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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7782 OF 2014

Balaram L. Pavashe & Ors.	...Petitioners
V/s.	
Parnakuti Co-op. Hsg. Soc. Ltd. & Ors.	...Respondents

Mr.R.D. Suryavanshi for the Petitioners.

Mr.Mohd.Kazi for the Respondent No.1.

Ms.Geeta P. Sonawane, A.G.P. for the State – Respondent No.3.

CORAM : R.D. DHANUKA, J.

DATE : 16TH JULY, 2018.

P.C. :-

1. Heard learned counsel for the petitioners and the learned counsel for the respondent nos.1 and 3.
2. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 31st December, 2012 passed by the learned Competent Authority and the District Deputy Registrar, Co-operative Societies, Thane in Deemed Conveyance Application No.57 of 2012 filed by the respondent no.1.
3. The petitioner no.1 had entered into an agreement with Deepak Pandit Pawashe in respect of plot survey no.36, Hissa no.3/1 in the Gavthan area of Katemanivalai, Taluka Kalyan District Thane admeasuring 1341 square yards. The developer constructed a

building on the said plot. The said members formed a society in the name of the respondent no.1. The respondent no.1 made an application *inter-alia* praying for a deemed conveyance under the provisions of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (for short "MOFA Act") before the learned Competent Authority. The said application for deemed conveyance was made by the respondent no.1 only in respect of the land bearing plot survey no.36, Hissa no.3/1 admeasuring 1341 square yards. The petitioner no.1 was impleaded as party respondent no.1 in the said application.

4. A public notice came to be issued by the respondent no.1 society in respect of the land bearing plot survey no.36, Hissa no.3/1. The petitioner no.1 however did not remain present on the ground that no notice was served upon the petitioner no.1. Learned Competent Authority however, passed an order of deemed conveyance in respect of several plots which were not the subject matter of the said agreement for sale. It is the case of the petitioners that the other plots belonged to the petitioner nos.2 to 15. No agreements were entered into between the petitioner nos.2 to 15 with any party in respect of their lands.

5. Mr.Suryavanshi, learned counsel appearing for the petitioners invited my attention to the agreement for sale entered into

between the petitioner no.1 and another developer i.e. Deepak Pandit Pawashe. He submits that though under the said agreement for sale, the petitioner no.1 had agreed to sell only the land bearing plot survey no.36, Hissa no.3/1 admeasuring 1341 square yards and though the respondent no.1 society applied for deemed conveyance only in respect of that plot, the learned Competent Authority has granted deemed conveyance in respect of several other plots which were not the subject matter of the agreement for sale in favour of the said developer, the respondent no.2 herein.

6. The next submission of the learned counsel is that though the respondent no.1 was fully aware of the new address of the petitioner no.1 mentioned in the other proceedings filed by the petitioner no.1, no personal notice was served upon the petitioner no.1 of the said application for deemed conveyance before the learned Competent Authority. He submits that the impugned order thus passed by the learned Competent Authority is in violation of the principles of natural justice.

7. It is submitted that the petitioner nos.2 to 15 were not impleaded in the application for deemed conveyance filed by the respondent no.1 society, nor were concerned with the respondent no.1 insofar as their respective plots are concerned. He submits that even the said so called notice was admittedly issued by the respondent

no.1 only in respect of the plot bearing survey no.36, Hissa no.3/1 admeasuring 1341 square yards.

8. Learned A.G.P. for the respondent no.3 tried to justify the impugned order passed by the learned Competent Authority by relying upon some of the findings rendered by the learned Competent authority. Learned counsel for the respondent no.1 could not dispute before this Court that the agreement entered into between the petitioner no.1 and the respondent no.2 was only in respect of plot survey no.36, Hissa no.3/1, admeasuring 1341 square yards. He also could not dispute that the public notice issued by the society was only in respect of the said plot and not all the plots in respect of which an order of deemed conveyance came to be passed by the learned Competent authority in favour of the respondent no.1 society.

