

Urmila Ingale

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

**WRIT PETITION NO. 594 OF 2020
WITH
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WITH
WRIT PETITION NO. 596 OF 2020
WITH
WRIT PETITION NO. 606 OF 2020**

M/s.Sim Properties
through its Partner
Shri Sachin Rikhablal Bhandari
Vs.

....Petitioners

The State of Maharashtra and ors.

..... Respondents

Mr.Y.S.Jahagirdar, Senior Advocate a/w Mr.N.V.Walawalkar, Senior Advocate i/b Mr.Suresh Sabrad, Mr.Dhawraj Chavan, Mr.Amey Sawant, Ms.Neha Parte & Ms.Kirti Khetmalas, for the Petitioners in all Petitions.

Dr.Uday P. Warunjikar i/b Mr.Nikhilesh Pote, for Respondent No.2.

Mr.P.V.Nelson Rajan - AGP a/w Mr.S.D.Rayrikar - AGP, Mr.S.H.Kankal - AGP and Mr.P.P. Pujari, AGP for the Respondent - State.

CORAM : M. S. KARNIK, J.

DATE : 20th JANUARY, 2021

P.C. :

. Heard learned Senior Advocate Mr.Jahagirdar appearing for the Petitioners, Mr.Warunjikar learned Counsel

appearing for the Respondent No.2 and learned AGPs appearing for Respondent No.1. As common issues are involved, the Petitions are disposed of by a common order.

2. Inviting my attention to the impugned order at page No. 101 of the Petition passed under section 11(3) of the Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short 'the said Act') granting deemed conveyance to the Respondent No.2 - Society, Shri Jahagirdar Senior Advocate submits that the Petitioner - Developer was not given the reasonable opportunity of hearing as contemplated by sub-section 4 of section 11 of the said Act.

3. The Petitioner is a Developer - Promoter. An application was made by Respondent No. 2 - Society for deemed conveyance under section 11 of the said Act before the Competent Authority. It is the contention of the learned Senior Advocate that notices which were issued were sent on the previous address of the Petitioners which was not the address for correspondence at the relevant time of issuance of notices. He invited my attention to page 197 which is a bailiff's report. The

address mentioned in the said notice is 102, Kumar Vastu, Range Hills, Pune 411020 ('previous address' for short). The report of the bailiff records that 'party has left'. He further submits that it appears that all notices were sent on the previous address. Shri Jahagirdar further submitted that the address for correspondence of the Petitioners was very well known to Respondent No.2. He submitted that there was exchange of draft deed of conveyance between the Petitioners and Respondent No.2 wherein the address for correspondence was mentioned as 201, B.A.Gateway, Plot No.4, CTS No. 1620, Baner Road, Aundh, Pune 411 007 ('new address' for short). He further invited my attention to notice dated 25/06/2019 addressed by the Petitioners to the Advocate for the Respondent No.2 who has filed an application for deemed conveyance. In the said notice, 'correct address' for correspondence is mentioned. Shri Jahagirdar relied upon the decision of the Hon'ble Supreme Court in the case of **Neerja Realtors Private Limited Vs. Janglu (dead) through legal representative (2018) 2 Supreme Court Cases 649** to demonstrate the manner in which the summons are to be served by the bailiff in the event the party is not found at the address mentioned in the summons. According to Shri Jahagirdar the bailiff ought to have affixed the summons on the conspicuous part of the house concerned. This requirement has not been

complied with. Shri Jahagirdar further says that there was no reason for the Petitioners to have avoided attending hearing of the proceedings as in any case there was exchange of draft deed of conveyance between the parties. According to him even the manner in which the public notice is issued leaves much to be desired and even with all due care and caution, it is difficult to notice it. He submitted that the section 11(4) of the said Act contemplates a reasonable opportunity of being heard to the Promoters and therefore it is the submission that this is a fit case where the present Petition deserves to be allowed and opportunity needs to be given to the Petitioners to be heard in the said proceedings before the Competent Authority.

