

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9844 OF 2014

1 Prakash Arun Apte)
Proprietor of M/s. A.V.Apte & Company)
Having address at 1065m Shrukrawar)
Peth, Gandhar Apartment, Subhash)
Nagar, Lane No.9, Pune 411 002) ..Petitioner

Versus

1 Narendra Co-operative Housing)
Society Limited)
through Shri Pradip Sinnarkar)
having office at CTS No.968, 969,)
final plot No.395/396, Bhamburda,)
Senapati Bapat Road, Pune 411016)

2 Sau Sushilabai Gulab Junjal)
Age Adult Occ Houshold)
R/a, 114 Shivaji Nagar, Pune 411016)

3 The Competent Authority and)
District Dy. Registrar, Co-operative)
Societies, Pune, City, Pune,)

4 The State of Maharashtra) ..Respondents

Mr. A. A. Kumbhakoni Senior Advocate a/w Mr. T. D. Deshmukh for the
Petitioner

Mr. R. M. Pethe for the Respondent No.1

CORAM : R. M. SAVANT, J.
DATE : 5th AUGUST, 2015

ORAL JUDGMENT

1 At the outset, the Learned Senior Counsel appearing for the
Petitioner seeks deletion of the Respondent No.2 from the array of the

Respondents as according to the Learned Senior Counsel for the Petitioner in the context of the challenge raised in the above Petition, the Respondent No.2 is not a necessary party. The Respondent No.2 is accordingly deleted at the risk of the Petitioner.

2 Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

3 The Writ Jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the order dated 28-8-2014 passed by the Competent Authority and the District Deputy Registrar, Co-operative Societies, Pune, by which order, the application for deemed conveyance filed under Section 11(1) of the Maharashtra Ownership of Flat Act, 1963 (for short the said Act), by the Respondent No.1 society came to be allowed and the deemed conveyance of the property mentioned in the certificate issued on the same day, came to be granted.

4 The Petitioner herein is the proprietor of the firm which has put up the construction on the plot of land in question. The ownership of the said plots of land was that of one S.G.Junjhal. The said plots of land were bearing CTS No.92 and final Plot Nos.395 and 396 totally admeasuring 1019.6 sq.mts. The said entire plot i.e. comprising of plot Nos.395 and 396, was leased out to

the father of the Petitioner Arun Apte for a period of 98 years by a registered Lease Deed dated 24-1-1975 by the owner. The said lease contained a covenant that the Petitioner was entitled to construct a building consisting of flats on the said plots of land. The said Lease Deed also contained a covenant authorising the Petitioner to create a sub-lease in favour of any person or society as the case may be.

5 It appears that on the Urban Land (Ceiling And Regulation) Act, 1976 (for short ULC Act) coming into force, the original owner filed a return / statement under Section 6 of the said Act and in view of the fact that she was holding land in excess of the ceiling limit, in so far as the urban agglomeration of Pune is concerned, the owner through the Petitioner applied for exemption under Section 20 of the said Act. The said application for exemption was considered by the Competent Authority and by its order dated 2-8-1979 the Competent Authority exempted the land i.e. the land admeasuring 1019.6 sq.mtrs. subject to the terms and conditions mentioned in the exemption order.

In the context of the present Petition, clause (6) of the exemption order dated 2-8-1979 is material and is reproduced hereinunder :

“(6) The said firm shall not transfer the exempted and (with buildings thereon) to any other person, by way of sale, mortgage, gift, lease or otherwise, except to proposed or registered cooperative housing society. The conveyance shall be made within a period of one year from the date of this exemption order. The Registration Authorities shall allow conveyance after a “No

objection Certificate” is produced from Competent Authority (Urban Land Ceiling), Pune.”

6 After the land was exempted under Section 20, the Petitioner it seems submitted the plans to the Pune Municipal Corporation for putting up a building consisting of 14 flats having stilt plus two floors. Since the FSI was one wherein the plots of lands are situated, the Petitioner was entitled to construct built up area admeasuring 1019.6 sq.mtrs. The Petitioner accordingly put up the building having 14 flats and according to the Petitioner the built up area is admeasuring 797.18 sq.mtrs. It is the case of the Petitioner that there is a balance FSI of 210.45 sq.mtrs. The flat purchasers in the building constructed by the Petitioner comprised themselves in the Respondent No.1 Co-operative Society which accordingly came to be registered on 7-6-1983. The Petitioner it seems in terms of the covenant of the Lease Deed executed in his favour by the original owner executed a sub-lease in favour of the Respondent No.1 society on 28-1-1986 for a period of 88 years. It has been mentioned in the sub-lease that the Respondent No.1 society would not be entitled to construct on any portion of the said entire plot which includes the suit property and it is the case of the Petitioner that it is only the Petitioner who would be entitled to construct on the balance vacant portion of the plot on which the building of the Respondent No.1 society is situated. It seems that thereafter certain facts have intervened wherein the Petitioner called upon the Respondent No.1 society to hand over the possession of the balance portion of the land in question, and on

the Respondent No.1 society refusing to do so, the Petitioner filed Civil Suit No.30 of 1999 seeking eviction of the Respondent No.1 under the provisions of the Bombay Rent Act. The said Suit came to be decreed against which Appeal No.545 of 2000 came to be filed by the Respondent No.1, which Appeal came to be allowed and the decree came to be set aside on the ground that there was no relationship of landlord and tenant and therefore the rent court has no jurisdiction to try the Suit.

