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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 11786 OF 2019

M/s. Blue Heaven Co-Op. Housing
Society Ltd. ... Petitioner
Vs.
M/s. Punit Construction Co. Pvt. Ltd. & Ors.... Respondents

Mr. P. S. Dani, Sr. Counsel a/w Vaibhav Bandgar, for the Petitioner.
Mr. Nishant Tripathi i/b M. Tripathi & Co., for Respondent No. 1.
Mr. N. C. Walimbe, AGP for the Respondent – State.

CORAM : C. V. BHADANG, J.

DATE : JANUARY 30, 2020

PC :

1. On 19th November, 2019 while issuing notice, this Court had indicated that an endeavour shall be made to dispose of the petition on the returnable date. Accordingly, the petition is taken up for final disposal.

2. I have heard the learned senior counsel for the Petitioner and the learned counsel for Respondent No. 1 – builder. None appears for the Respondent No. 2 – owner, though served.

3. The challenge in this petition is to the order dated 5th / 8th July, 2019 passed by the Competent Authority, refusing to grant

deemed conveyance, in favour of the Petitioner under Section 11(3) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short the “Act”). Perusal of the impugned order shows that the Competent Authority has refused to grant application filed by the Petitioner on the ground that there is certain disputes about alleged non receipt of amount of Rs. 56 lakhs by the owner from the builder.

4. It may be mentioned that the first Respondent – builder had no objection for grant of deemed conveyance. That application was opposed on behalf of the owner, presumably on the ground of certain dispute between owner and the builder.

5. Mr. P. S. Dani, the learned senior counsel for the Petitioner placing reliance on the decision of this Court in the case of ***M/s. Shree Chintamani Builders Vs. State of Maharashtra & Ors.***¹ has submitted that such a dispute cannot be examined by the Competent Authority and in any event, on account of any such dispute between the owner and the builder, the Competent Authority could not have refused to grant an order of deemed conveyance in favour of the society. It is pointed out that under the provisions of the said Act, the Competent Authority is required to look into the provisions of Sections

1 2016 SCC OnLine Bom 9343

10 and 11 and verify existence of an agreement under Section 4 of the said Act, and then consider the issue of grant of deemed conveyance. The learned senior counsel has pointed out that the application filed by the owner for de-registration of the Petitioner Society has been rejected, and that order has not been carried any further. He, therefore, submitted that the application may be remitted back to the Competent Authority for deciding it afresh, in accordance with law.

6. Learned counsel for the first Respondent has adopted the arguments advanced on behalf of the Petitioner.

7. Having heard the learned counsel for the parties, I find that the Competent Authority was in error in refusing to grant deemed conveyance, on account of certain alleged dispute about non payment of Rs. 56 lakhs by the builder to the owner. This Court in the case of ***Mazda Construction Co. & Ors. Vs. Sultanabad Darshan CHS Ltd. & Ors.***² and certain other judgments, such as - ***M/s. Sawant Constructions & Anr. V. Shri Guruchhaya Co-Op. Housing Society & Ors.***³ has consistently held that all that the Competent Authority has to look into is the existence of the agreement under S. 4 of the Act and the requirements of Sections 10 and 11 being satisfied, and then grant

2 Writ Petition No. 3912 of 2012, dated 31st August, 2012

3 Writ Petition No. 1585 of 2013, dated 5th February, 2014

unilateral deemed conveyance in consonance with the terms and conditions, as agreed between the parties. Any other dispute, which is foreign to such documents, cannot be looked into by the Competent Authority. In that view of the matter, I find that it would be appropriate for the Competent Authority to reconsider and decide the application of the Petitioner for deemed conveyance, afresh on its own merits and in accordance with law. Hence, the following order.

ORDER

- (i) The petition is partly allowed.
- (ii) Impugned order is hereby set aside.
- (iii) Application filed by the Petitioner under Section 11(3) of the Act is remitted back to the Competent Authority for deciding it afresh on its own merits and in accordance with law, and in the light of the observations made above.
- (iv) The Competent Authority shall make an endeavour to decide the said application afresh, as expeditiously as possibly, and preferably within a period of three months from the date of receipt hereof.
- (v) In the circumstances, there shall be no order as to costs.

Vinayak
P.
Halemath

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by Vinayak P.
Halemath
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Sd/-
C. V. BHADANG, J.