

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (STAMP) NO.13347 OF 2015

M/s. Paramount Builders & Developers.] ... Petitioner

Versus

State of Maharashtra, Through its Secretary]
to Department of Co-operation & Textiles]
Marketing, and Ors.] ... Respondents

Mr. S. S. Kanetkar for Petitioner.

Mr. S. D. Rayrikar, A.G.P., for Respondent Nos.1 to 3.

Mr. M. J. Jamdar for Respondent Nos.4 and 5.

CORAM :- M. S. SONAK, J.

DATE :- DECEMBER 09, 2015

P. C. :-

1. The challenge in this petition is to the order dated 13/11/2014 made by the Competent Authority (respondent no.2) under the provisions of Section 10(1) of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ('MOFA').

2. Mr. S. S. Kanetkar, learned Counsel for petitioner, has submitted that the petitioner was never served notice in Application No.106 of 2014 made by the respondent no.4 in the matter of

registration of society and therefore, the petitioner could not attend the proceedings before the respondent no.2. Mr. Kanetkar however submitted that upon acquiring knowledge about pendency of the proceedings, one of the partners of the petitioner did appear before the respondent no.2 on 11/11/2014, on which date, final hearing in the matter was scheduled. A written application was also made by the partner on 11/11/2014 seeking for adjournment and liberty to file reply. Mr. Kanetkar however submitted that the written application was not even taken on record by the respondent no.2 who proceeded to make final order on 13/11/2014. Mr. Kanetkar submitted that there has been gross violation of principles of natural justice and fair play in the making of the impugned order. That apart, Mr. Kanetkar pointed out that in terms of agreement with the flat purchasers, the option is with the petitioner whether to convey apartment individually or execute a conveyance in favour of the society. The petitioner, being unaware of the making of the impugned order, has on 02/12/2014, already executed a Deed of Declaration submitting to the jurisdiction of the authorities under the Apartment Ownership Act, 1970 and has also informed the purchasers that they are willing to execute individual Deed of Apartment in favour of the flat purchasers. For all these reasons, Mr. Kanetkar submitted that the impugned order dated 13/11/2014 is required to be set aside.

3. The respondent no.2 has filed an affidavit sworn on 27/09/2015. The deponent therein, makes a categorical statement that notices were issued to the concerned parties and in spite of

receipt of notice, the petitioner failed to remain present. Hearing has taken place on 13/10/2014, 03/11/2014 and 11/11/2014. The deponent had denied the presence of the representative of the petitioner on 11/11/2014.

4. Mr. S. D. Rayrikar, learned A.G.P. for respondent nos.1 to 3, has submitted that there is no affidavit in rejoinder filed by the petitioner disputing the averments in the affidavit made by the respondent no.2. That apart, there are records which establish that notices were duly served upon the petitioner and the averments in the petition to the contrary are false. Mr. Rayrikar has submitted that the impugned order has been made after compliance with principles of natural justice.

5. Mr. M. J. Jamdar, learned Counsel for respondent nos.4 and 5, has submitted that there was absolutely no breach of principles of natural justice and fair play. Despite notice, the petitioner chose not to attend the proceedings. Mr. Jamdar has handed in compilation of documents, which are said to have been obtained under the Right To Information Act. The documents include registered acknowledgment slip which evidence service upon the petitioner. Mr. Jamdar pointed out that the Deed of Declaration dated 02/12/2014 was made after the impugned order was passed and with the knowledge that the impugned order has been passed. For all these reasons, Mr. Jamdar submitted that this petition be dismissed.

6. Having heard the learned Counsel for parties, in my judgment, no case is made out to interfere with the impugned order. There is material on record which indicates that the petition was duly served in the proceedings before the respondent no.2. The respondent no.2 has filed an affidavit and the averments in the affidavit have not been contested by the petitioner by filing any affidavit in rejoinder. That apart, there are registered acknowledgment slips which establish that the petitioner was duly served in the matter. There is no explanation in the petition as to how, the representative of the petitioner obtained knowledge of the proceedings and attended the proceedings on 11/11/2014. No doubt, as per the affidavit of the respondent no.2, the representative of the petitioner never attended the proceedings on 11/11/2014. However, as per petitioner's case, their representative was informed that the matter has been posted for orders. Then, it was expected of the petitioner to pursue the matter and at least obtain copy of the order within reasonable period. In para 8 of the petition, there is an averment that petitioner, through their Advocate, applied for getting a copy of the order, if any, from the respondent no.2. However, neither is the date of such application indicated nor is the copy of such application placed on record. Instead, on 02/12/2014, the petitioner proceeded to execute the Deed of Declaration unilaterally. This petition is also instituted sometime in May 2015. Considering such circumstances cumulatively, there is no case made out of any violation of principles of natural justice and fair play in the making of the impugned order.

7. The impugned order has merely permitted the registration of the respondent no.5 society. As yet, no orders have been made in the context of execution of conveyance or deemed conveyance.

8. The learned Counsel for parties state that proceedings in that regard are already pending before the respondent no.2. The petitioner has been served in the said proceedings and the petitioner is even appearing in the said proceedings. All contentions of all parties, under the law insofar as the said proceedings are concerned, are kept open for decision by the respondent no.2.

9. Accordingly, there is no case made out to interfere with the impugned order. This petition is therefore dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)