
having its address at Konkan Bhavan, )  
Navi Mumbai. )

.. Respondents

---

Mr.V.A.Thorat, Senior Advocate a/w Mr.Vaibhav Sughdare a/w  
Mr.Shashank Shah i/by M/s. L D Shah & Co. for the petitioners.  
Mr.S.C. Naidu a/w Mr.Manoj Gujar and Mr.T.R.Yadav i/by M/s.C. R.  
Naidu & Co. for the respondent no.1.  
Mr.Soura Subha Ghosh a/w Mr.R.Bandekar i/by M/s.Hariani & Co. for  
the respondent nos.2(a) to 2 (d).  
Mr.S.D. Rayrikar, AGP for the respondent no.6-State.

---

CORAM : R.D. DHANUKA, J.

RESERVED ON : 22nd March 2018 PRONOUNCED ON : 11th April 2018 Judgment :

. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 19 th January 2017 ppn 5 wp-4373.17(j).doc passed by the learned District Deputy Registrar Co-operative Society, the respondent no.6 and also the certificate of unilateral deemed conveyance granted by the respondent no.6 of the land admeasuring 12928 sq. mtr. bearing Survey No.69(part), 70(part) and 71 (part) corresponding to CTS No.108/3 admeasuring 1000 sq.yds. i.e. 12928 sq. mtrs. at Vikhroli (West), Mumbai 400 082. Some of the relevant facts for the purpose of

deciding this petition are as under :-

2. It is the case of the petitioners that under Articles of Agreement dated 27th December 1979 executed by Pratapsingh Shoorji Vallabhdas, Dilipsingh Shoorji, Jyotsnaben Vikramsingh, Jaylaxmi Shoorji, these parties granted a land admeasuring 12928 sq. mtr. at Vikhroli (West), Mumbai 400 082 in favour of the respondent no.3 for consideration and conditions provided in the said Articles of Agreement dated 27th December 1979.

3. It is the case of the petitioners that by an agreement dated 27th December 1979, the respondent no.3 granted rights to develop a part admeasuring 4721.25 sq. mtrs. forming a part of the larger land by using and utilizing the FSI to the extent of 1446.25 sq. mtrs. for consideration in favour of the respondent no.5 and on terms and conditions alleged to have been set out therein.

ppn 6 wp-4373.17(j).doc

4. By a first Supplementary Agreement alleged to have been entered into in the month of March 1980, the respondent no.3 granted rights in favour of the respondent no.5 to further develop the bigger land by using and utilizing the FSI to the extent of 3275.39 sq. mtrs. for consideration and on terms and conditions alleged to have been set out therein. By a second Agreement alleged to have been entered into in the month of November 1981, the respondent no.3 granted rights in favour of the respondent no.5 to develop the Plot by using and utilizing the FSI to the extent of 3880.61 sq. mtrs. for consideration and on terms and conditions alleged to have been set out therein.

5. It is the case of the petitioners that by virtue of agreements dated 27th December 1979, March 1980 and November 1981, the respondent no.5 became entitled to develop the bigger land by using and utilizing the aggregate FSI to the extent of 8602.25 sq.mtrs. and had entrusted the said area to the respondent no.5. According to the petitioners, the said agreement dated 27th December 1979 or any of the subsequent agreements did not provide for the sale or transfer of the larger land in favour of the respondent no.5.

6. The respondent no.5 entered into various agreements for sale of industrial units in favour of various prospective purchasers. It is ppn 7 wp-4373.17(j).doc the case of the petitioners that the respondent no.5 could at the most execute the said assignment or conveyance in favour of the society in respect of the area about 8692.21 sq. mtr. out of the larger land admeasuring 12928 sq. mtr.

7. Various purchasers of the industrial units formed a Society i.e. Industrial Estate Premises Co-operative Society Limited, the respondent no.1 herein. The respondent no.1 through its advocate's notice dated 26th August 2016 called upon the petitioners to execute a Deed of Conveyance in favour of the respondent no.1 and made it clear that if the Deed of Conveyance is not executed within the time prescribed, an action under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale Management and Transfer) Act, 1963 (for short "the said MOFA") would be initiated against the petitioners.

