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

WRIT PETITION NO. 11831 OF 2018

TEERTH DEVELOPERS AND SUYOJIT
INFRASTRUCTURES LTD. & ORS.

.. PETITIONERS

vs.

MANOJ JADHAV & ORS.

.. RESPONDENTS

Mr. Joel J. Carlos for the petitioners.

Mr. Lalit Jhunjhunwala a/w. Paven S. Patil, Rajat Agarwal i/b.
Triyama Legal for respondent No.1.

Mrs. V.S. Nimbalkar, AGP for respondent Nos. 2 & 3.

CORAM : M.S.KARNIK, J.

DATE : MARCH 15, 2021

P.C.:-

Heard learned counsel for the petitioners.

2. This Petition filed under Article 227 of the Constitution of India by the developer challenges corrigendum dated 16/3/2018 issued by the competent authority and the District Deputy Registrar, Co-operative Society under the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as 'the MOFA' for short) to the order dated 21/2/2018 granting deemed conveyance in favour of the respondent No.1 – Society. The deemed conveyance was granted

on 21/2/2018. Even the certificate under Section 4 of the MOFA was issued on 21/2/2018. An application came to be made by the respondent No.1 – society on 13/3/2018 for issuance of necessary corrigendum on the basis of the following averments which reads thus :

“1. The present application was filed along with all the relevant documents including the certificate from the Architect. This Hon'ble Authority was pleased to Issue Notice to the respondent and in response to the same respondents appeared and filed reply. In the said Reply, it is specifically contended that the Building Nos.F and G are yet to be constructed and they have no objection for conveying rest of the property. The sanctioned plan shows total actual area of the plot as per demarcation which is 36792.03 sq. meters. Copy of the said plan is already filed on record along with list of documents at Sr.No.6. The Respondents while registering the Society have also accepted in unequivocal terms by giving an undertaking on 3/11/2007 that the entire land will be transferred. The copy of the same is also produced on record, however for ready reference ; it is produced as Annexure “A”.

2. As the F and G Buildings were to be constructed, another Certificate of Architect, dated 02.02.2018 was produced on record by excluding the built up area of F and G Buildings. In both the certificates, the plot area remained same. It is clearly

observed by this Hon'ble Authority, that, the respondents are ready to convey except Building Nos.F and G. The Hon'ble Authority has also granted the open space and amenity space along with the built up area and it is also observed that there is no federal Society existing on the said plot or it cannot be formed as there is no separate Society for different building on the said Plot. However, through oversight the plot area has remained to be mentioned. Therefore, it is necessary to issue the Corrigendum to the Order dated 21.02.2018 and a fresh Certificate including the said plot area as mentioned in the sanctioned plan as per demarcation.

3. The applicant Society submits that, they have come across the Completion Certificate issued by PMRDA for Building Nos.F and G on 28.02.2018. Thus, it is clear that, the entire construction on the said plot is now completed. The copy of said completion certificate is annexed herewith and marked as Annexure -B.

4. It is, therefore, prayed that, the necessary Corrigendum may please be issued and oblige."

3. On the basis of the application the competent authority issued the impugned corrigendum on 16/3/2018.

4. On last occasion when the matter was heard for admission, Shri Sakhare, learned Senior Advocate appearing on behalf of the petitioners submitted that apart from the merits of the challenge to the impugned order, the impugned order calls for interference also on the ground that the same was passed without hearing the petitioners.

5. Learned counsel appearing for the respondents submitted that what is issued by way of corrigendum is only a clarification in respect of oversight that happened in plot area which remained to be mentioned. He submits that the deemed conveyance has already been granted which is not under challenge. In this view of the matter, according to him, if the corrigendum only rectifies an error happened due to oversight, in that case, it was not necessary for the competent authority to hear the petitioners before issuing the corrigendum.

6. I have heard learned counsel. I find force in the contention of the learned Senior Advocate for the petitioners. Admittedly, the competent authority has not heard the petitioners before issuing the corrigendum. In the application it has been stated that through oversight the plot area remained to be mentioned and therefore it is necessary to issue corrigendum to the order

dated 21/2/2018. A further prayer is made that fresh certificate including total plot as mentioned in sanctioned plan and as per the demarcation be issued. In this view of the matter, in my opinion, it was necessary that the petitioners should have been heard before the issuance of the impugned corrigendum. It cannot be said that this is a mere typographical error or an oversight as is the contention of learned counsel for the respondent No.1- society. A detailed application was made explaining the necessity of issuing the corrigendum. The application should have been served on the petitioners. The impugned order dated 16/3/2018 is therefore set aside.

7. Learned counsel for the respondent No.1 – society pointed out that pursuant to the issuance of the corrigendum, the sale deeds have been executed.

8. In these circumstances, to enable the competent authority to hear the concerned on the application dated 13/3/2018 made by the applicant – society afresh, the present Petition can be disposed of by observing that all actions taken pursuant to the issuance of the corrigendum will abide by the decision of the competent authority on the said application.

9. All contentions of the parties including jurisdiction of the competent authority to issue the corrigendum are kept open.

10. The petitioners as well as the respondent No.1 - Society to appear before the competent authority on 30/3/2021, at 11.00 a.m.

11. The application be decided expeditiously and in any case within a period of six weeks from 30/3/2021.

12. It is made clear that the interim order granted by this Court shall continue till the disposal of the application dated 13/3/2018 by the competent authority.

13. The Writ Petition is disposed of.

(M.S.KARNIK, J.)

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