

ingale

IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10634 OF 2014

M/s.Shambhu Realtors Private Ltd. ... Petitioner
Vs.
Shri Nitin Kale and others ... Respondents

Mr.Sandeep Mishra, for Petitioner.
Mrs.M.S.Bane, AGP 'B' Panel, for Respondent No.1.

CORAM : A.K.MENON, J.
DATE : 15th OCTOBER, 2015

P.C. :

. The present Writ Petition challenges the order passed by the District Deputy Registrar of Co-operative Societies, Thane pursuant to the application made for deemed conveyance under section 11(3) of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. The learned Counsel for the petitioner submits that the respondent No.1 did not give a proper opportunity to the petitioner of being heard. The said order, therefore, vitiated on that count. He submits that the petitioner is yet to recover various amounts due to the petitioner from the purchasers of the flats and that he has filed Special Civil Suit No. 84/11/272/12 in the Court of the Civil Judge, Senior Division at Kalyan to recover the aforesaid sum of Rs.17,21,000/-.

2. The Suit proceeds on the basis that the aforesaid amounts are still due and payable towards the plaintiff's dues. It may not be out of place to mention that Suit is filed against the Society through its Chairman and Secretary. In view of the pendency of the Suit, this Court does not express any opinion on the aspect of the money claim that the petitioner may have against the Society. However, it is pertinent to mention that in the earlier round of litigation, the application made under section 11 (3) was rejected by the Deputy Registrar of Co-operative Societies, Thane vide order dated 16/08/2011 (Exhibit 'C').

3. Thereupon Writ Petition came to be filed in this Court being Writ Petition No. 8910 of 2011 which came to be finally disposed of on 04/10/2012. By the said order, this Court set aside the impugned order and directed the Competent Authority to deal with the application filed by the petitioner as expeditiously as possible after all the parties including respondents No. 2 to 4 being developers (respondent No.2 being the present petitioner) were duly served in the matter. Accordingly, the Competent Authority thereafter heard the parties pursuant to the remand and vide order dated 15/03/2013 has granted a Certificate of deemed conveyance in respect of 2722 sq. meters of land.

4. Today, the learned Counsel appearing for the petitioner submits that no proper opportunity was given to the petitioner and

although there is no dispute as to the area sought to be conveyed. His Suit filed in the year 2012 is still pending and till the amounts claimed by him are paid, there is no question of executing any conveyance. He submits that being aggrieved by the impugned order dated 15/03/2013, the petitioner filed application for review before the Competent Authority contending that no proper opportunity was given to him for raising other pleas. The Competent Authority after having heard review, rejected the same on 20/11/2013 since he had no power to review the order. Being aggrieved by the impugned order dated 15/03/2013, the present petition has been filed in July 2014.

5. Having heard the parties and having considered the various contentions of the parties, the only contention of the petitioner to the effect that he has not been given an opportunity to present his case. In my view, the same is not sustainable in view of the fact that petitioner was already before the Competent Authority in the first round of litigation and having succeeded and after the order came to be challenged in this Court on remand, once again, the parties including the petitioner are seen to be heard in compliance with the directions of this Court in the order dated 04/10/2012. The only contention the petitioner has reiterated other than the alleged lack of opportunity is the fact that Suit is still pending.

6. In the circumstance, the order of the Competent Authority is not arbitrary or perverse in any manner. It is however, necessary to clarify that although no interference is called for by this Court with the impugned order, the observations in this order shall not prevent the petitioner from pursuing the Suit filed in the Court at Kalyan for recovery of its alleged dues of the Suit is otherwise maintainable. With these observations, Writ Petition is disposed of by following order :

- i) Writ Petition is dismissed.
- ii) There will be no order as to costs.

(A.K.MENON, J.)