8. The respondent no.1 filed an application under Section 11(3) of the MOFA before the respondent no.6 inter alia praying for deemed conveyance and for other reliefs in respect of larger area. The petitioners informed the respondent no.6 that some of the original owners had expired and thus their legal heirs should be brought on ppn 8 wp-4373.17(j).doc record. The petitioners through their advocate's letter dated 20 th September 2016 called upon the respondent no.1 to furnish inspection of original documents. It is the case of the petitioners that the respondent no.1 however failed to furnish copy and/or inspection of the original documents. The petitioners filed a reply to the said application before the respondent no.6. The developers also filed written statement before the respondent no.6 raising various contentions. It was contended by the respondent no.1 in the rejoinder that the property had been fully developed with 61 industrial galas plus 13 godown plus 5 cabins with necessary open spaces. The total constructed area is 10269.26 sq.ft. It was contended that the entire construction was made.

9. On 19th January 2017, the respondent no.6 passed an order of unilateral deemed conveyance in respect of the entire larger land admeasuring 12,928 sq. mtr. in favour of the respondent no.1. On 19 th January 2017, the respondent no.6 also issued a certificate of unilateral deemed conveyance in favour of the respondent no.1. The petitioners have impugned both these orders in this petition filed under Article 227 of the Constitution of India.

10. Mr.Thorat, learned senior counsel for the petitioners invited my attention to various annexures to the writ petition, various averments ppn 9 wp-4373.17(j).doc from the affidavit-in-reply and from the rejoinder. Learned senior counsel made following submissions :-

(a) The respondent no.6 has not assigned any reasons for granting any unilateral deemed conveyance for the entire larger land admeasuring 12928 sq. mtr. in favour of the respondent no.1. The respondent no.6 has not considered various documents produced by the petitioners and has overlooked the submissions made by the petitioners before the respondent no.6.

(b) The respondent no.5 became entitled to develop the bigger land by virtue of the Agreement dated 27th December, 1979, March, 1980 and November, 1981 by using and utilizing aggregate FSI to the extent of 8602.25 sq. mtrs. Pursuant to the agreement for development entered into between the respondent no.3 and the respondent no.5, the respondent no.5 was entrusted an area of 4721.642 sq. mtrs. for construction of the industrial unit along with additional area. The respondent no.1 society being the successor in title of the respondent no.5 thus cannot claim any rights higher than the rights of the respondent no.5 in any manner whatsoever.

(c) The respondent no.5 had agreed to sell the respective industrial units to the prospective purchasers. The entitlement of the respondent no.5 under those agreements was at the most to an area about 8692.21 sq. ppn 10 wp-4373.17(j).doc mtrs. of the larger land and not the entire area of larger land admeasuring 12928 sq. mtrs.

(d) The industrial units were constructed on larger piece of land. The respondent no.1 had been formed and duly registered in the year 1987. The respondent no.1 had called upon the petitioners for execution of deemed conveyance under section 11 of MOFA belatedly. The respondent no.5 was

entitled only to develop the land utilizing an aggregate FSI 8602.21 sq. mtrs. and area admeasuring 4721.64 sq.mtrs. out of the larger land.

(e) The respondent no.6 did not consider an important fact that the petitioners had their own independent structures on the portion of the land on a large piece of land and have been carrying out the business on the said land. The sheds standing on the balance portion of the land are partly occupied by some of the petitioners and some others who have been given such portion of land on leave and license basis. He placed reliance on the Architect's Report dated 11th January, 2017 appointed by the petitioners observing that the respondent no.1 society would be entitled to the portion admeasuring 8620.21 sq. mtrs. and that the petitioners would be entitled to the balance area admeasuring 4325.79 sq. mtrs. to be retained in law. This report submitted by the petitioners' Architect also is totally overlooked by the respondent no.6 in the ppn 11 wp-4373.17(j).doc impugned order.

(f) The respondent no.6 ought to have considered before passing an order of deemed conveyance, rights, entitlement and obligations of the parties under the agreement for sale and/or development agreement and could not have granted deemed conference in respect of the larger area to which the respondent no.1 was not entitled to under those agreements. The respondent no.6 has exceeded his powers by allowing deemed conveyance in respect of the entire property which is beyond the scope of entitlement of the respondent no.5 through whom the respondent no.1 society is claiming right, title and interest in the land in question. The impugned order shows non-application of mind on the part of the respondent no.6. The entire FSI available of large plot had not been consumed by the petitioners. The respondent no.1 could not thus directly or indirectly claim any right in respect of such FSI which was not consumed. The FSI permissible was 1 and not 0.75 on the date of the agreements. The respondent no.5 promoters had to first perfect their title under section 11(1) of MOFA before such promoters could be called upon to execute a conveyance of the respondent no.1 society in respect of the entire larger plot. The entire order passed by the respondent no.6 is thus without jurisdiction.

