

JPP

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION***

WRIT PETITION NO. 3434 OF 2019

Hemal Pradip Mehta and Anr.

... Petitioners

V/s.

The State of Maharashtra and Ors.

... Respondents

Mr. Mayur Khandeparkar a/w. Manish Gala i/b. Law square for the
Petitioners

Mr. Ashutosh Kulkarni a/w. Mr. Akshay Kulkarni for Respondent
No.3

Ms. Garima Agrawal i/b. Wadia Ghandy & Co. for Respondent No.4

Mr. Nagnath Bhumkar i/b. Vishal Tambat for Respondent No.5

***CORAM : NITIN JAMDAR &
MILIND N. JADHAV, JJ.***

DATE : 8 DECEMBER 2020

P.C. :-

In view of the stand taken by the learned Counsel for the
Respondent No.3 – Authority, it is not necessary for us to narrate de
the controversy in detail and decide the larger issues raised by the
Petitioners.

2. The Petitioners are aggrieved by the order passed on 27
September 2019 by the Respondent No.3 – Maharashtra State Real

Estate Regulatory Authority. The Petitioners also seek orders on the application dated 15 July 2019 filed by the Petitioners and a direction that it be decided by the Adjudicating Officer in accordance with law.

3. The Petitioners, who are the Original Complainants before the Authority, are seeking refund of the amounts paid by them including the amounts of stamp duty and registration charges in respect of certain flats constructed by the Respondent No.4. The application filed by the Petitioners seeking to transfer the matter from the Respondent No.2 was rejected by the impugned order.

4. Apart from the various grievances raised by the Petitioners, one which goes to the root is that the Petitioners were not heard while passing the impugned order. When the Petition was heard on 1 December 2020, the learned Counsel for the Respondent – Authority sought time to take instructions on this submission of the Petitioners, and the Petition was adjourned till today. The learned Counsel for the Respondent – Authority submitted that it is correct that the Petitioners were not given the hearing while passing the impugned order and he has instructions that the Petitioners will be heard. In view of this stand taken, the impugned order will have to be set aside and the application filed by the Petitioners will have to be restored to the file.

5. The learned Counsel for the Petitioners submitted that currently the Authority is following the procedure which is contrary to the law and contrary to the decisions of this Court and the Apex Court. He submits that to ensure that there is no breach of the law as laid down, the Respondents must develop a Case Management System and the Roznama be made available online.

6. Since the cause of action of the Petitioners i.e. the order dated 27 September 2019 is being set aside, we do not deem it appropriate to embark upon the enquiry to consider larger issues raised in the interest of litigants before the Authority in this Petition. We keep these aspects and the prayers made by the Petitioners in clause (ii) and (iii) open to be considered in appropriate case.

7. Accordingly, the Petition is disposed of as under :-

- (a) Impugned order dated 27 September 2019 is quashed and set aside.
- (b) The application dated 15 July 2019 is restored to file.
- (c) All contentions of all the parties are kept open including the contention of the Petitioners that the

Authority to which the application is being relegated to does not have power to decide this application.

8. The decision be taken on the application, if it is feasible, within a period of four weeks from today, depending on the workload available and the availability of virtual hearing.

9. The Writ Petition is disposed of in the above terms.

MILIND N. JADHAV, J.

NITIN JAMDAR, J.

Jyoti P.
Pawar

Digitally signed
by Jyoti P. Pawar
Date: 2020.12.10
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