

ITEM NO.3

COURT NO.3
(HEARING THROUGH VIDEO CONFERENCING)

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (C) No.5432/2021

(Arising out of impugned final judgment and order dated 25-02-2021 in WPST No.95334/2020 passed by the High Court Of Judicature At Bombay)

ARUNKUMAR H SHAH HUF

Petitioner(s)

VERSUS

AVON ARCADE PREMISES CO-OPERATIVE
SOCIETY LIMITED & ORS.

Respondent(s)

(FOR ADMISSION and I.R.)

Date : 07-05-2021 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE K.M. JOSEPH

For Petitioner(s) Mr. Shyam Divan, Sr. Adv.
 Mr. Nishant Sasidharan, Adv.
 Mr. Nakul Jain, Adv.
 Ms. Gauri Joshi, Adv.
 Mr. Adith Deshmukh, Adv.
 Ms. Priyashree Sharma Ph, Adv.
 Mr. Kush Chaturvedi, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Vide order dated 18.09.2020, the application seeking Deemed Conveyance preferred by Avon Arcade Premises Co-operative Society Ltd. ("the Society" for short) was accepted by the Competent Authority and District Deputy Registrar Co-operative Societies, Mumbai. The application preferred by the Society in paragraphs 12 and 13 had stated:

"12. The Applicants Society had initially issued the notice to the land owners and Developers, named hereinabove and due to the non-co-operation on their part, approached the Hon'ble Consumer Forum for seeking conveyance of the land and building in their favour and filed an Application for Conveyance of the said land and Building in its favour under the provisions of the Maharashtra Ownership of Flats Act, 1963, before the Additional Consumer Dispute Redressal Forum, Mumbai Suburban District vide Complaint No.89/2011 seeking conveyance of an area of about 1911.40 sq. mtrs.

13. It was however not informed to the Applicants Society that they are seeking less area in terms of the plot of land as sought for by the Applicants Society, which would then render the constructed area more than the permissible limits and revoking of all permissions, sanctions, etc. The plans duly approved by the Opponent No.4 was for the development of the entire plot of land i.e. 2814.38 sq. mtrs. with the benefit of 131.7 sq. mtrs. of set back already availed then. The Opponent No.4 has utilized the entire FSI of the entire plot in construction of the Society Building and the neighbouring structures on the same plot, referred to hereinabove and thus, conveyance of part or portion is neither permissible, advisable nor tenable and practical thereto."

The documents on record indicate that the individual agreements entered into between the Apartment Buyers and the Promoter referred to the plot of land admeasuring about 2286 sq. yds. equivalent to 1911.32 square meters, in the second schedule to the Agreement.

Mr. Shyam Divan, learned Senior Advocate appearing in support of the petition submits *inter alia*:

a) The agreements entered into with the individual Apartment Buyers having referred to the area of 1911.32 square meters in the second schedule, the order granting Deemed Conveyance in respect of the land admeasuring 2814.32 square meters is *ex facie* incorrect.

b) The area of 903.06 square meters as indicated in the Agreement entered into with the Apartment Buyers has been leased to the present petitioner by way of perpetual lease dated 16.07.1991.

c) The present petitioner has nothing to do with the Agreement entered into between the Apartment Buyers and the Promoter and as such, the area of 903.06 square meters, which is held by the petitioner in its independent right cannot be subject matter of Deemed Conveyance.

Issue notice, returnable on 05.07.2021. Dasti service, in addition, is permitted. We also direct:-

- A. The petitioner shall place on record copy of the lease deed dated 16.07.1991 or any other document which according to the petitioner establishes right, title or interest of the petitioner with respect to the plot of land admeasuring 903.06 square meters.
- B. Let the document(s), as stated above, be filed in the Registry of this Court within three weeks from today.
- C. The concerned respondents shall place on record copies of the Original Permission/Sanctioned Approval Plans on the basis of which the constructions have been carried out and whether the FSI in respect of the entirety of the plot admeasuring 2814.38 square meters has been utilized while erecting construction in the land referred to in the second schedule to the Agreement between the Apartment Buyers and the Promoter.

Pending further consideration, the effect and operation of the order dated 18.09.2020 granting Deemed Conveyance shall remain stayed.

(MUKESH NASA)
COURT MASTER

(VIRENDER SINGH)
BRANCH OFFICER