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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8033 OF 2012

Arvind N. Mistry ...Petitioner
V/s.
New Shiv Darshan Co-op. Hsg. Soc. Ltd. & Ors. ...Respondents

Mr.Ajai Fernandes with Mr.Mohan G. S. i/b MGS Legal for the
Petitioner.

Mr.Shailesh Shah, Senior Counsel i/b Mr.Hasanuddin S.Ansari for
the Respondent Nos.1 and 3.

CORAM : R.D. DHANUKA, J.
DATE : 10TH JANUARY, 2018.

P.C. :-

1. By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has impugned the order dated 3rd June, 2012 passed by the respondent no.4 granting deemed conveyance in favour of the respondent no.1 society.

2. The petitioner and the respondent no.5 claimed to be co-owners of the plot of land bearing CTS No.172, 172/1 to 10 described in the petition. On 31st August, 1984, the respondent no.2 had entered into an agreement for development with Mr.Nancy Mistry who developed the suit property. It is the case of the petitioner that when the said agreement was entered into in the year 1984, there was no

concept of Transferable Development Rights (TDR).

3. The said developer constructed the building. The flat purchasers thereafter formed the respondent no.1 society and are in occupation of the said building and the tenements since the date of construction of the said building by the developer.

4. On 3rd April, 2012, the respondent no.1 society made an application for deemed conveyance before the respondent no.4 under section 11 of the Maharashtra Ownership of Flats Act, 1963. Upon receipt of the said application made by the respondent no.1 society, the respondent no.4 issued various notices from time to time to the petitioner. The petitioner however, remained absent before the respondent no.4. The matter was thereafter heard by the respondent no.4 on 17th April, 2012, 30th April, 2012, 7th May, 2012 and 15th May, 2012 and the matter was closed for orders. The respondent no.4 thereafter passed a detailed order under section 11 for deemed conveyance in favour of the respondent no.1 society.

5. Learned counsel appearing for the petitioner submits that there was no proper opportunity granted by the respondent no.4 to the petitioner before passing the impugned order in favour of the respondent no.1 society and thus the petitioner could not remain present before the respondent no.4. He submitted that the impugned order is thus in violation of the principles of natural justice. The

development agreement was entered into between the petitioner and the developer. The petitioner had not conferred any right of ownership on the developer in respect of the building in question but only leasehold rights were conferred and thus the respondent no.4 could not have passed an order of deemed conveyance thereby conferring the right of ownership in respect of the plot in question in favour of the respondent no.1.

6. The last submission of the learned counsel for the petitioner is that the respondent no.4 has also allowed the deemed conveyance in respect of the garages which were not the subject matter of the agreement between the petitioner and the developer.

7. Both the parties produced various photographs for perusal of this Court in respect of their rival contentions about the present condition of the building. It is the case of the petitioner that the building is still in a sound condition and not in dangerous condition. On the other hand, it is the case of the respondent no.1 society that the building is in dilapidated condition and requires to be demolished and redeveloped immediately.

8. Mr.Shah, learned senior counsel for the respondent nos.1 and 3 on the other hand submits that though the building was fully developed by the developer, the petitioner did not execute a Deed of Conveyance in favour of the society in terms of the agreement

entered into between the petitioner and the developer and thus the respondent no.1 had filed an application under section 11 of the Maharashtra Ownership of Flats Act, 1963 before the respondent no.4 for seeking deemed conveyance. Learned senior counsel invited my attention to the impugned order insofar as the the issue of violation of principles of natural justice raised by the petitioner is concerned. He submits that the impugned order clearly states that the notice of registered A.D. with acknowledgement was sent to the petitioner on 3rd April, 2012 for hearing on 17th April, 2012. The respondent no.4 was kind enough to grant further opportunity by issuing notice to the petitioner. The petitioner however, chose to remain absent before the respondent no.4.

9. It is submitted that the public notice was also issued in Free Press Journal on 4th April, 2012 and in Navbharat on 5th April, 2012. Since the petitioner remained absent, the matter proceeded for hearing by the respondent no.4 on 17th April, 2012, 30th April, 2012, 7th May, 2012 and 15th May, 2012. He submits that the respondent no.4 considered all the relevant facts and also the documents produced by the respondent no.1 and rightly passed an order of deemed conveyance in favour of the respondent no.1. He submits that the deemed conveyance is granted by the respondent no.4 only in respect of the portion of land on which the building has been

constructed by the developer, which is occupied now by the members of the respondent no.1 society.

