

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

WRIT PETITION NO.1047 OF 2015

M/s. Yash Promoters and Builders	]	
Through its proprietor	]	
Shri Ashok Chunilal Katariya	]	
Age : 56 years, Occ : business	]	
205, 4th Dimension, Opp. Hotel Abhishek	]	
Erandwane, Pune – 411 004	]	 Petitioner.

Versus

1]	Yash Platinum Co-operative Housing	]	
	Society Ltd	]	
	Through Tushar Shivdas Salunkhe	]	
	President and Shri Prasad Kshirsagar	]	
	Secretary	]	
		]	
2]	The Competent Authority and	]	
	the District Deputy Registrar,	]	
	Co-operative Societies, Pune	]	
	[Summons to be served upon the	]	
	Ld. Government Pleader]	]	 Respondents.

Mr. R D Soni i/by Mr. Sugandh Deshmukh for the Petitioner.
Mr. S M Railkar for the Respondent No.1.
Mr. S D Rayrikar AGP for the Respondent No.2.

CORAM : R. M. SAVANT, J.
DATE : 06th May 2015

ORAL JUDGMENT :-

1 At the outset the learned counsel for the Petitioner seeks leave to amend the above Petition so as to join the Competent Authority and District Deputy Registrar, Co-operative Societies, Pune as party Respondent, and also seeks deletion of the Respondent Nos.2 to 10 who are formal parties in the

context of the challenge raised in the above Petition, Leave granted. Amendment to be carried out forthwith.

2 Rule, with the consent of the learned counsel for the parties made returnable forthwith and heard.

3 The writ jurisdiction of this Court is invoked against the order dated 05/08/2015 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Pune by which order the application filed by the Respondent No.1 Society for deemed conveyance came to be allowed and resultantly the deemed conveyance of the plot of land mentioned in the said application was granted to the Respondent No.1 Society. Pursuant to the impugned order the certificate bearing the same date also came to be issued by the Competent Authority and District Deputy Registrar, Co-operative Societies Pune.

4 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Respondent No.1 Society comprises of buildings A, B C and D which have been constructed by the Petitioner herein as a Developer. The Petitioner being a proponent of the said development is a Promoter within the meaning of Maharashtra Ownership of Flats Act, 1963 ("MOFA" for short). The flat purchasers of the said buildings A, B C and D have

constituted themselves in the Respondent No.1 Society. The Respondent No.1 Society has been registered on 9/11/2012. It is after the registration that the Respondent No.1 society invoked the provisions of Section 11 of the Maharashtra Ownership of Flats Act for grant of deemed conveyance as the Petitioner had defaulted in his obligations to convey the property to the Society. The deemed conveyance was sought of the property which is mentioned in the said application. The said application was filed on 29/5/2013. The Respondent No.1 filed its reply on 6/8/2013. The application thereafter was kept for hearing in August and September 2013. In the roznama of 3/9/2013 it is recorded that the Respondent No.1 to file written arguments on 17/9/2013. On 17/9/2013 it seems that the Respondent No.1 was not represented and therefore it is recorded in the roznama dated 17/09/2013 to the following effect :-

“Shri Shinde for Applicant argued that the matter be decided in their favour.

Respondent No.1 absent. Hence no arguments are considered on his behalf. Respondent No.2 to 10 absent. Hence no say is considered on their behalf. Matter is closed for orders.”

It is thereafter that the impugned order dated 5/8/2014 came to be passed. A reading of the impugned order discloses that the same is bereft of any reasons. It is required to be noted that the Respondent No.1 was not represented on 17/09/2013 but as indicated herein above, the Respondent No.1 had filed its

reply to the application on 06/08/2013. Assuming that the Respondent No.1 was not represented on 17/09/2013 the least that was expected from the authority was that the reply was required to be taken into consideration. However, the authority has by passing a cryptic order has decided the said application filed under Section 11 of the MOFA.

5 The impugned order has been challenged by the Petitioner on the ground that the order passed is a non-speaking order and that the principles of natural justice have also been violated inasmuch as an opportunity of hearing ought to have been given to the Petitioner.

6 The learned counsel appearing for the Respondent No.1 Society sought to justify the impugned order on the ground that what had happened during the course of the proceedings has been recorded in the preface to the said order. The learned counsel would also contend that conveyance is executed in favour of the Respondent No.1 Society.

7 In my view, it is not possible to sustain the order for more than one reason. It is required to be noted that though the matter was closed for orders on 17/9/2013, the impugned order has been passed by the Competent Authority on 05/08/2014 i.e. almost after a period of more than 10 months. The order is also bereft of any reasons and also does not advert to the reply

filed on behalf of the Respondent No.,1 which was the main contesting Respondent and if the Respondent No.1 had not remained present on 17/09/2013 a final indulgence could have been shown to the Respondent No.1 by keeping the application on some other date as a last chance. But that was not done and abruptly the proceeding was closed for orders, and as indicated above, the said order was passed almost after a period of 10 months of the proceedings being closed for orders. The order is therefore vitiated on account of violation of the principles of natural justice, as also on account of the fact that the order has been passed long after the matter was reserved for orders. In that view of the matter, the impugned order would have to be quashed and set aside and the matter would have to be relegated back to the Competent Authority for a de-novo consideration of the application filed for deemed conveyance being Application No.122/2013. The impugned order is accordingly quashed and set aside and the matter is remanded back to the Competent Authority for a de-novo consideration of the application filed for deemed conveyance being Application No.122 of 2013. On remand the parties to appear before the Competent Authority on 18/05/2015. The said date is fixed by the consent of the learned counsel for the parties. The Competent Authority thereafter to decide the application latest by 21/07/2015 by giving proper opportunity to the parties. The learned counsel appearing on behalf of the Petitioner states that the Petitioner would file written submissions on 18/05/2015. However, it is clarified that filing of the written submissions

would not obviate the need to grant personal hearing to the parties. The Competent Authority is directed to deal with the contentions that would be urged by the parties. The above Writ Petition is allowed to the aforesaid extent. Rule is accordingly made absolute, with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]