

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 11251 OF 2016****M/s.P.R.Enterprises & Ors.****..... Petitioners****VERSUS****The competent authority under the****Maharashtra Ownership Flats Act & Ors.****..... Respondents**

Mr.M. A. Adenwala for the Petitioners.

Mr.S.D.Rayrikar, A.G.P. for the State – Respondent no.1.

Mr.P.S.Dani, Senior Advocate, a/w. Kiran Jain, Ms.Amita Kamble,
i/b.Kiran Jain & CO. for the Respondent no.2.**CORAM : R.D. DHANUKA, J.****DATE : 23rd JULY, 2018****P.C.**

By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 12th August, 2015 passed by the competent authority thereby allowing the application of the respondent no.2 society for deemed conveyance.

2. The petitioners had entered into various agreements for sale with the flat buyers in the building proposed to be constructed on the plot described in the schedule appended to the said agreement for sale. One of such agreement dated 26th July, 2004 is annexed at Exhibit 'K' to the writ petition. The flat buyers of the building constructed on the said plot formed a society i.e. the respondent no.2 in this petition. The said society was formed on 6th May, 2013.

3. Since the petitioners did not execute the deed of conveyance within four months, the respondent no.2 society applied for deemed conveyance before the competent authority under the provisions of Maharashtra Ownership Flats Act. The competent authority issued a notice at the address mentioned in the said agreement for sale dated 26th July,2004 and also published the said notice in two newspapers. The petitioner remained absent. The competent authority after considering the documents produced by the respondent no.2 society passed an order of deemed conveyance on 12th August,2015 in favour of the respondent no.2 and also issued certificate under section 11(5) of the Maharashtra Ownership Flats Act. The petitioners have impugned the said order of deemed conveyance and the certificate by filing this petition on 28th July,2016.

4. Learned counsel appearing for the petitioners states that so-called notice issued by the competent authority upon the petitioner was at the incomplete address and thus the petitioners did not receive the said notice and thus the impugned order passed by the competent authority was in violation of principles of natural justice. In support of this submission, learned counsel placed reliance on the judgment of this court in case of ***Tushar Jivram Chauhan and another vs. State of Maharashtra and others, 2015(4) Mh.L.J.867.***

5. The next submission of the learned counsel for the petitioners is that there were several occupants on various structures which were existing on the said plot of land. The petitioners had obtained a permission from the MHADA for carrying on construction on the said

plot. It was one of the condition imposed by the MHADA that there would be two separate buildings and two separate societies. It is submitted that the learned competent authority thus could not have passed an order of deemed conveyance in respect of the entire plot in favour of the respondent no.2 society. The second building is yet to be constructed and the petitioners have yet to comply with its obligations under the NOC granted by the MHADA as well as by the other authorities.

6. Mr.Dani, learned senior counsel for the respondent no.2 society on the other hand invited my attention to various clauses of the agreement for sale dated 26th July,2004 and more particularly clause 38 which provides for the obligation of the petitioners to execute a deemed conveyance in favour of the society that would be formed by the flat purchasers including the flat purchaser under the said agreement. Learned senior counsel submits that it is specifically agreed by and between the parties in the said agreement that the rights to the existing FSI, if any, of the petitioners would be only upto the date of formation of the society and not thereafter.

7. Learned senior counsel also invited my attention to the schedule appended to the said agreement for sale which provides for an area admeasuring about 1933.36 sq.mtrs as per title deeds and 1927.27 as per city survey property card. He also invited my attention to the impugned order passed by the competent authority in support of the submission that the competent authority has granted deemed conveyance in respect of the same area mentioned in the schedule

appended to the said agreement which has to be read with other obligations of the petitioners under the said agreement for sale. He submits that the competent authority has thus not granted any order of deemed conveyance in respect of any area larger than the area mentioned in the schedule appended to the agreement for sale.

8. Insofar as submission of the learned counsel for the petitioners that there was violation of principles of natural justice by the competent authority is concerned, learned senior counsel invited my attention to the address of the petitioner mentioned in the agreement dated 26th July, 2004 i.e. Agyari Lane, Tembi Naka, Thane (West) 400 601. He submits that the notice was sent by the office of the competent authority by Registered A.D. at the said address mentioned in the said agreement dated 26th July, 2004. In addition to the said personal notice since the petitioners remained absent before the competent authority, the competent authority issued the said notice in two newspapers having wide circulation i.e. one in Marathi and another in English. He submits that since the petitioners did not remain present inspite of these two notices, the competent authority after considering the entire documents produced by the respondent no.2 has rightly granted an order of deemed conveyance.

