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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (STAMP) NO.20544 OF 2018

Rajani K. Patil & Ors.	...Petitioners
V/s.	
Malad Surya Karan CHS Ltd. & Ors.	...Respondents

Mr.Rakesh Kumar with Ms.Aishwarya Hadkar I/b M/s.Legal Vision for the Petitioners.

Mr.Atul S. Singh for the Respondent No.1.

Mr.S.D. Rayrikar, A.G.P. for the State – Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 14TH AUGUST, 2018.

P.C. :-

1. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 23rd May, 2016 passed by the learned District Deputy Registrar, Co-operative Societies, Mumbai City (4) under the provisions of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short “the MOFA Act”) insofar as the land bearing CTS no.182/1 to 182/4 of village Malad, Taluka Borivali, Manchubai Road, Rana Cottage Malad (East), Mumbai Suburban District, Mumbai - 64 is concerned.

2. It is the case of the petitioners that the petitioners are the owners in use , occupation and possession of four structures which are on the plot bearing CTS nos.182/1 to 182/4 and have purchased

the said structures by a Deed of Conveyance dated 3rd August, 1987 from the erstwhile owners.

3. It is the case of the petitioners that though the petitioners have been impleaded in the application under section 11 of the MOFA Act by the respondent no.1 society, the addresses of the petitioners were not shown in the application for deemed conveyance. No notice of hearing was issued by the authority to the petitioners before passing the impugned order granting deemed conveyance in favour of the society.

4. Learned counsel appearing for the petitioners invited my attention to a Sale Deed relied upon by the petitioners in support of their case that the petitioners are the owners of those structures constructed on the land bearing CTS no.182/1 to 182/4 and also the land underneath the structures and submits that the competent authority could not have passed an order of deemed conveyance in respect of these four structures or the land underneath those structures. Learned counsel placed reliance on the judgment of this Court in case of **Tushar Jivram Chauhan & Ors. vs. The State of Maharashtra & Ors. 2015 (4) Mh.L.J. 867** in support of the submission that the competent authority could not have passed an order of deemed conveyance in respect of the area more than described in the agreement. The said judgment is relied upon also in support of the submission that the impugned order passed by the competent authority was in violation of the principles of natural justice.

5. Learned counsel appearing for the respondent no.1 society on the other hand submits that the respondent no.1 society was already formed in the year 1981 whereas the alleged Sale Deed was

executed, if any, in favour of the petitioners on 3rd August, 1987. He submits that after formation of the society, the erstwhile owner could not have entered into any such alleged Sale Deed in favour of the petitioners.

6. It is submitted that a public notice was issued by the competent authority before passing the final order. In his alternate submission, he submitted that since the petitioners are raising an issue of title in respect of those structures bearing CTS no.182/1 to 182/4, the remedy of the petitioners would be to file a civil suit and not a writ petition. He placed reliance on the judgment of this Court delivered on 11th April, 2018 in case of **Angeline Randolph Pereira & Ors. vs. Suyog Industrial Estate Premises Co-operative Society Ltd. & Ors.** in Writ Petition No.4373 of 2017 and would that this Court shall not entertain the writ petition filed by the petitioners.

7. It is not in dispute that the respondent no.1 society was already formed in the year 1981. The agreement entered into between the developer and the flat buyers on 15th August, 1975 indicates that the said agreement was in respect of the land as well as the structures standing on CTS no.182, 183, 184, 185 and 186. Admittedly the petitioners are claiming rights under three separate Sale Deed all dated 3rd August, 1987. A perusal of the Sale Deed indicates that the erstwhile owner had allegedly sold three structures to the petitioners situated on the plot of land bearing CTS No.182. I am of the *prima-facie* view that there is thus no substance in the case of the petitioners that the petitioners were sold land bearing CTS no.182/1 to 182/4.

8. Insofar as the submission of the learned counsel on the

issue of violation of principles of natural justice is concerned, a perusal of the impugned order passed by the competent authority indicates that the competent authority had issued a public notice in view of the fact that the addresses of the petitioners were not available. It is not the case of the petitioners that such objection referred therein were not dealt with by the competent authority before passing the final order of Deemed Conveyance in favour of the respondent no.1 society.

9. I am thus not inclined to accept the submissions made by the learned counsel for the petitioners that principles of natural justice were violated by the competent authority before passing an order of deemed conveyance.

10. In my view the judgment of this Court in case of **Tushar Jivram Chauhan & Ors.** (supra) relied upon by the learned counsel for the petitioners would not assist the case of the petitioners.

11. This Court in case of **Angeline Randolph Pereira & Ors.** (supra) has held that the competent authority while deciding the application under section 11 of the MOFA Act does not decide the issue of title in respect of the property. It is held by this Court that the remedy of the parties raising the dispute of title will have to file a civil suit in respect of the property in question and the same can be independently decided without being influence by the fact that the order of deemed conveyance of the property in question is passed by the authority and a certificate of title issued by the competent authority under section 11 (5) of the MOFA Act is issued. The said judgment of this Court in case of **Angeline Randolph Pereira & Ors.** (supra) clearly applies to the facts of this case. I am thus not inclined to

interfere with the impugned order passed by the authority. The petition is devoid of merit and is accordingly dismissed.

12. The petitioners would be at liberty to file a civil suit in respect of the structures in question. If any such suit is filed, the Civil Court shall decide the said suit independently and on its own merits. There shall be no order as to costs.

(R.D. DHANUKA, J.)