

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 992 OF 2015

Akhil Bharatvarshiya Marwari
Agarwal Jatiya Kosh
Having its office at 227, Kalbadevi
Road, 2nd floor, Mumbai-400 002

.....Petitioner

Versus

1. The State of Maharashtra
Through the office of Govt.
Pleader, High Court, P.W.D Bldg,
Bombay-400 032.

2. The District Registrar,
Co-operative Societies, Mumbai City
(4), having his office at Bhandari Co-op
Bank Building, 2nd floor, P.L. Kale
Guruji Marg, Dadar (West),
Mumbai-400 028.

3. Brahmanand Sharma
Hon. Secretary, Agarsen Co-op Hsg.
Society Limited, C.T.S. No.97A/5-2
Village-Chincholi, Taluka-Borivali,
Upper Govind Nagar, Opp. Upwan
Tower, Malad (East),
Mumbai-400 097.

.....Respondents

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Mr. Vivek Kantawala a/w. Mr. Amey Patil i/by. Vivek Kantawala & Co.,
Advocate for the petitioner.

Mr. Mohit Jadhav, AGP for respondents no.1 and 2.

Mr. Navin Parekh a/w. Mr. A.M. Saraogi, Advocate for respondent no.3.

Coram :- Smt. R.P. SondurBaldota, J.

10th September, 2015.

P.C. :-

1). The petitioner, a registered Public Charitable Trust has filed this petition under Article 226 of the Constitution of India to challenge legality and correctness of the order dated 13th January, 2015 passed by the District Registrar Co-operative Housing Societies allowing the application filed by respondent no.3 on behalf of Agrasen Co-operative Housing Society Ltd ("the Society" for short) under Section 11(3) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("the MOFA" for short).

2). The members of respondent no.3 had filed Civil Suit No. 411 of 2004 against the petitioner for several mandatory reliefs directing it to fulfill its obligations under the MOFA and to restrain it from carrying out any further construction. They alleged in the plaint that, the petitioner had in the year 1976-77 represented to the members of the Society that, they are the owners of the land at Plot No.J, Survey No.40, 48A, 48/47 admeasuring 1192.2 sq.mts situate at Malad (East) and that they were

intending to construct a housing complex consisting of various buildings, of flats to be sold on ownership basis. Some of the members of the Society purchased flats from the petitioner and paid substantial amount in the year 1978 towards advance/part payment of sale price of the flats. Around the year 1980, on the demand from the petitioner, they paid the balance consideration also for which receipts had been issued to them. The other members of the Society have purchased their respective flats on resale. After receipt of the full purchase price of the flats, possession letters were issued to the flat purchasers and consent given for transfer of the electricity meters in the name of respective flat purchasers. The petitioner, however, did not enter into agreements of sale with each flat purchaser and get the same registered as mandatorily required under the MOFA. The petitioner also failed to, (i) complete the entire work in respect of the building, (ii) obtain occupation certificate, (iii) secure municipal water connection to the building, (iv) pay property taxes, (v) provide amenities like drainage connection and sanitation services, and (vi) form Society of the flat purchasers despite collecting money therefor from each flat purchaser. Lastly, the petitioner failed to convey the suit property to the Society, to be formed of the flat purchasers. In addition to these, several other transgressions of the provisions of MOFA were alleged against the petitioner. The flat purchasers had formed an Association and requested the petitioner to do the needful.

3). The Bombay City Civil Court, by its judgment and order dated 22nd January, 2010 decreed the suit, directed the petitioner to (i) execute and register agreements in favour of the flat purchasers in accordance with Section 4 of MOFA within 3 months from the date of the order, by bearing the costs for execution and registration of the agreements, (ii) complete the building in accordance with the building plans sanctioned and obtain occupancy certificate within 4 months from the date of the order, (iii) acquire municipal water connection to the building, (iv) form a Co-operative Housing Society of flats purchasers within 4 months from the date of the order and (v) convey the title in respect of the suit building and land to the extent of the suit building as shown in the plan within 6 months from the date of the order. On failure of compliance with direction-(ii) above, the flat purchasers were at liberty to get the work done through any other builder and recover cost from the petitioner and on failure of compliance with direction-(v) above, the flat purchasers were granted liberty to apply to the Competent Authority for unilateral conveyance under Section 11(3) of MOFA.

4). The petitioner had preferred appeal being First Appeal No.466 of 2010 against the judgment and decree of the Bombay City Civil Court. That appeal was dismissed on merit by this Court by its judgment and order dated 4th December, 2014 while upholding the judgment and decree of this Court, clarified that the petitioner was liable

to convey the building alongwith the land admeasuring 2700 sq.mts to the Society and that the petitioner was entitled to consume the balance FSI of the suit land. It also extended the time to convey the property by nine months. The petitioner had, thereafter, sought modification of the order to specify conveyance of the property to the extent of 1009 sq.mts i.e. the land under the building instead of 2700 sq.mts by filing Civil Application No. 1698 of 2015. By the order dated 4th July, 2015 the Civil Application was dismissed. The order, however, specified the extent of balance FSI on the plot of land available to the petitioner as 1194.95 sq.mts. The petitioner has not carried the matter further till date.

5). On failure on the part of the petitioner to comply with the decree, respondent no.3 filed Application No. 42 of 2014 before the District Registrar Co-operative Housing Societies, Mumbai under Section 11(3) of the MOFA for unilateral deemed conveyance of the property to it. The petitioner filed its reply contending that the application was barred on the principles analogous to Section 11 of CPC because there was already a decree for conveyance in favour of respondent no.3 of which execution could have been sought by respondent no.3. The District Registrar by the order impugned in the petition allowed the application by a speaking order granting deemed unilateral conveyance of the land at City survey No.97/A5-2 admeasuring 2593.7 sq.mts situated at Upper Govind Nagar, Opp.

Upwan Tower, Village-Chincholi, Taluka-Borivali, Malad (East) and the building constructed thereon.

6). The challenge contained in the petition to grant of unilateral conveyance is essentially on the ground of absence of agreement of sale between the petitioner and each flat purchaser. The second objection is of absence of occupation certificate. The third objection is based on the allegation that, the District Registrar did not conduct the necessary enquiry into the claim of the petitioner in respect of the land under the building.

7). As regards the first two objections, it does not lie in the mouth of the petitioner, to contend the same because they arise out of the act of the petitioner in breach of MOFA. If the petitioner is allowed to plead the two grounds, it would amount to allowing it to take advantage of its own wrong. Further, the petitioner has also failed to comply with the directions given in the decree to execute agreement with each flat purchaser and also obtain occupation certificate. As regards the third contention, in view of the order passed by this Court in the First Appeal and the Civil Application filed by the petitioner, there was nothing for the District Registrar to enquire into. Hence, the petition is dismissed.

Rane

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WP-992-2015
Thursday, 10.9.2015

CERTIFICATE

. Certified to be true and correct copy of the original signed order.