(g) Reliance is placed on the order dated 21 st April, 2017 passed by

Shri Justice R.G. Ketkar in this writ petition thereby granting liberty to the petitioners to move this Court in the event of the petitioners getting any notice under section 11(5) of MOFA. No notice under section 11(5) of MOFA has been issued to the petitioners. The respondent no.6 has already issued a certificate under section 11(5) of MOFA to the respondent no.1 illegally. The said certificate also thus deserves to be set aside. Reliance is placed on the judgment of this Court in case of Mazda Construction Company & Ors. vs. Sultanabad Darshan CHS Ltd. & Ors., 2013(2) ALL MR 278 in support of the submission that the respondent no.6 could not have passed an order of unilateral

deemed conveyance in favour of the respondent no.1 society in respect of larger area on the plot which was not even assigned to the developers. The respondent no.6 was bound to consider the rights and entitlement of the developers and the society under the agreement entered into between the parties and could not have passed the order of unilateral deemed conveyance in respect of the area larger than the area which the developers themselves were entitled to under those agreements.

(h) Reliance is placed on the judgment of the Supreme Court in case of Assistant Commissioner, Commercial Tax Department, Works Contract & Leasing, Kota vs. Shukla & Brothers, (2010) 4 SCC 785 and in particular paragraph 13 in support of the submission that the judgment ppn 13 wp-4373.17(j).doc without reasons causes prejudice to the persons against whom it is pronounced. If the reasons are not recorded in the impugned order, it would be in violation of principles of natural justice.

(i) If the respondent no.1 society implements the order passed by the respondent no.6 and if the certificate issued under section 11(5) of MOFA is registered in favour of the respondent no.1, based on such order deemed conveyance and issuance of such certificate under section 11(5) of MOFA, the respondent no.1 may create third party rights and claim exclusive ownership in respect of the entire land which the respondent no.1 need not entitled to. The impugned order thus deserves to be set aside by this Court. Filing of the civil suit by the petitioners is not required.

11. Mr.S.C. Naidu, learned counsel appearing for the respondent no.1 on the other hand invited my attention to the exhibits annexed to the writ petition, to the affidavit in reply, including the plan and submits as under :-

a) The documents annexed at Exhibit "A" to the petition are not even registered. No proper stamp duty is paid on those documents. The documents annexed at Exhibits "B" and "C" are also disputed on the similar ground.

ppn

14

wp-4373.17(j).doc

(b) The respondent no.1 society was formed on 19<sup>th</sup> November,1987.

The promoters and the owners were under an obligation to file deed of conveyance in favour of the respondent no.1 society within four months from the date of registration of the society. In spite of the repeated request made by the respondent no.1 society to the promoters as well as to the owners, the conveyance was not executed by them in favour of the respondent no.1. The respondent no.1 was thus compelled to file an application under section 11 of the MOFA inter alia praying for a deemed conveyance and for other reliefs.

(c) Scope of application under section 11 of MOFA is very limited. The District Deputy Registrar has to verify the documents placed on record by the society including the agreements entered into between the parties and to scrutinize whether the promoters as well as the owners had committed default of their obligation to execute deed of conveyance in favour of the society within the time prescribed or not, whether the documents placed on record by the society are in accordance with

and in conformity with the provisions of section 11 read with the rules or not.

(d) The learned District Deputy Registrar has rightly referred to all the documents produced by the respondent no.1 along with the application under section 11 and also the documents produced by the contesting respondents has rendered a finding that the application was in conformity ppn 15 wp-4373.17(j).doc with the provisions of MOFA and rules.

(e) The reliance is also placed on the Articles of Agreement annexed at Ex.D and also the schedule I appended thereto. The said schedule clearly provides that the conveyance was required to be executed in respect of the land admeasuring 12988 sq.mtrs. or thereabouts. The reliance is also placed on the plan annexed to the affidavit in reply filed by the respondent no.1 and also the area statement. The question of title or ownership of the land cannot be adjudicated under section upon in a writ petition filed under Articles 226 and 227 of the Constitution of India. There is no merit in the case of the petitioners that the learned District Deputy Registrar has passed an order of deemed conveyance in favour of the respondent no.1 in respect of the area more than which could be at all conveyed by the respondent no.5 in favour of the respondent no.1.

