

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 1815 OF 2018****Proprietor M/s. Strufcon Engineers****..... Petitioner****VERSUS****Deepak Trilokchand Patel & Ors.****..... Respondents**

Mr.Milind M. Sathye for the Petitioner.

Ms.Chaitrali A.Deshmukh for the Respondent nos. 1 to 6.

CORAM : R.D. DHANUKA, J.**DATE : 20th FEBRUARY, 2018****P.C.**

Rule. Learned counsel appearing for the respondents waive service. By consent of parties, the matter is heard finally.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned an order dated 13th September, 2017 passed by the competent authority in the Application No.20 of 2016 filed by the respondents granting deemed conveyance in favour of the respondents and against the petitioner in favour of individuals and not in favour of the association.

3. A perusal of the impugned order passed by the competent authority indicates that the declaration of the apartment ownership is already executed by the petitioner. The application for deemed conveyance was made by the flat purchasers some of whom are not the members of the apartment. On plain reading of section 11(4), it is

clear that the order of deemed conveyance cannot be passed in favour of the individuals but at most could be ordered in favour of the association of the apartment owners and not in favour of the individuals. The impugned order passed by the competent authority of deemed conveyance in favour of the individuals is *ex-facie* in the teeth of section 11(3) and 11(4) of the Maharashtra Ownership Flat Act and thus deserves to be set aside.

5. I, therefore pass the following order :-

(a) The impugned order is set aside. The application made by the respondents is restored to file and to be heard afresh by the competent authority without being influenced by the observations made and the conclusions drawn in the impugned order.

(b) It is one of the submission of the petitioner that all the applicants before the competent authority in the application filed for deemed conveyance had not purchased the tenements before obtaining prior permission from the petitioner and some of them also have carried out unauthorized construction as a result thereof the Municipal Corporation has not issued occupation certificate to the petitioner. Learned counsel for the respondents disputes this allegation. In view of

this controversy, the competent authority shall also decide this issues while considering the application of deemed conveyance made by the respondents. The order shall be passed expeditiously after hearing both the parties and after complying with the principle of natural justice.

(c) All contentions of both parties are kept open.

(d) The learned competent authority shall also decide the grievance of the respondents herein that the petitioner has not been issuing the membership certificate to the flat purchasers.

(e) Both the parties are directed to appear before the competent authority on 6th March,2018 at 03.00 p.m.

(f) The petitioner is directed to convey this order to the competent authority for compliance. The parties as well as the authority to act on the authenticated copy of this order.

(g) Rule is made absolute in the aforesaid terms. No order as to costs.

(h) In view of this order setting aside the impugned order passed by the competent authority, all further action initiated by the respondents in implementing the impugned order are also set aside.

[R.D. DHANUKA, J.]