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

WRIT PETITION NO. 2421 OF 1997

Ms. Mariangel Donafrancis Rochelin Faria and anr.. Petitioners
Versus
Jupiter Apartment No. II Cooperative Housing
Society Limited and Ors. .. Respondents

**ALONG WITH
WRIT PETITION NO. 2878 OF 1998**

Jupiter Apartment No. II Cooperative Housing
Society Limited and Ors. ... Petitioners
Versus
M/s. National Enterprises and Ors. ... Respondents

**ALONG WITH
WRIT PETITION NO. 3479 OF 1997**

M/s. National Enterprises and Anr. ... Petitioners
Versus
M/s. Mariangel Donafrancis Rochelin and Ors. ... Respondents

Mr. Rajiv Narula i/by Mr. Anuj Narula for petitioner in W.P. No. 2421 of 1997.

Ms. M.S. Bane "B" Panel counsel for State.

Ms. Pallavi Thakar for respondent no. 9 in W.P. No. 2421 of 1997 and Respondent no.5 in W.P. No. 2878 of 1998.

**CORAM : ANOOP V. MOHTA,J.
DATED : 23 FEBRUARY, 2015**

P.C.

Taken up from final hearing board.

2. Heard learned counsel for the petitioners. Since order impugned is same, all three petitions are disposed of by this common order.

WRIT PETITION NO. 2421 OF 1997 :

3. The petitioners challenge the order dated 27th February, 1997 passed by the Deputy Collector and Competent Authority-II (Urban Land Ceiling) Greater Bombay whereby the application of the complaint under section 7(2) of the Maharashtra Ownership Flats (Regulation of Promotion of Construction, Sale, Management and Transfer) Act, 1963 is allowed without deciding the issue of jurisdiction so specifically raised in the written statement filed by the petitioner (original opponent nos. 6 and 7). The specific contentions raised are as under :

“1. At the very outset these Opponents submit that the present dispute as framed and filed under Section 7(2) of Maharashtra Flat Ownership Act is not maintainable against these Opponents. Therefore, the above mentioned case is liable to be dismissed with costs.

2. This Honourable Court can try and entertain the disputes between promoter and persons who have agreed to take flats in the building and persons who have agreed to take flats in the building to be constructed or constructed, with

regards to any defects in the building or material used or any unauthorised change in the construction. Therefore, this Honourable Court has no jurisdiction to try and entertain any dispute between the disputants and these Opponents. On this ground alone the above mentioned case is liable to be dismissed with cost.”

4. While passing the final order, without dealing with the specific issues of jurisdiction so raised, the learned Authority has passed the order. This court on 22nd September, 1997 while admitting the petition has granted interim relief in terms of prayer clause (b) which resulted into stay of the order. It is also directed that the Dispute Case No. 103 of 1987 be proceeded further. The pendency in that matter in any way is not sufficient to keep this petition pending. Since 22nd September, 1997 the order impugned is stayed and the effect of this is that it was never implemented and or executed. Therefore also there is no point to keep this petition pending.

5. Therefore, to avoid further delay and in the interest of justice, I am inclined to set aside the order so passed and remand the matter for reconsideration basically on the ground of jurisdiction so raised in view of the specific provisions and the objections recorded hereinabove. The power of

authority in the Act is quite limited. The jurisdictional issue needs to be decided before proceeding further as rights so decided binds all the parties. The authority therefore, needs to act within the frame of law by following principles of natural justice including dealing with submissions of both the parties in accordance with law.

7. The parties are at liberty to add or to produce material in support of their case and/or ask for appropriate relief in view of subsequent change/development in the matter pertaining to the issues so raised in the present petition. All points are kept open.

8. I therefore, pass the following order :

Impugned order dated 27th February, 1997 is quashed and set aside. The matter is remanded back for reconsideration. All the points are kept open. The parties are at liberty to file an additional affidavit and/or produce material, if any to justify their respective case. Rule is made absolute accordingly. There shall be no order as to costs.

WRIT PETITION NO. 2878 OF 1998 :

In so far as Writ Petition No. 2878 of 1998 is concerned, this

petition is filed by the society challenging the same order, so referred above. Therefore, the same reasons and the order are sufficient to dispose of this petition also. Petition is accordingly disposed of. Rule is made absolute accordingly.

WRIT PETITION NO. 3479 OF 1997 :

This petition is filed by the developer and challenge is to the same impugned order as in Writ Petition No.2421 of 1997. This petition is also disposed of on the same reasons and the order. Rule is made absolute accordingly. There shall be no order as to costs.

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(ANOOP V. MOHTA,J.)