

Mr. Ramanand R. Sharma for Petitioners.
Mr. Rohit Kurmi for Respondent No.1.
Mr. S. H. Kankal, AGP for Respondent No.3-State.

P.C. :

Heard Mr. Sharma, learned Counsel for petitioners, Mr. Kurmi, learned Counsel for respondent No.1, Mr. Kankal, learned AGP for respondent No.3 at length.

2. Rule. Mr. Kurmi waives service for respondent No.1. Mr. Kankal waives service for respondent No.3-State. As the second respondent did not appear before the Competent Authority, notice of rule is dispensed with. At the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

3. By this Petition under Article 227 of the Constitution of India, petitioners have challenged the order dated 06.10.2015 and the certificate dated 06.10.2015 issued by the Competent Authority and District Deputy Registrar, Co-operative Societies (3), Mumbai in Application No.145 of 2014 filed by the first respondent under Section 11(3) of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (for short 'M.O.F.A.'). By the impugned order, the Competent Authority held that the first respondent is entitled to unilateral deemed conveyance and

accordingly issued the certificate.

3. A perusal of the impugned order shows that respondent No.2 herein, who was opponent No.1 before the Competent Authority, did not participate in the proceedings. Opponents No.2 and 3 before the Competent Authority had filed written arguments. Opponent No.3 before the Competent Authority had also filed written statement sometime in November 2014. Though the impugned order records the contention raised in the written arguments filed on behalf of opponents No.2 and 3 before the Competent Authority, in paragraph 4, the Competent Authority recorded that no objection was raised by any of the opponents. In view thereof, it is not possible to sustain the impugned order.

4. As the Court was inclined to admit the Petition, Mr. Kurmi submitted that the impugned order may be set aside and the matter may be remitted to the Competent Authority for deciding it afresh in accordance with law. Mr. Kurmi, on instructions, further stated that though the impugned order is passed on 06.10.2015 and the certificate is issued on the same date, till date, the conveyance is not registered and is pending for adjudication.

5. In view thereof, by consent of the petitioners and respondent No.1., Petition is disposed of in the following terms:

- a. Impugned order dated 06.10.2015 is set aside;
- b. Application No.145 of 2014 filed by the first respondent is restored to the file of the Competent Authority;
- c. The petitioners and the first respondent will appear before the Competent Authority on 05.12.2018. The Competent Authority will fix a suitable date and also in the meantime issue notice by Registered Post A.D. to the opponent No.1, namely, M/s. Venus Enterprises communicating the date of

hearing. Despite service if the opponent No.1 - M/s. Venus Enterprises does not appear, the Competent Authority will decide the matter as expeditiously as possible and in any case within 3 months from completion of service on first opponent - M/s. Venus Enterprises.

- d. All contentions of the parties on merits are expressly kept open.
- e. Rule is made absolute in the aforesaid terms with no order as to costs.

(R. G. KETKAR, J.)

Minal Parab