

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8333 OF 2015

Mr. Ramkrishna Ramkrishna Salvi (Deceased)]
 Throughh his legal heirs.] ... Petitioners

Versus

The District Deputy Registrar, Co-Operative]
 Societies (2), and Ors.] ... Respondents

Mr. M. S. Topkar for Petitioners.

Mr. S. D. Rayrikar, A.G.P, for Respondent No.1.

Mrs. A. A. Walawalkar a/w Mr. Prayag Joshi i/b Mr. Bipin Joshi for
 Respondent No.2.

CORAM :- M. S. SONAK, J.

DATE :- JANUARY 18, 2016

P. C. :-

1. Mr. M. S. Topkar, learned Counsel for petitioners seeks deletion of respondent no.2, as the presence of respondent no.3 is not necessary for the purposes of deciding the present petition. Leave is granted. Necessary amendment to be carried out forthwith.

2. **Rule.**

3. With the consent of and at the request of learned Counsel for parties, Rule is made returnable forthwith.

4. The challenge in this petition is to the order dated 11/03/2015 made by the Competent Authority under the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ('MOFA')

5. The respondent no.2 applied to the Competent Authority for making appropriate order in the matter of issuance of deemed conveyance under the MOFA. The Roznama for 29/12/2014 reads thus :-

“29 Dec 2014.

For Applicant R. M. Shouche – Chairman

Applicant submitted amended application and 3(a)(b)(c) (d)(e) and 4 Respondent added.

Respondent No.3(a) Tushar Ramchandra Salve present.

- *Nobody for other Respondent.*
- *Adv. Sadhana Patil for Respondent No.3(a) & 3(b) (c)(d)(e) have given authority to (a) & (b)*
- *Through this application applicant ask for 691.2 sq.mt. area. Now applicant ask for 550 sq.mt. + 327 sq.mt. FSI*
- *Accordingly, consent terms are prepared and submitted today. Applicant society agreed for less area. Applicant asked to furnish Arch. Certificate.*

Next date 20.01.2015 T 3.30.

*Sd/-
29/12”*

6. On the next date i.e. on 20/01/2015, the following Roznama came to be recorded :-

“20.01.2015.

Mr. Hegde for Applicant.

Adv. Sadhana Patil for Respondent no.3 a, b, c, d,e

Parties have already filed consent terms for the conveyance of the land and it is hence opinion that there is no need of deem conveyance. Since society & developers are ready, then in such situation where developers is ready to give conveyance and consent terms are filed then society should not waste money on stamp duty & other registration charges.

*Parties are free to go for conveyance of land.
Closed.*

*Sd/-
20.01.2015.”*

7. In view of the aforesaid, it is the case of Mr. Topkar, learned Counsel for petitioners, that the petitioners were under the *bona fide* impression that the proceedings themselves have been closed, since it was made clear that the parties were free to go in for conveyance of the land. Mr. Topkar submits that there was neither any compliance with the provisions contained in Rule 13 of the Maharashtra Ownership Flats Rules, 1964 ('said Rules') nor were the petitioners afforded any opportunity of either filing their reply nor was any opportunity of hearing afforded to the petitioners before the impugned order came to be made. In terms of the impugned order, deemed conveyance has been directed.

8. Mrs. A. A. Walawalkar, learned Counsel for respondent no.2, submitted that from the Roznama, it appears that the procedure prescribed under Rule 13 (5) was complied with. She submitted that the petitioners had exerted undue pressure upon the Chairman of the respondent no.2-Society into filing of Consent Terms. She submitted that opportunity of filing response or hearing was also granted to the petitioners but the petitioners failed to avail the same. On this

ground, she submitted that no interference is warranted in the impugned order.

9. Upon hearing the learned Counsel for parties and perusing the record, in my Judgment, the impugned order is required to be set aside on the ground that breach of principles of natural justice as well as non-compliance with the rules upon which reliance is being placed by Mrs. Walawalkar. From the two Roznamas, it is apparent that there was no opportunity of hearing as such granted to the petitioners, as it was declared that the parties are free to go for conveyance of the land. Whilst the Consent Terms filed by the parties may not be binding upon the Competent Authority and the Competent Authority always has the right to reject the Consent Terms and to proceed with adjudication on merits, this has to be done after afford of opportunity of hearing to all the parties. From the Roznama to which reference has been made earlier, it is clear that no such opportunity of hearing was afforded to the petitioner and it is possible that the petitioner was under the *bona fide* impression that the proceedings stand closed, in view of the Consent Terms.

10. If the provisions contained in Rule 13 of the said Rules are perused, then, a detailed procedure has been prescribed. The procedure contemplates opportunity for filing reply, production and inspection of documents as well as opportunity of hearing. There is no record with regard to compliance with such procedure. On this short ground, the impugned order is liable to be set aside.

11. The matter is remanded to the Competent Authority and the Competent Authority is directed to decide the application made by the respondent no.2 on its own merits and in accordance with law. The petitioners, if they choose, are at liberty to file reply within four weeks from today without seeking any further adjournment in the matter. The Competent Authority to dispose of the application made by the respondent no.2 upon deemed compliances with the provisions contained in Rule 13 of the said Rules, which includes afford of opportunity of hearing to all the parties.

12. The parties to appear before the Competent Authority on 27/01/2016 at 3.00 p.m. and produce authenticated copy of this order.

13. It is made clear that this Court has not adverted to merits of the matter and therefore, all contentions of all parties are left open for decision by the Competent Authority.

14., All parties to cooperate in the matter of expeditious disposal of the proceedings.

15. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

16. All parties to act on basis of authenticated copy of this order.

(M. S. SONAK, J.)