4. On the other hand, Shri Warunjikar submits that the Petitioner was very much functioning at the previous address on which the notice was issued. In support of his submissions, he relied upon the legal notice issued by the Society which is at page 127 of the Petition. He submitted that the said notice dated 12/06/2019 was sent on the same previous address which is mentioned in the cause title before the Competent Authority. The said notice was received on behalf of the Petitioners at the very same previous address. Even the date of acknowledgment is 18/06/2019 around the same time when the summons in the

proceedings came to be issued. Mr.Warunjikar relied upon the decisions of this Court in the case of **Zainul Abedin Yusufali Massawawala and ors. Vs. The Competent Authority District Deputy Registrar of Co-operative Housing Societies, Mumbai and ors in Writ Petition No. 2163 of 2014 dated 29/06/2016 (Coram : S.C.Dharmadhikari & Dr.Shalini Phansalkar-Joshi, JJ.)** and in **Writ Petition No. 4373 of 2017 in the case of Angeline Randolph Pereira and ors Vs.Suyog Industrial Estate Premises Co-operative Society Ltd and ors. Dated 11/04/2018 (Coram : R.D.Dhanuka, J.)** to contend that remedy of the Petitioner is to approach the Civil Court and get the dispute adjudicated. Mr.Warunjikar submitted that even public notice which complies with the requirement of substituted service was given in the daily newspaper 'Punyanagari'. Mr.Warunjikar therefore submitted that all these steps satisfy the test of the reasonable opportunity as contemplated by section 11(4) of the said Act and therefore no further opportunity is necessary to be given to the Petitioners. It is the Petitioners who deliberately avoided attending the proceedings despite the service of notice.

5. Heard learned Counsel for the parties. No doubt, a public notice was issued in the daily newspaper 'Punyanagari' .

However, from the public notice which is annexed at page 146 of the Petition, it is seen that said public notice forms part of very small column and it is very difficult to decipher the contents of the notice. The possibility of the same being overlooked by any prudent person cannot be ruled out. The submission of the Petitioners in this count deserves to be accepted.

6. So far as the service of notice is concerned, it is seen that no doubt the Petitioner was functioning from the previous address mentioned in the proceedings before the Competent Authority. It is noticed from the exchange of correspondence that the Petitioners had clearly indicated the address of correspondence as 201, B.A.Gateway, Plot No.4, CTS No. 1620, Baner Road, Aundh, Pune 411 007 viz. the new address which was to the knowledge of the Respondent No.2.

7. In terms of section 11(4) of the said Act reasonable opportunity of hearing to the Promoters is to be given before issuing the certificate. Though there is some substance in the contention of Mr.Warunjikar that there is one communication which is at page 127 served on the previous address of the Petitioners, however, requirement of Rule 13(2) of the

Maharashtra Ownership Flats (Regulation of the Promotion of Construction etc.) Rules, 1964 provides that the notice shall be served on the opponents by registered post acknowledgment due or under certificate of posting on the last known address.

8. The decisions of this Court relied upon by Shri Warunjikar is in respect of the remedy of approaching the civil Court to get the dispute adjudicated. The said decisions will not apply to the present facts where the Petitioners are seeking a reasonable opportunity of being heard before issuance of the certificate in terms of section 11(4) of the said Act.

9. In this view of the matter and considering the provisions of section 11(4) of the said Act which provides for a reasonable opportunity of being heard to the Petitioners, I find this is a fit case to interfere with the order passed by the Competent Authority by granting one opportunity to the Petitioners to participate in the said proceedings. Hence the following order.

ORDER

- (i) The impugned order is set aside.

(ii) The Petitioners shall co-operate with the hearing before the Competent Authority and shall not seek any adjournment.

(iii) The Petitioners shall appear before the Competent Authority on 27/01/2021 at 11.00 a.m. whereafter the Competent Authority may either hear the Application on the same day or any other day as per its convenience.

(iv) The Competent Authority to decide the application itself as far as possible within a period of 6 weeks from 27/01/2021.

(v) Senior Advocate Shri Jahagirdar and Senior Advocate Shri Walawalkar graciously submit that considering the hardship faced by Respondent No.2, Petitioners are willing to pay costs of Rs.50,000/-in each Petition totaling Rs.2,00,000/- to the Respondent No.2 – Society within a period of one week. Statement accepted. This is obviously without prejudice to the contentions that the Petitioners are not responsible for the hardship and inconvenience.

10. Writ Petition is disposed of.

(M.S.KARNIK, J.)