

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
LETTER PATENT APPEAL NO. 159 OF 2013
IN
WRIT PETITION NO. 10669 OF 2012
WITH
CIVIL APPLICATION NO. 247 OF 2013
IN
LETTER PATENT APPEAL NO. 159 OF 2013

Maganlal Popatlal Charity and Sarvodaya HospitalApplicants
and others

V/s.

The State of Maharashtra and othersRespondents

CIVIL APPLICATION NO. 9 OF 2016
IN
LETTER PATENT APPEAL NO. 159 OF 2013

M/s Calibre Engineers and developers throughApplicant
Proprietor Mr. Sanjay Bhosale

V/s.

Maganlal Popatlal Charity and SarvodayaRespondents.
Hospital Trust and others

Mr. Vishal Kanade i/b J. J. Shah for the appellant and for the applicant in
CAL 247 of 2013.

Mr. Bipin Joshi for the respondent no. 3.

Mr. S. S. Kanetkar for the respondent no. 4.

**CORAM : SMT. VASANTI. A. NAIK,
SARANG V. KOTWAL, JJ.**

DATE : DECEMBER 11, 2017.

P.C.

The order in appeal is passed by the learned Single Judge on 20/02/2013 in writ petition no. 10669 of 2012.

The appellant herein was the petitioner in writ petition no. 10669 of 2012. In the said writ petition, the petitioner had challenged the order of the competent authority under section 11 (3) of the Maharashtra Ownership of Flats (Regulation of the promotion of the construction sale, management and transfer) Act, dated 30/08/2012 by which deemed conveyance had been granted in favour of the respondent no. 3 to the said petition.

Admittedly, the petitioner is the developer that had constructed wings 'A' & 'B' of the building. The respondent no. 3 society was formed for wing 'A' and the respondent no. 4 society was formed for wing 'B'. The petitioner desired to construct 'C' wing and claimed that certain FSI was available for the construction of the same. There was some dispute between the petitioner and respondent nos. 3 & 4 pertaining to the lay out. Since the petitioner did not seek the execution of the conveyance in favour of the respondent nos. 3 & 4, the respondent no. 3 moved an application before the competent authority under section 11 of the Act. By the order dated 30/08/2012, the competent

authority had passed a deemed conveyance order in favour of the respondent no. 3. the said order was challenged in writ petition no. 10669 of 2012 before the learned Single Judge. By the order in appeal dated 20/02/2013, the writ petition filed by the petitioner was dismissed. The said order is appealed against in this letter patent appeal.

Shri. Vishal Kanade, the learned counsel for the appellant submitted that due weightage was not given by the learned Single Judge to the fact that the compromise was effected between respondent nos. 3 & 4 before the competent authority behind the back of the petitioner, though the petitioner was a developer and the petitioner was interested in the construction of 'C' wing and the dispute pertained to the availability of the FSI for the construction of the same. It is submitted that a finding of fact could not have been recorded by the learned single Judge in the order appealed against that the respondent no. 3 was entitled to a deemed conveyance for an area of 934 square meters. It is submitted that if this Court is inclined to reject the appeal filed by the appellant, the appellant would agitate the disputes in a civil suit that is filed by the appellant.

On hearing of the learned counsel for the parties and on a perusal of the order dated 20/02/2013, we find that no ground has been made out by the appellant in this appeal. It is no doubt true that the appellant had raised a ground about absence of opportunity to the appellant before the compromise was recorded between the respondent nos. 3 & 4. The learned Single Judge

had duly considered this aspect, after noting the undisputed fact that the constructed area of the respondent no. 3 society-building was 710 square meters. The learned Single Judge held that remanding the matter to the competent authority for re-deciding the matter would be an empty formality. The learned Single Judge rightly considered that if 25% area is to be added to 710 square meters, the respondent no. 3 had right to get the conveyance for an area of 710 meters plus 25% area which would be 934 square meters. The learned Single Judge held that nothing turned much on the compromise between the respondent nos. 3 & 4 and even if the petitioner had been heard, in view of the undisputed position that the constructed area of the society building was 710 square meters, the respondent no. 3 would have had a right of conveyance in respect of an area of 934 square meters. We find that the order appealed against is passed by considering the well settled exception to the principles of natural justice that the matter may not be remanded to the authority if the re-hearing of the matter would be an empty formality.

In the result, we dismiss the letter patent appeal with no order as to costs.

[SARANG V. KOTWAL, J.]

[SMT. VASANTI A. NAIK, J.]