(f) The reliance placed by the petitioners on the three agreements executed inter se between the predecessors of the petitioners on one hand and respondent no.5 on the other hand annexed at Exs.A, B and respectively of this petition cannot be considered by this court and the said agreements are inadmissible. None of those agreements are registered and not even properly stamped.

(g) The permissible FSI for industrial use in respect of the land in question at the relevant time was 1 : 0.75. The sanctioned plans shows ppn 16 wp-4373.17(j).doc consumption of 0.736 FSI of the total plot of land admeasuring 12928 sq.mtrs. Under the development control regulation 1991, the FSI of the said plot has been enhanced to 1:1. The respondent no.1 after providing for the retained structure encompassing 917.41 sq.mts claimed to be occupied by the petitioners has erected industrial building utilizing 0.736 FSI considering area of the plot as 12928 sq.mtrs. The entire plot admeasuring 12928 sq.mtrs. consists one single plot of land which is reserved for industrial use. The Municipal Corporation had issued building completion certificate with the accepted completion plans dated 28th November,2001 which plan was made available for inspection to the petitioners which provides the details of the area utilized by the respondent no.5 while constructing buildings A, B and C.

(h) Reliance is placed on the judgment of this court in case of Mazda Construction Company & Ors. (supra) and also an order and judgment delivered by the Division Bench of this court in case of M/s.Shree Chintamani Builders vs. State of Maharashtra & Ors. 2016 SCC OnLine Bom 9343 in support of the submission that the authority while deciding an application under section 11 of the MOFA for granting deemed conveyance does not adjudicate upon the title of the parties in respect of the property in question. The remedy of the petitioners would be by way of a civil suit.

ppn

17

wp-4373.17(j).doc

(i) Reliance is also placed on page 182 of the writ petition forming



part of the impugned order in support of the submission that the promoters i.e. the respondent no.5 had given no objection for grant of deemed conveyance in favour of the respondent no.1 in respect of the entire plot. Insofar as the reliance placed by the learned senior counsel for the petitioners on the report of the architect who was appointed by the petitioners is concerned, it is submitted that the said report shows various factual errors and was thus rightly not considered by the learned District Deputy Registrar in the impugned order. Reliance is placed on the report submitted by the architect of the respondent no.1 and it is submitted that the said report is in conformity with the agreement entered into between the promoters and the purchasers of various industrial units. If there is any grievance of the petitioners against the respondent no.5 that the respondent no.5 could not have given NOC on or even otherwise could not have executed a conveyance in respect of the entire property which would be beyond scope of the agreements entered into between the petitioners and the developers, such contentious issue could not have been even otherwise gone into by the District Deputy Registrar while considering the limited scope of application under section 11 of the MOFA read with rules.

(j) Reliance is also invited to the averments made by the petitioners in

ppn

18

wp-4373.17(j).doc

paragraph (8) of the writ petition relating to the utilization of the FSI by the respondent no.1 and it is submitted that the said contentious issue will require evidence which can be gone into only in the civil court whereas the entire case of the respondent no.1 society is based on the agreement entered into between the respondent no.5 and the unit holders and also on the basis of the sanctioned plan. The District Deputy Registrar having satisfied that the requirement under sections 11(3) and 11(4) of MOFA having been complied with the learned District Deputy Registrar was bound to pass an order for deemed conveyance in favour of the respondent no.1 society. There was no dispute raised by the petitioners prior to the date of the passing of the impugned order passed by the learned District Deputy Registrar. No proceedings were pending between the parties before passing of the impugned order passed by the District Deputy Registrar. The petitioners had not made any application for sub division of the plots. The agreement entered into between the promoters and the unit holders also did not provide for sub division of the land in question.

(k) The judgment in case of Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota (supra) relied upon by the learned senior counsel for the petitioners is distinguished on the ground that the learned authority had recorded the reasons in the ppn 19 wp-4373.17(j).doc impugned order and thus the said judgment relied upon by the petitioners would not assist their case.

(l) Under section 11(5) of the MOFA, the competent authority has already issued a certificate allowing unilateral deemed conveyance. The respondent no.1 has now already paid the requisite

stamp duty payable on the said deed of conveyance with the stamp authority. The issuance of such certificate under section 11(5) is in furtherance of the order of the deed of conveyance passed by the District Deputy Registrar under section 11(3) of the MOFA. The petitioners thus cannot be allowed to challenge the said order of the deed of conveyance as well as the said certificate issued by the District Deputy Registrar at this stage.

