

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Writ Petition No. 1298 OF 2015

Kalanidhi Co-operative Housing
Society Ltd.

...Petitioner

Versus

The Chairman/ Secretary, Mulund Riddhi
Siddhi Co-operative Housing Society Ltd.
And Ors

...Respondents

....

Mr.Sandesh Deshpande, Advocate for the Petitioner.

Mr.M.A. Adenwala, Advocate for Respondent No.1.

Mr.Meelan Topkar, Advocate for Respondent No.4.

Ms. M.S. Bane, B Panel Counsel, AGP for Respondent No.7.

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CORAM : R. G. KETKAR, J.

DATE : 30th MARCH, 2017

P.C.

1. Heard Mr.Sandesh Deshpande, learned Counsel for the petitioner, Mr.M.A. Adenwala, learned Counsel for respondent No.1, Mr. Meelan Topkar, learned Counsel for respondent No.4 and Ms.M.S. Bane, learned A.G.P. for respondent No.7.

2. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 4.10.2013 passed by respondent No.7 District Deputy Registrar of Co-operative Societies and the Competent Authority (for short, 'Competent Authority'). By that order, the Competent Authority

issued unilateral deemed conveyance and certificate under Section 11(4) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short, 'MOFA').

3. In support of this Petition, Mr. Deshpande has invited my attention to the plan of C.T.S. No.633/1 at Exhibit-A, Page-24 of the Petition. He submitted that the petitioner society is in building 'C' and the first respondent society is in building 'A'. He has invited my attention to the application made by the first respondent to the Competent Authority under Section 11(3) of the Act and in particular paragraph-15. In paragraph-15, the first respondent contended that M/s. Maruti Shilp Pvt. Ltd. developed C.T.S. No.633/1 by constructing separate seven storeyed building with 14 flats and registered the petitioner society on the basis of the plan sanctioned by the Bombay Municipal Corporation dated 29.10.1996. He submitted that the first respondent, however, did not implead the petitioner in an application under Section 11(3). The petitioners were consequently not heard by the Competent Authority. He submitted that the impugned order is liable to be set aside for violation of principles of natural justice. In support of this submission, he relied upon decision of this Court in

Tushar Jivram Chauhan and another v State of Maharashtra and others, 2015(4), Mh.L.J. 867 and in particular paragraphs-22, 24 and 25 thereof. He submitted that the petitioner also filed application under Section 11(3) of MOFA. By order dated 22.12.2014, the Competent Authority dismissed the application on the ground that C.T.S. No.633/1 is not subdivided and that in respect of said property already deemed conveyance order is made in favour of the first respondent society. He, therefore, submitted that the impugned order deserves to be set aside thereby directing the first respondent to implead the petitioner and the application may be ordered to be decided denovo.

4. On the other hand, Mr. Adenwala supported the impugned order. He has invited my attention to (1) affidavit-in-reply filed by Mr. Hitesh Dedhia, Secretary of the first respondent society, and in particular paragraphs-3 and 4 thereof, as also (2) agreement dated 15.8.1995 between M/s. Jai Ganesh Construction Company and one of the flat purchasers and in particular clause-17 thereof. He submitted that the first respondent society is ready and willing to enroll the flat purchasers of the petitioner society as members of the first

respondent society.

5. I have considered the rival submissions advanced by learned Counsel appearing for the parties. I have also perused the material on record. It is not in dispute that the first respondent was registered as a society in the year 1987. It is also not in dispute that C.T.S. No.633/1 is not sub-divided. A perusal of the impugned order and in particular paragraph-17.5 shows that the building of the first respondent society was constructed in the year 1985 and the building of the petitioner society was constructed in the year 1995. The petitioner never filed application demanding deemed conveyance. This is relevant in the context that the petitioner was registered as a co-operative society in the year 2004. Clause 17 of the agreement dated 15.8.1995 reads thus :

“17. The Developers shall be entitled to sell the tenements in the said building or buildings and/or the annex thereto on ownership basis with a view ultimately that the purchasers of the said tenements should subject to the Developers' directions form themselves into a Co-operative Society duly registered under the Maharashtra Co-operative Societies Act 1960 or they should incorporate a Limited Company under the Companies Act 1956 or joint Riddhi Siddhi Apartment Co-operative Housing Society Ltd., as members thereof. The Executors and

Beneficiaries shall at the Developers' request and direction execute a conveyance in favour of such organization of Purchasers of the tenements contained in the said building or buildings proposed to be constructed by the Developers, in respect of a portion of the said property to land appurtenant thereto with the service land and the necessary appropriate exits to the same at the entire costs and expenses by the Developers. If the Purchasers of the tenements of the building or buildings proposed to be constructed by the Developers joint the said Riddhi Siddhi Apartments Co-operative Housing Society Ltd., then the Executors and the Beneficiaries shall grant conveyance of the said property in favour of the said Riddhi Siddhi Apartments Co-operative Housing Society Ltd;”

6. A perusal of this clause shows that the petitioner was given option to join the first respondent society as members thereof. The members of the petitioner society were given option to join the first respondent society as members as also the petitioner after forming organization of purchasers of tenements were to obtain conveyance in favour of such organization. Between 2004-2015 the petitioner did not make any effort for obtaining deemed conveyance in terms of clause 17. It is only after the deemed conveyance order was made in favour of the first respondent on 4.10.2013, an application was made by the petitioner in 2014 for unilateral conveyance which was rejected on

22.12.2014.

7. Mr. Deshpande relied upon the decision of this Court in ***Tushar Chauhan*** (supra). In that case, the petitioners were the owners of the suit property and they had challenged the order and deemed conveyance certificate dated 18.11.2013 passed by the Competent Authority. It is in that context, the learned Single Judge of this Court noted that the deemed conveyance cannot be granted behind the back of the owners/promoters. The facts of said decision are not applicable to the facts of the present case.

8. In the light of the above discussion and for the reasons stated in paragraph-17.5 of the impugned order, I do not find that the Competent Authority has committed any error. Hence, the Petition fails and the same is dismissed.

9. Statement made by Mr. Adenwala, upon instructions from Hitesh Dedhia, Secretary of the first respondent society who is present in Court, states that the first respondent is ready and willing to enroll the members of the petitioner as its members, is recorded. Order accordingly.

(R. G. KETKAR, J.)