10. Insofar as the issue of ownership raised by the petitioner is concerned, it is submitted by the learned senior counsel that the petitioner chose to remain absent before the respondent no.4 and did not raise any such issue. If the petitioner has any dispute about the ownership rights in respect of any part of the property or that only deemed conveyance could be granted in respect of the leasehold rights of the petitioner, the petitioner is free to file appropriate proceedings.

11. A perusal of the grounds raised in the writ petition indicates that the main ground raised in the writ petition is that there was no concept of transfer of the TDR rights introduced by the State Government when the development agreement was entered into between the petitioner and the developer. It is clear that in the said development agreement, the petitioner had not reserved any right that would be available on the property to the petitioner in future after execution of the development agreement and thus no grievance in respect thereof can be raised after execution of the said development agreement at this stage.

12. Insofar as the issue that the respondent no.4 has allowed deemed conveyance also in respect of the garages are concerned,

the said issue also can be raised by the petitioner in an appropriate proceedings and not in this writ petition.

13. It is not in dispute that there was no *ad-interim* relief granted by this Court since 15th July, 2014. It is also not in dispute that the impugned order passed by the respondent no.4 has been already implemented by the respondent no.1. The deemed conveyance is already registered as far back as on 24th August, 2012.

14. A perusal of the record further indicates that the brother of the petitioner, who was also claiming ownership rights in the property in question was also a party to the proceedings before the respondent no.4 but did not raise any dispute of alleged non-service of notices issued by the respondent no.4. The said co-owner also did not challenge the order of deemed conveyance passed by the respondent no.4. According to the petitioner, the relations between the said brother and the petitioner are strained. In my view, even if the relationship between the petitioner and his brother were strained, the fact remains that he was also one of the co-owner of the said property and though was a party to the proceedings filed by the respondent no.1, did not challenge the said order.

15. Insofar as the issue of the alleged violation of the principles of natural justice raised by the petitioner is concerned, a

perusal of the impugned order clearly indicates that the notices were served by the respondent no.4 upon the petitioner by registered A.D. on 3rd April, 2012 and even thereafter. The notices were also published in the two newspapers viz. Free Press Journal on 4th April, 2012 and Navbharat on 5th April, 2012. The petitioner however, chose to remain absent before the respondent no.4. The matter was heard by the respondent no.4 on four occasions and thereafter the matter was closed for orders on 15th May, 2012. In my view, there is thus no substance in the first submission of the learned counsel for the petitioner that the impugned order is in violation of principles of natural justice.

16. Insofar as the second and third submissions made by the learned counsel for the petitioner that the respondent no.4 could not have passed the order of deemed conveyance thereby conferring conveyance in respect of the ownership is concerned, the issue of title in respect of the property and more particularly the garages and the land in question is concerned, the petitioner has an alternate remedy of filing an independent suit in respect of the title as sought to be canvassed by the learned counsel for the petitioner across the bar. I am inclined to accept the submissions made by the learned senior counsel for the respondent no.1 that the deemed conveyance granted only in respect of the portion of the land on which the suit

building is constructed by the developer.

17. Insofar as the issue of TDR raised in the writ petition is concerned, it is a common ground that when the development agreement was entered into between the petitioner and the developer, there was no concept of TDR announced by the State Government. A perusal of the development agreement clearly indicates that no such right was reserved in favour of the petitioner that may be granted in future after execution of the development agreement arising on the plot of land. There is thus no substance in the submissions made by the learned counsel for the petitioner.

18. Insofar as the condition of the building is concerned, a perusal of the photographs produced by both the parties, indicates that the condition of the building is dilapidated. Be that as it may, the respondent no.1, who is granted a deemed conveyance by the respondent no.4 is entitled to redevelop the suit property. In my view, the writ petition is devoid of merit and is accordingly dismissed. *Ad-interim* order granted by this Court stands vacated.

19. At this stage, learned counsel for the petitioner seeks continuation of the *ad-interim* protection granted by this Court on 15th July, 2014 which is vehemently opposed by Mr.Shah, learned senior counsel for the respondent no.1.

20. For the reasons recorded by this Court while dismissing

the writ petition, I am not inclined to accept the request of the learned counsel for the petitioner for continuation of the *ad-interim* order. The application for continuation of the *ad-interim* order is rejected.

(R.D. DHANUKA, J.)