

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 5742 OF 2025

M/s. Deepak Builders

...Petitioner

Versus

State of Maharashtra & Ors.

...Respondents

Mr. Mayur Khandeparkar a/w Mr. Satchit Bhogle i/by Mr. Dharmesh S. Jain for the Petitioner.

Mr. Manish Upadhye, AGP for the Respondent Nos. 1 and 2.

Mr. Kartik Tiwari a/w Mr. Devang Shah and Mr. Aditya Kanchan i/by Lakshyavedhi Legal for the Respondent No. 3.

CORAM : R.I. CHAGLA J
DATE : 26 February 2025

ORDER :

1. By this Writ Petition, the Petitioner is seeking quashing and setting aside of the impugned order dated 5th April 2024 passed by the Respondent No. 2 – District Deputy Registrar, Co Operative Societies, Mumbai City (4).

2. It is the contention of the Petitioner that the impugned order has been passed *ex parte* against the erstwhile partners of the Petitioner, who have been joined to the Application No. 23 of 2024

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filed by the Respondent No. 3 – Society for deemed conveyance under Section 11(3) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management, and Transfer) Act, 1963.

3. Mr. Khandeparkar, the learned Counsel for the Petitioner has referred to the documents which have been annexed to the Petition, which include the documents showing that the composition of the firm has been changed on 30th June 2017. He has placed reliance upon the agreement dated 30th June 2017 between the retiring partners and new / continuing partners, which has been annexed at Exh.B to the Petition. He has also referred to the extract of the Registrar of Firm which is annexed at Exh.M to the Petition, wherein at page 71 of the Petition, the new place of business of the Petitioner firm has been mentioned and date shown therein is 18th October 2019 as well as there is mention of the retiring partners having retired from the Petitioner firm on 30th June 2017.

4. Mr. Khandeparkar has also referred to the subsequent correspondence dated 24th January 2022 addressed by the Petitioner to the Respondent No. 3 – Society, wherein the Partnership Deed of

the Petitioner firm along with the survey plan has been enclosed and request has been made by the Petitioner firm for issuance of NOC for subdivision at the earliest.

5. Mr. Khandeparkar has submitted that inspite of Respondent No. 3 – Society having full details of the composition of the Petitioner firm including the continuing partners and change in address, Application No. 23 of 2024 has been filed against the retired partners of the Petitioner firm at the erstwhile address of the Petitioner firm. He has accordingly, submitted that the impugned order which has been passed *exparte* ought to be set aside, as it grants deemed conveyance in respect of the entire property when there was an NOC for subdivision of the said property granted by the Respondent No.3 – Society and for which conveyance has been sought from the continuing partners of the Petitioner firm on 1st March 2018 vide letter dated 1st March 2018 which is annexed at Exh.C to the Petition. He has also referred to the subsequent correspondence dated 27th September 2018 addressed by the Petitioner firm to the Respondent No. 3 – Society, wherein draft of the deed of conveyance had been submitted and request made for the final draft to be prepared.

6. Mr. Tiwari, the learned Counsel for the Respondent No.3 – Society has sought for time to file Affidavit in Reply to the Petition. He has submitted that the letter dated 24th January 2022 at Exh.L to the Petition, which has been relied upon on behalf of the Petitioner, and which is purportedly addressed by the Petitioner firm to the Respondent No. 3 – Society, is a fabricated letter. He has also submitted that the letter dated 10th January 2021, which is purportedly addressed by the Respondent No. 3 – Society to the Petitioner – firm and which refers to the letter dated 19th December 2020 for NOC for subdivision which has been placed before the General Body of the Respondent No. 3 – Society at a meeting purportedly held on 13th January 2018 is also a fabricated letter and was never addressed by the Respondent No. 3 – Society. He has submitted that these facts will be placed in an Affidavit in Reply which will be filed by the Respondent No. 3.

7. Considering that the impugned order has been passed against the Petitioner firm who has been incorrectly joined through the erstwhile partners and showing the erstwhile address which address has changed as reflected in the Registrar of Firms which is annexed at Exh.M to the Petition, I am of the *prima facie* view that

the impugned order is passed *ex parte*

8. There is a submission made on behalf of the Respondent No. 3 – Society that the Petitioner firm had assigned its rights in the said property to Sadanand Vasudev Shenai, Krishnakumar Ramakant Patil, Sharad Ramakant Patil, Kedarsingh D. Thakkur, who have been joined in the deemed conveyance application. However, the Petitioner firm through its continuing partners was a necessary party to the deemed conveyance application and required to be heard prior to the passing of the impugned order.

9. Accordingly, till the next date, the impugned order dated 5th April 2024 passed by the Respondent No. 2 is stayed. Respondent No. 3 – Society is restrained from taking steps pursuant to the impugned order dated 5th April 2024 passed by Respondent No. 2 including presenting the impugned order for registration before the competent Sub-Registrar of Assurances, or making any application for mutation of entries in the revenue record in terms thereof.

10. Respondent No. 3 – Society shall file their Affidavit in Reply to the Petition within a period of three weeks from the date

of this order.

11. The Petitioner is at liberty to file Affidavit in Rejoinder within a period of one week thereafter.

12. Place the Writ Petition for further consideration on 1st April 2025.

13. At this stage, Mr. Khandeparkar has sought for permission to amend the Writ Petition by joining the aforementioned assignees who were joined in the deemed conveyance application of the Respondent No. 3 – Society.

14. Permission is granted. The Petitioner shall carry out the amendment within a period of one week from the date of this order.

15. Re-verification is dispensed with.

16. Stand over to 1st April 2025.

[R.I. CHAGLA J.]