

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO.7190 OF 2014**

**Bharat Vihar Co-operative Housing Society Ltd.**

**.. Petitioner**

**Versus**

**State of Maharashtra and others**

**.. Respondents**

**Mr. S. R. Waghmare, for the Petitioner.**

**Mr. S. R. Nargolkar i/by Meenakshi Sakhare, for the Respondent No.4.**

**Mr. S. D. Rayrikar, AGP for the Respondent Nos.1 & 2.**

**CORAM : R.M. SAVANT, J.**

**DATE : 11<sup>th</sup> JUNE, 2015**

**PC.**

1. The Writ Jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the order dated 20.02.2014 passed by the Competent Authority and the District Deputy Registrar, Co-operative Societies, Pune, by which order the application for deemed conveyance filed by the Petitioner under Section 11(3) of the Maharashtra Ownership of Flats Act, 1963 ("MOFA" for short) came to be allowed and the deemed conveyance in respect of an area 1263.87 sq. mtrs. came to be granted. The certificate issued bearing the said date also records the said fact.

2. The Petitioner herein is the society comprising of the flat purchasers who have purchased flats in the building known as "Bharat

Vihar” having two wings constructed by the Respondent No.3. The Respondent No.3 who was at the relevant time a proprietary-ship concern was engaged in the business of development of properties. The Respondent No.3 incidentally happened to be the owner of the land in question. In the context of the present Petition, clause 26 of the agreement entered into by the Respondent No.3 with one of the flat purchasers namely Mr. Rajendra H. Kulkarni in respect of a flat is relevant and is reproduced herein under :-

“The Purchasers herein are aware that out of the two buildings proposed to be constructed in the said property, the northern side building is being constructed by the builders for their own use and occupation and the said building as well as the appurtenant land to the extent of 9000 sq. ft. shall be exclusively in possession of and of the ownership of the owners and the Purchasers shall not be in any way connected and/or concerned with the same in any manner, and at no time Purchasers of flat, shops, parking spaces and/or the association Society and/or Company that may be formed shall have any right, title and interest in respect of the same and the said portion in occupation and ownership of builders shall be exclusively in possession of the owners and the said Society or Association shall not be in any way connected and/or concerned with the same in any manner. The promoters shall have absolute right and authority to use and occupy the same and/or to let, sublet, transfer in any manner the said premises together with the open space to any other person/s as may be deemed fit and proper by the promoters and neither the Purchasers nor any other person or persons claiming through him/her shall obstruct the same in any manner.”

3 . Hence, in terms of the said clause 26, in so far as the land in question to the extent of 9000 sq. ft. is concerned, the flat purchaser or the

association or the society of the flat purchasers that was to be formed did not have any right, title and interest in respect of the said area.

4. The development it seems was carried out on the land admeasuring 21000 sq. ft. It is out of the 21000 sq. ft. area that the area of 9000 sq. ft. that is equivalent to 836.13 sq. mtrs. was to be excluded in terms of clause 26. The Petitioner society which as indicated above is the society of the flat purchasers was registered on 20.12.1994 and the instant application for deemed conveyance was filed by the society in the year 2013 being Application No.336 of 2013 as according to the Petitioner the Respondent No.3 had not conveyed the property though was required to do so in terms of the provisions of the MOFA. In the said application the factum of the society being registered and the construction of the building known as Bharat Vihar by the Respondent No.3 was adverted to. It was also stated that the Respondent No.3 had agreed to convey an area of 12000 sq.ft. i.e. equivalent to 12000 sq.ft. but had not done so. The Petitioner had therefore applied for grant of unilateral deemed conveyance.

5. The said application was opposed to on behalf of the Respondent No.3 by filing a reply. In the said reply, a reference was made to clause 26, wherein the Respondent No.3 stated that they have constructed three bungalows on the said area admeasuring 9000 sq.ft. It

was further stated that the present proceedings are only restricted to the building consisting of 23 flats and 12 commercial shops and that the Respondent No.3 was always ready and willing to convey the area of 12000 sq.ft. to the Petitioner society. The Competent Authority considered the said application and in view of the fact that the Respondent No.3 had no objection to the area of 12000 sq.ft. being conveyed which was the area on which the building Bharat Vihar was constructed and having regard to the clause 26 of the agreement entered into with the flat purchasers was pleased to allow the deemed conveyance application filed by the Petitioner for the area of 1263.87 sq. mtrs. by the impugned order dated 20.02.2014 and consequentially a certificate was also issued. In the light of the covenant i.e. clause 26 in the agreement between the flat purchasers and the Respondent No.3 which clause unequivocally spells out that the area of 9000 sq. ft. has to be excluded from the area of 21000 sq. ft. on which the development was undertaken, the order passed by the Competent Authority granting deemed conveyance to 1263.87 sq. mtrs. can not be found fault with. It is well settled that the society of the flat purchasers is entitled to deemed conveyance in terms of the agreement which has been entered with the flat purchasers. The Learned Counsel for the Petitioner made attempts to urge that the Petitioner society would be entitled to a larger area of land than the one which is conveyed, but on being queried was not in a position to base the said claim on any right

which the flat purchasers have in terms of the agreement. In that view of the matter, the order passed by the Competent Authority cannot be faulted with, no case for interference in the Writ Jurisdiction of this Court is made out. The Writ Petition is accordingly dismissed.

[R.M. SAVANT, J]

Bombay High Court