

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**APPELLATE SIDE CIVIL JURISDICTION****WRIT PETITION NO. 10459 OF 2014**

Mr. Purshottam S. Rane, also
known as Mr. Purshottam S. Raorane

....Petitioner.

Vs.

Chairman/Secretary,
Janki Niwas Co-operative Housing
Society Ltd & Ors.

....Respondents.

Mr. Manoj S. Mhambrey for the Petitioner.
Mr. Ketan A. Chotani for Respondent No.1.
Mr. S.D. Rayrikar, AGP for Respondent No.5.

CORAM:- ANOOP V. MOHTA, J.
DATE :- 17 FEBRUARY 2015.

P.C:-

Rule, made returnable forthwith.

Heard finally by consent of the parties.

2 The original Petitioner-being original owner, filed the Application, challenging the maintainability of the Application for deemed conveyance filed by Respondent No.1-Society. The said Application dated 23 May 2014 was duly replied by contesting Respondents by reply dated 1 July 2014. Respondent No.5-Authority,

however, though is Competent Authority as contemplated under Section 5A of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short, “the MOFA Act”) without assigning the reasons on the preliminary issue so raised by the impugned order, rejected the preliminary objection. This itself, in my view, is sufficient to remand the matter for reconsideration, as the issue so raised by the owner, just cannot be brushed aside like this, as it goes to the root of the matter or at least required consideration and decision from the Competent Authority before granting and/or proceeding further with the grant of deemed conveyance in question as prayed for, by the Respondent-Society. The aspects of no building is standing and/or demolished already, and further no registered agreement which are necessary for deciding the issue so raised, are also missing.

3 Therefore, taking overall view of the matter and in the interest of justice to avoid further complications, impugned order dated 5 November 2014, is quashed and set aside. The Application dated 23 May 2014 filed by the Petitioner, stands restored to file. The Respondent-Authority to decide the same, as early as possible, in

accordance with law, by giving equal opportunity to both the parties.

4 Therefore, the following order:-

ORDER

- a) Impugned order dated 5 November 2014, issued by Respondent No. 5-Authority is quashed and set aside.
- b) The Petitioner's Application of preliminary issue, is restored to file.
- c) The Respondent-Authority to decide the same with reasons, in accordance with law, as early as possible, by giving equal opportunity to all the parties concerned.
- d) Writ Petition is allowed.
- e) All contentions are kept open.
- f) Rule made absolute, accordingly.
- g) There shall be no order as to costs.

(ANOOP V. MOHTA, J.)