12. Mr.Thorat, learned senior counsel for the petitioners in rejoinder submits that the entire order of the deed of conveyance passed by the District Deputy Registrar is illegal. The principles laid down by this court in case of Mazda Construction Company & Ors. (supra) have not been followed by the authority while passing an order of unilateral deemed conveyance in favour of the respondent no.1 and even while issuing the certificate under section 11(5) of the MOFA. The petitioners are thus not required to file any civil suit for the purpose of adjudication of the title in respect of the suit land.

ppn

20

wp-4373.17(j).doc

#### REASONS AND CONCLUSIONS :-

13. It is not in dispute that the respondent no.1 Society was formed on 19th November 1987. The deed of conveyance was required to be executed in favour of the respondent no.1 Society within four months from the date of registration of society. The respondent no.1 had repeatedly called upon the respondent no.5 who were promoters and the petitioners who were owners to execute deed of conveyance in favour of the respondent no.1. The petitioners have strongly placed reliance on the agreements entered into between the petitioners and the developers in support of the submission that the petitioners had not allowed the developers to utilise the entire FSI but had entrusted the area of 4721.642 sq.mtrs. for construction of industrial unit along with additional area. The petitioners have also strongly canvassed that some of the structures of the petitioners are already situated on the part of the said land and thus there was no question of the said developers carrying out any construction on that part of land and execution of any deed of conveyance in respect of the entire plot of land including the portion of the land on which the structures of the petitioners are situated.

14. On the other hand, the case of the respondent no.1 society is that the agreements on which the petitioners relied on which were entered ppn 21 wp-4373.17(j).doc into between the petitioners and the developers are not registered. Authenticity of those agreements are disputed by the respondent no.1. Reliance is also heavily placed on the Schedule annexed to development agreement entered into between developers and the purchasers of various industrial units which provides for execution of conveyance in respect of the entire property and not any portion thereof. Reliance is also placed on the sanctioned plan showing consumption of 0.736 FSI of the total plot of land admeasuring 12928 sq. mtrs. The said FSI was enhanced to 1:1. Municipal Corporation had issued a building completion certificate with the accepted completion plans dated 28th November 2001. The respondent no.1 also heavily placed reliance on no objection certificate granted by the promoters for grant of deed of conveyance in favour of the respondent no.1 in respect of the entire plot. The respondent no.1 has disputed the correctness of the Architect's report submitted by the petitioners

before the authority on the ground that the said report contains various aspects on actual area available.

15. Learned counsel for both the parties have strongly placed reliance on the judgment of this Court in the case of Mazda Construction Company & Ors.(supra). It is submitted by Mr.Naidu, learned counsel for the respondent no.1 society that the scope of Section 11 of MOFA is ppn 22 wp-4373.17(j).doc very limited. The competent authority has rightly considered relevant issues and were satisfied that all relevant documents were duly complied with by the respondent no.1 seeking deemed conveyance of the property in question. It is submitted that the contentious issue of title in respect of property in question even otherwise could not have been gone into by the competent authority under the provisions of the MOFA and the same can be decided only by a civil Court.

16. This Court in the said judgment in the case of Mazda Construction Company & Ors.(supra) has held that the competent authority cannot permit a society to claim something which is beyond their agreements with the promoters or other relevant documents. In that matter, there was a serious dispute as to whether the areas referred to as "garden" and "access" are forming part of the entitlement of the occupants or residents of the building on the plot or sub-plot. It is held that the parties were not ad-idem or in any event the entitlement could not have been determined and decided even in terms of the documents produced before the competent authority, then the areas which are now included and which on the showing of the competent authority have been termed as proportionate could not have been included. This Court considered the fact that there was a suit pending in a Court of law with ppn 23 wp-4373.17(j).doc regard to the entitlement of the parties then all the more the competent authority ought not to undertake the exercise by which they overreach the jurisdiction, authority and powers of competent courts and tribunals.

17. Admittedly, in this case, the petitioners have not filed any suit inter alia praying for adjudication of their title in respect of any part of the property. The petitioners have also not challenged the entitlement of the developers to execute a deed of conveyance in respect of the entire property on the ground that the developers could not have even otherwise executed deed of conveyance in respect of the entire area of plot. The respondent no.1, on the other hand, has disputed the validity of the agreements entered into between the petitioners and the developers on various grounds. In my view, the contentions issues regarding title in respect of the property in question or adjudication in respect of entitlement of the exact quantification of FSI on the plots in question even otherwise cannot be gone into in the proceedings under Section 11 of the MOFA by the competent authority. The competent authority could not have decided the validity of the agreements entered into between the petitioners and the developers and at the same time could not have also gone into the issue as to whether the promoters had committed any breach ppn 24 wp-4373.17(j).doc of not executing a deed of conveyance in respect of the entire property or not.

