HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 260 OF 2015

Sudhir Yashwant Mandke ….. Petitioner

VERSUS

Competent Authority and
District Deputy Registrar & Ors. ….. Respondents

Mr.Rafique Dada, Senior Advocate, a/w. Mr.Shripad Khurjekar, Mr.S.Khan, Mr.Mihir R.Govilkar, i/b. Mr.R.V.Govilkar for the Petitioner.

Mr.S.D.Rayrikar, A.G.P. for the Respondent no.1.

Mr.P.S.Dani, Senior Advocate, i/b. Mr.Arvind Purohit for the Respondent no. 2.

CORAM : R.D. DHANUKA, J.

DATE : 27th JUNE, 2018

P.C.

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 21st April, 2014 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Pune and issuing service under section 11(5) of the MOFA in favour of the respondent no.1 society.

2. The impugned order as well as the certificate are challenged on the ground that though there are few more buildings to be constructed on the same plot of land under a common layout, the competent authority has granted the conveyance of the entire property including the open space. The impugned order is also challenged on the ground

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that though the petitioner is entitled to use the balance FSI available for the balance plot, a finding is rendered by the competent authority that there is no FSI available on the plot and that the entire FSI is consumed.

3. The next ground raised by the petitioner is that while issuing certificate under section 11(5) of the MOFA by the competent authority, no hearing was granted to the petitioner. There are serious disputes about the ownership in respect of the balance area and the entitlement of the petitioner of FSI.

4. On the other hand, it is the case of the society that the competent authority has granted deemed conveyance in respect of the plinth area on which the buildings have been constructed and the respondent no.1 society is formed, in addition to the proportionate open area. It is the case of the society that the deemed conveyance is passed in favour of the society on the basis of the sanctioned plan and the agreements entered into between the developer and the flat purchasers. The entire FSI is already consumed for the construction of the buildings, the occupiers thereof have formed the respondent no.1 society.

5. Insofar as the issue as to whether the petitioner was granted any hearing or not while issuing certificate under section 11(5) of the MOFA is concerned, my attention is invited to the written statement filed by the petitioner and also to the Roznama of the proceedings in which the petitioner had made it clear that the written submission filed by the petitioner society shall be treated as argument by the authority.

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6. It is not in dispute that pursuant to the impugned order passed by the competent authority, the deemed conveyance is already executed in favour of the respondent no.1 society. The certificate issued under section 11(5) of the MOFA has been also registered and is duly stamped.

7. In *catena* of decisions of this court, it has been held that in the proceedings under section 11 of the MOFA, the competent authority does not decide the dispute in respect of the title of the property. Those judgments are binding on this court.

8. Mr.Dani, learned senior counsel for the respondent no.2 that the petitioner has already filed a civil suit on 22nd August, 2017 *inter alia* challenging the deed of conveyance and also has prayed for a declaration that the petitioner is entitled to complete the construction on the balance portion of the land and has applied for injunction against the society. The said suit is pending.

9. In view of the fact that the competent authority does not decide the dispute about the title in respect of the property and in view of the fact that the petitioner has alrady filed a civil suit *inter alia* praying for a declaration that the deed of conveyance is bad and illegal and for a declaration that the petitioner is entitled to carry out the construction on the balance portion of the land and applied for injunction, in my view this court cannot interfere with the impugned order passed by the competent authority. The issue of title including the issue of

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entitlement of the FSI and TDR if any can be decided by the civil court in the suit filed by the petitioner.

10. If the petitioner seeks to carry out any amendment in that suit and seek additional prayer in respect of the subject matter of the deemed conveyance and if any application is filed by the petitioner for seeking amendment to the plaint, the same can be considered by the civil court on its own merits.

11. It is made clear that the various findings rendered by the competent authority in the impugned order will not come in the way of the petitioner in the civil suit for determining the dispute in respect of the title of the suit property.

12. Writ petition is disposed of in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]

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