

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7965 OF 2019

Rama Motiram Bhoir
(Since Deceased)

through legal heirs and ors.

... Petitioners

V/s.

The Joint District Registrar

Co-Op. Societies, Navi Mumbai and ors. ... Respondents

Dr.Abhinav Chandrachud with Mr.Sujay Gawade and Ms.
Amita Dubey-Upadhyay i/by M/s Shree & Co., Advocate
for the Petitioners.

Mr.Akhilesh Dubey with Mr.Rajendra Tambe and Mr.Uttam
Dubey i/by M/s Law Counsellors, Advocate for Respondent
Nos.3 and 4.

Mr.C.D.Mali, AGP for Respondent Nos.1 and 5.

CORAM : UJJAL BHUYAN, J.

DATE : DECEMBER 03, 2019.

P.C.:-

1. Heard Dr.Abhinav Chandrachud, learned counsel for the petitioners; Mr.C.D.Mali, learned AGP for the State of Maharashtra; and Mr.Akhilesh Dubey, learned counsel for respondent Nos.3 and 4.

2. By filing this petition under Articles 226 and 227 of the Constitution of India, petitioners have sought for quashing of order dated 1st March, 2016 passed by the Designated Authority under the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 cum Sub-Registrar of Co-operative Societies.

3. By the impugned order dated 1st March, 2016, the Designated Authority has granted deemed conveyance under Section 11(3) of the aforesaid Act (briefly referred to as “MOFA” hereinafter).

4. Learned counsel for the petitioners submits that petitioners are the legal heirs of the owners of the land on which the flats have been constructed. They were not heard while granting deemed conveyance. In this connection he has referred to the address as the petitioners given in the application seeking deemed conveyance which merely mentioned their address as residents of Vashi Taluka, District Thane. It is contended

that on such address petitioners could not have been served. That apart, learned counsel has pointed out that in the impugned order it was mentioned that public notice was issued in the newspaper "Daily Bahumat" on 7th February, 2016, whereas in the affidavit-in-reply of respondent Nos.3 and 4 a categorical statement is made in paragraph No.20 thereof that the public notice was issued in the newspaper "Loknayak" on 7th February, 2016. He therefore submits that no notice was issued to the petitioners who were unaware of the proceedings before the Designated Authority. Impugned order is therefore in violation of the principles of natural justice.

5. On the other hand, learned counsel for respondent Nos.3 and 4 has referred to various provisions of MOFA and submits that under Section 11(1) thereof a promoter is under a legal obligation to convey title etc. to the organization of persons who take flats, in the present case, the co-operative society i.e. respondent No.3. In the event of failure to execute such conveyance in favour of the co-operative society, sub-section (3) of

Section 11 provides that the co-operative society would be entitled to have an unilateral deemed conveyance executed in their favour and to have it registered. He submits that it is the admitted position that predecessor-in-interest of the petitioners being owners of the land were promoters within the meaning of Section 2(c) of MOFA and they were under the legal obligation to convey title etc. to the co-operative society. That having not been done, respondent No.3 is legally entitled under Sub-section (3) of Section 11 to have an unilateral deemed conveyance. If that is the legal position, question of hearing the petitioners may not arise. He has also brought to the notice of the court subsequent developments following grant of deemed conveyance.

6. Submissions made have been considered.

7. After hearing learned counsel for the parties and on due consideration, court is of the view that since petitioners were arrayed as opponents in the application

filed before the Designated Authority for deemed conveyance and notice having been issued to the opponents, it was necessary that the opponents should have been heard. The fact that in the impugned order reference was made to the public notice published in the newspaper "Daily Bahumat" on 7th February, 2016, whereas in the affidavit-in-reply of respondent Nos.3 and 4 it is stated that the public notice was issued in the newspaper "Lokmat" on 7th February, 2016 has cast a doubt in the mind of the court regarding issuance of public notice. That apart, the address of the opponents given in the application was certainly vague and therefore, incomplete to effect service of notice.

8. In such circumstances, court is of the view that it would be in the interest of justice to remand the matter back to the Designated Authority to hear the petitioners and thereafter, may pass appropriate order in accordance with law. Since petitioners are before the court, let them appear before the Designated Authority on 23rd December, 2019 at 10.30 a.m. and file their

objection whereafter the Designated Authority may hear the parties and may pass appropriate order in accordance with law. Impugned order dated 1st March, 2016 would be subject to such order that may be passed by the Designated Authority after hearing the parties afresh.

9. While keeping all contentions of the parties open, the Designated Authority is directed to decide the matter within a period of two months from the date of appearance.

10. Writ Petition is disposed of.

(UJJAL BHUYAN, J.)

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