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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.150 OF 2016

Mr.Aspandiar Rashid Irani & Anr.] ..Petitioners.

v.

The Deputy Registrar, Co-operative Societies]
Thane City & Ors.] ..Respondents.

Mr.D.S.Mhaispurkar i/by Mr.S.M.Mangaonkar, for the Petitioners.
Mr.Kisan Sukre alongwith Mr.Sandesh Deshpande, for Respondent No.3.
Mrs.S.S. Bhende, AGP for Respondent-State.

CORAM : INDRAJIT MAHANTY &
A.M. BADAR, JJ.

DATE : 23rd APRIL, 2019.

P.C.

1] The Petitioners herein are the owners and developers of the property developed at Thane. This Writ Petition has been filed seeking to challenge the Certificate of Registration No.TNA/(TNA)/HSG/(TC)/26844/2014 and the bye laws dated 3rd November 2014, sanctioned and issued by Respondent No.1-Deputy Registrar, Co-operative Societies, Thane, dated 3rd November, 2014 inter alia on the ground that the Deputy Registrar was not competent to issue Certificate of Registration and bye laws, since as contemplated under clause (9) of Exhibit C the allottees of the flats covered under Maharashtra Ownership of Flats Act, 1963 ("the MOFA Act") were required to approach the Competent Authority i.e. the District Deputy Registrar.

2] Further contention of the learned counsel for the Petitioner is that, the Deputy Registrar was lacking the jurisdiction, and even no notice was ever served on the Petitioner prior to issuance of the Certificate of Registration and bye laws.

3] Learned counsel appearing for the Respondent-Society submits that the occupation certificate was issued in the year 2010 and possession was handed over to the allottees during the year 2011-2012 and in spite of an Agreement containing the clause requiring the Developer to constitute a Committee within a period of four months, since the Developer failed to do so, the occupants/allottees of the flats were left with no alternative other than to move before the Authority for issuing necessary orders for registration of the Society. It is further submitted that the Society was formed in the year 2014 and presently carrying on responsibilities of maintaining the Society. Consequently, any order that may be passed in the Writ Petition will cause immense hardship to the occupants of the said Society.

4] Learned AGP for the State, on instructions fairly admits that no notice or hearing was given by the Deputy Registrar and she further submits that the appropriate Authority or the Competent Authority in the present case is the District Deputy Registrar and not the Deputy Registrar, Thane.

5] In consideration of the submissions noted hereinabove, we are of the considered view that the Deputy Registrar, Thane, was not the Competent Authority to deal with the application of Respondent No.3-Society.

6] However, keeping in mind, the peculiar circumstances of the present case, we direct as follows :

i] Respondent No.3-Society shall make a necessary application to Respondent No.2 i.e. District Deputy Registrar within a period of two weeks from today, seeking necessary directions for registration of the Society.

ii] Respondent No.2- District Deputy Registrar shall do well to offer opportunity of hearing to all the parties and pass necessary orders thereon within a period of three months from the date of filing of such application.

iii] Respondent No.3-Society shall remain responsible for the management of the premises till final orders are passed by Respondent No.2- District Deputy Registrar. Needless to state that the outcome of such proceedings would be binding on all the parties to the proceedings.

7] With the above directions, Writ Petition No.150 of 2016 stands disposed off.

[A.M. BADAR, J] **[INDRAJIT MAHANTY, J]**