9. A perusal of the record indicates that though the agreement for sale between the petitioner no.1 and the respondent no.2 was only in respect of the plot survey no.36, Hissa no.3/1 admeasuring 1341 square yards, and though the application for deemed conveyance was also restricted to the said plot only, the learned Competent Authority has granted deemed conveyance in respect of several plots which were not the subject matter of the said agreement to sell between the petitioner no.1 and the respondent no.2. Admittedly the building whose occupants have formed the respondent no.1 society

has been constructed on the same plot bearing plot survey no.36, Hissa no.3/1 admeasuring 1341 square yards. In my view, the learned Competent Authority thus could not have passed an order of deemed conveyance in respect of all the properties which were neither the subject matter of the agreement for sale nor the subject matter of the application for deemed conveyance filed by the respondent no.1 society. The impugned order shows total non-application for mind and illegality.

10. Insofar as the service of notice upon the petitioner no.1 is concerned, the learned counsel for the society could not dispute that the notices in respect of the said proceedings between the petitioner no.1 and the society were not served on another address of the petitioner no.1 known to the respondent no.1. Though the respondent no.1 society was fully aware of another address of the petitioner no.1 to which address the petitioner no.1 had shifted, the respondent no.1 made an attempt to serve the papers and proceedings upon the petitioner no.1 on the old address. The petitioner no.1 did not come across the public notice issued by the respondent no.1. In these circumstances, in my view the impugned order passed by the learned Competent Authority insofar as the petitioner no.1 also is concerned, is in violation of the principles of natural justice and thus deserves to be set aside.

11. Learned counsel for the petitioner no.1 on instructions from his clients is ready and willing to appear before the learned Competent Authority and to oppose such application for deemed conveyance. He is ready to accept all the notices and the papers and proceedings on behalf of the petitioner no.1 from the respondent no.1 in respect of that application for deemed conveyance. The statement is accepted.

12. I therefore, pass the following order :-

a). The impugned order passed by the learned Competent Authority dated 31st December, 2012 in Deemed Conveyance Application No.57 of 2012 is set aside. The application for deemed conveyance No.57 of 2012 filed by the respondent no.1 society is restored to file.

b). The petitioner no.1 is directed to file affidavit in reply within two weeks from the date of service of the papers and proceedings and a copy thereof shall be served upon the learned counsel for the respondent no.1 simultaneously. Rejoinder, if any, shall be filed within one week from the date of service of the affidavit in reply and a copy thereof shall be served upon the petitioner no.1's advocate simultaneously.

c). Insofar as the petitioner nos.2 to 15 are concerned, since there was no application made by the respondent no.1 for deemed

conveyance in respect of other plots which are claimed to be owned by the petitioner nos.2 to 15, learned Competent authority shall not include their plot in the fresh order proposed to be passed for the purpose of granting deemed conveyance.

d). Learned Competent Authority shall decide the matter afresh insofar as the plot survey no.36, Hissa no.3/1 admeasuring 1341 square yards which was owned by the petitioner no.1 is concerned on its own merits without being influenced by the observations made and the conclusion drawn in the impugned order dated 31st December, 2012 after complying with the principles of natural justice

e). The petitioner no.1 agrees to appear before the learned Competent Authority and not to seek any unnecessary adjournment.

f). The application for deemed conveyance shall be disposed of by the learned Competent Authority expeditiously and not later than four months from the date of the next hearing.

g). The petitioner no.1 and the respondent no.1 are directed to appear before the learned Competent Authority on 6th August, 2018 at 11:00 a.m. If the date fixed by this Court is not convenient to the learned Competent Authority, the parties shall be conveyed the earliest convenient date by the learned Competent Authority.

h). In view of the fact that the impugned order dated 31st

December, 2012 is set aside by this Court, consequently the certificate issued by the learned Competent Authority under section 11(5) of the MOFA Act passed on 31st December, 2012 is also set aside.

13. The writ petition is disposed of in aforesaid terms. There shall be no order as to costs.

(R.D. DHANUKA, J.)