9. It is submitted by the learned senior counsel that though the petitioners were liable to pay the municipal taxes in respect of the said plot in question on which the building came to be constructed, the petitioners committed default in making payment of the municipal taxes. In support of this submission, he invited attention to the notice

of demand raised by the Municipal Corporation and also an order of warrant of attachment in respect of the property in question. He submits that according to the said notice of demand raised by the Municipal Corporation, a sum of Rs.1,89,00,000/- was due and payable by the petitioners on the said plot towards the municipal taxes. The respondent no.2 had to apply for installments for payment of the said taxes without prejudice to their rights and contentions and with a view to save the said property from auction. The respondent no.2 society has been paying the said municipal taxes which was liable to be paid by the petitioner.

10. The next submission of the learned senior counsel is that insofar as obligations, if any, of the petitioners for carrying out the construction of the another building on the other portion of the land in question is concerned, since the petitioners have no right to claim any FSI after formation of the respondent no.2 society, all such alleged rights and obligation of the petitioners, if any, under the said agreement for sale will be complied with by the respondent no.2 society.

11. Learned senior counsel submits that insofar as the issue of title, if any, raised by the petitioners is concerned, the same cannot be gone into by this court in this writ petition nor it can be gone into by the competent authority while passing an order of deemed conveyance and thus the remedy, if any, of the petitioners would be to file a civil suit.

12. Learned senior counsel for the petitioners in rejoinder submits that the respondent no.2 society never called upon the petitioners to

pay the municipal taxes or to seek reimbursement of the payment if any payment made by the respondent no.2 pursuant to the warrant of attachment if any.

13. A perusal of the agreement for sale dated 26th July, 2004 clearly indicates that the petitioners had agreed to execute a deed of conveyance in favour of the society to be formed by the flat purchasers in the said building to be constructed on the plot described in the schedule appended to the said agreement for sale. The petitioners having failed to execute the deemed conveyance in favour of the respondent no.2 society which has been formed as on 6th May, 2013, the respondent no.2 society was entitled to apply for an order of deemed conveyance to the competent authority under section 11 of the MOFA.

14. Insofar as the submission of the learned counsel for the petitioners that the impugned order was passed in violation of the principles of natural justice is concerned, a perusal of the agreement indicates that the address mentioned in the said agreement of the petitioner was Agyari Lane, Tembi Naka, Thane (West) 400 601. A perusal of the record indicates that the first notice was sent by the competent authority by Registered A.D. at the same address which was mentioned in the said agreement for sale. Since the petitioners chose to remain absent inspite of the said notice, the second notice was published in two newspapers. The copies of those two notices in the newspapers are annexed to the affidavit in reply filed by the respondent no.2 which clearly indicates that those notices were published in the

newspapers having wide circulation.

15. I am thus not inclined to accept the submission of the learned counsel for the petitioners that the impugned order passed by the competent authority in violation of the principles of natural justice.

16. Insofar as the second submission of the learned counsel for the petitioners that second building is yet to be constructed and the petitioner has to comply with various other obligations under NOC granted by the MHADA and other authorities and thus the competent authority could not have passed an order for deemed conveyance in respect of the entire plot is concerned, a perusal of the obligations of the petitioners in the agreement for sale clearly indicates that the petitioners had agreed to execute a deed of conveyance in favour of the society to be formed by the flat buyers which building was to be constructed on the plot described in the schedule appended to the said agreement for sale.

17. A perusal of the application filed by the respondent no.2 society under section 11 of MOFA clearly indicates that the application for deemed conveyance was in respect of the same area mentioned in schedule and in the other portion of the said agreement for sale. The impugned order indicates that the competent authority has granted order of deemed conveyance in respect of the same area mentioned in the the agreement for sale.

18. Be that as it may, insofar as the issue of title sought to be raised

by the petitioner in this petition and across the bar is concerned, it is held by this court in *catena* of decisions that the competent authority does not decide the issue of title while considering an application for deemed conveyance under section 11 of MOFA. The remedy of the petitioner would be to file a civil suit for seeking adjudication of title.

19. A perusal of the record further indicates that though there was liability of the petitioners to pay the municipal taxes in respect of the land in question, inspite of the petitioners having received the notices from the Municipal Corporation, the petitioners did not make any payment of the municipal taxes, consequently the society had to apply for installments to pay the said amount to avoid auction of the said property. I am not inclined to accept the submission of the learned counsel for the petitioners that the petitioners are not aware of the demand of the municipal corporation or that there was an order of warrant of attachment on the property in question.

20. The competent authority in my view has rightly allowed the application for the deemed conveyance filed by the respondent no.2 society and has rightly issued a certificate under section 11(5) of MOFA and thus does not warrant any interference in this petition filed under Article 227 of the Constitution of India.

21. It is made clear that if any civil suit is filed for seeking adjudication of the title in respect of the property in question, the same shall be decided independently.

22. The writ petition is accordingly dismissed with aforesaid clarification. No order as to costs.

23. An application for continuation of stay applied by the learned counsel for the petitioner is rejected.

[R.D. DHANUKA, J.]