18. Division bench of this Court in the case of M/s.Shree Chintamani Builders Vs.State of Maharashtra & Ors. (supra) to which the Hon'ble Judge of this Court who was party to the case of Mazda Construction Company & Ors. (supra) was a party clarified the judgment delivered by the learned Single Judge in the case of Mazda Construction Company & Ors. (supra) that an order granting deemed conveyance will not conclude the issue of right, title and interest in the immovable

property and to such an extent as is apprehended by the petitioner. In that matter, it is also clarified that it was not as if such an order is passed that the petitioners have no remedy to question the act of the society on the strength of such deemed conveyance. The petitioner can still bring a substantive suit on title and point out therein that as far as the dispute plot is concerned, the reservation was shifted. It is held that all such assertions and by pointing out the relevant documents and records so also by leading oral evidence can be substantiated by the petitioner in the substantive suit.

19. It is held that in the writ jurisdiction and in the garb of examining the legality and correctness so also validity of deemed ppn 25 wp-4373.17(j).doc conveyance, Court cannot examine these issues. Division Bench of this Court clarified in the said judgment that the order of deemed conveyance shall not preclude or prevent the petitioner from filing a suit and claiming therein appropriate reliefs. In my view, the judgment delivered by the learned Single Judge of this Court in the case of Mazda Construction Company & Ors.(supra) and the judgment of this Court in the case of M/s.Shree Chintamani Builders Vs.State of Maharashtra & Ors. (supra) would squarely apply to the facts of this case. I am respectfully bound by the said judgment.

20. In this case also various contentions issues as referred to aforesaid could not have been gone into in the proceedings under Section 11 of the MOFA by the competent authority. Merely because an order of deemed conveyance is passed in favour of the respondent no.1 and the certificate of title is issued by the competent authority under Section 11 of the MOFA in favour of the respondent no.1, the petitioners are not precluded from seeking adjudication of their alleged title in respect of the suit property by filing of an appropriate civil suit. All such contentions raised by the petitioners regarding adjudication of title in the property in question can be adjudicated upon in a substantive suit.

ppn 26 wp-4373.17(j).doc

21. In so far as the judgment of the Supreme Court in the case of Assistant Commissioner, Commercial Tax Department, Works Contract and Leasing, Kota (supra) relied upon by Mr.Thorat, learned senior counsel for the petitioners is concerned, there is no dispute about the proposition of law laid down by the Supreme Court in the said judgment. However, a perusal of the impugned order by the competent authority indicates that the impugned order records various reasons and thus cannot be construed as a non-speaking order. The judgment of the Supreme Court relied upon by the petitioners thus would be of no assistance to the petitioners.

22. In view of the aforesaid view taken by this Court relying upon the law laid down by this Court in the aforesaid judgment, this Court need not deal with other submissions advanced by both the parties regarding title of either party in respect of the land in question as the same can be adjudicated upon by a civil Court in the substantive suit if filed by the petitioners.

23. It is made clear that if any civil suit is filed by the petitioners for adjudication of title in respect of the property in question, the said suit can be independently decided without being influenced by the fact ppn 27 wp-4373.17(j).doc that an order of deemed conveyance passed by the competent authority or that the certificate of title of the property is issued by the competent authority in favour

of the respondent no.1 in respect of the property in question. It is not in dispute that the order of deemed conveyance has already been executed in favour of the respondent no.1 and the certificate of title of the property in favour of the respondent no.1 is also issued by the competent authority. The respondent no.1 has already paid stamp duty on the said certificate. I am thus not inclined to interfere with the impugned order passed by the competent authority in this situation.

24. I therefore pass the following order :-

(i) The petitioners would be at liberty to file a substantive suit for adjudication of title in respect of the property in question. The same can be decided independently without being influenced by the fact that an order of deemed conveyance of the property in question is passed by the competent authority and the certificate of title of the property is issued by the competent authority under Section 11(5) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale Management and Transfer) Act, 1963.

ppn

28

wp-4373.17(j).doc

(ii) Writ petition is dismissed with the aforesaid clarification and directions.

(iii) There shall be no order as to costs.

R.D. DHANUKA, J.