7 In the context of the present Petition, it is required to be noted that the Appellate Court has observed that the Petitioner has not adhered to the conditions mentioned in the exemption order dated 2-8-1979. It seems that against the order passed by the Appellate Authority, the Petitioner had filed a Civil Revision Application No.679 of 2011 which is pending.

8 In view of the fact that the property was not being conveyed to the Respondent No.1 though the Petitioner was obligated to do so in terms of Section 11 of the said Act, the Respondent No.1 filed an application for deemed conveyance. The said application was supported by the relevant documents amongst which was the exemption order dated 2-8-1979. the said application was opposed to on behalf of the Petitioner inter alia on the ground that the Respondent No.1 would not be entitled to a conveyance in the light of the sub-lease which has been executed in favour of the Respondent No.1 as in

terms of the agreement between the owner and the Petitioner, the Petitioner had only been given a right to create a sub-lease. The said application was considered by the Competent Authority. The Competent Authority has adverted to the case urged on either side and has also referred to the documents which were produced on behalf of the Respondent No.1 and thereafter by observing that the Respondent No.1 is entitled to grant of deemed conveyance, has allowed the application filed by the Respondent No.1 society by the impugned order dated 28-8-2014 and consequentially a certificate has also been issued of the area in respect of which a deemed conveyance has been granted i.e. 1019.6 sq.mtrs.

9 The Learned Senior Counsel Mr. A.A.Kumbhakoni appearing on behalf of the Petitioner would reiterate the case of the Petitioner before the Competent Authority and would contend that since the Petitioner has executed a sub-lease in favour of the Respondent No.1 society and since only a sub-lease could have been executed by the Petitioner in terms of the lease granted by the original owner, the application for deemed conveyance is not maintainable. This was the principal contention urged on behalf of the Petitioner.

10 Per contra, the Learned Counsel appearing for the Respondent No.1 society Mr. Pethe, would support the impugned order and the Learned Counsel would seek to place reliance on condition (6) mentioned in exemption

order dated 2-8-1979. The Learned Counsel would contend that in terms of the said exemption order, the Respondent No.1 society would be entitled to conveyance as the said condition forms part of the order on the basis of which exemption has been granted to the original owner. It is also the submission of the Learned Counsel that since it is pursuant to the exemption granted to the original owner that the construction is put up, the original owner falls within the ambit of Section 2 of the said Act which defines the term "promoter". The Learned Counsel would therefore contend that no interference is called for with the order of deemed conveyance.

11 Having heard the Learned Counsel for the parties I have considered the rival contentions. The question that is posed in the instant Petition is as to whether the Respondent No.1 society is entitled to only a sub-lease or is entitled to the conveyance of the property in question. No doubt in terms of the lease granted by the original owner to the Petitioner, the Petitioner could only create a sub-lease in favour of the Respondent No.1 society in respect of the land upon which the building has been constructed. However, in the instant case, the defining aspect if one can say is the exemption order passed under Section 20 of the ULC Act. It is required to be noted that the lease granted in favour of the Petitioner was in the year 1975. The ULC Act has thereafter come into force in the year 1976 and in terms of the said Act, every holder of land in an urban agglomeration was required to file a return /

statement under Section 6 of the said Act. The owner in compliance with the said requirement seems to have filed a return / statement and seems to have accepted the fact that she was holding the land i.e. the entire plot admeasuring 1019.6 sq.mtrs. in excess of the ceiling limit. The owner through the Petitioner seems to have submitted an application for exemption under Section 20 and it is pursuant to the said application for exemption that the order dated 2-8-1979 came to be passed by the Competent Authority exercising provisions under the ULC Act. By clause (6) of the said order it is provided that conveyance shall be executed within a period of one year from the date of the exemption order in favour of the registered Co-operative Housing Society, meaning thereby that the conveyance is required to be executed in favour of the society of the flat purchasers or the allottee of the flats which have been constructed pursuant to the exemption granted under Section 20. The said exemption order therefore superimposes itself on the lease executed between the owner and the Petitioner as also between the Petitioner and the Respondent No.1 society. It is only because of the exemption order that the construction could be put up on the plot of land in question by the owner through the aegis of the Petitioner developer. The owner in the instant case also qualifies to be a promoter as defined under the MOFA. If the owner had not submitted a scheme under Section 20, then the owner would have been divested of the land in question under the provisions of the said ULC Act and the land would have vested in the State Government. The Petitioner as a developer is therefore the beneficiary of

the order dated 2-8-1979 and the said exemption granted on the basis of the terms and conditions mentioned in the said order. The Petitioner now cannot revert back to the lease between the owner and the father of the Petitioner to contend that under the said lease the Petitioner at the highest can grant a sub-lease to the Respondent No.1 which it has already done. The obligation of the owner and the Petitioner as developer would therefore be governed by the exemption order dated 2-8-1979. They were therefore required to execute the conveyance in favour of the Respondent No.1 society, in terms of clause (6) thereof, they having failed to do so the Competent Authority exercising powers under the said Act has rightly intervened and granted deemed conveyance.

12 In my view, therefore, the contentions urged on behalf of the Petitioner by the Learned Senior Counsel as referred to hereinabove, cannot be accepted in the light of the exemption order dated 2-8-1979. In that view of the matter the order passed by the Competent Authority cannot be found fault with. No case for exercise of the Writ Jurisdiction under Article 227 of the Constitution of India is made out. The Writ Petition is accordingly dismissed. Rule discharged, with parties to bear their respective costs.

13 At this stage the Learned Senior Counsel for the Petitioner prays for continuation of the ad-interim relief. In the facts and circumstances of the case, the said prayer is rejected.

[R.M.SAVANT, J]