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

WRIT PETITION NO. 3076 OF 2021

M/s.A & K Associates and ors. Petitioners
Vs.
Shreyas Co-operative Housing
Society Ltd. and anr. Respondents

Mr.Mehul Shah a/w Mr.Abhishek Nikharge, for the Petitioners.
Mr.Vishal Kanade a/w Mr.M.P. Vora & Ms.Ketki Prajapati i/b
Pramodkumar & Co., for Respondent No.1.
Mr. A.P.Vanarase, AGP for the Respondent – State.

CORAM : M. S.KARNIK, J.

DATE : 04th AUGUST, 2021

P.C. :

. Heard learned Counsel for the Petitioners. The
Petitioners are the promoters. Respondent No.1 - Co-operative
Society approached the Competent Authority under the
provisions of the Maharashtra Ownership Flats (Regulation of the
Promotion of Construction, Sale, Management and Transfer) Act,
1963 for grant of deemed conveyance. By the impugned order,
deemed conveyance was granted in favour of Respondent No.1 -
Society.

2. It is the contention of the learned Counsel for the Petitioners that though on the first date of hearing for which the Petitioners received notice, the Petitioners were duly represented by their lawyer on 22/03/2021, on the subsequent dates, due to pandemic and break the chain orders, their lawyer was under the impression that hearings are not taking place. Sometime in July 2021 when the Petitioners lawyer enquired about the date of hearing, he was informed that the Competent Authority heard the matter exparte and has passed the impugned order on 11/06/2021.

3. Learned Counsel for Respondent No.1 opposed the Petition and contended that the Petitioners were duly represented and they purposely avoided appearing before the Competent Authority. It is further submitted that in the meantime, however, the Petitioners approached the Municipal Corporation and submitted an application for amendment of the original plan for the subject building. In fact, in the meantime, the concessions claimed by the Petitioners were approved and the further proposal for approval is under progress. According to learned Counsel for Respondent no.1 this speaks volumes about the conduct of the Petitioners and therefore this is a fit case where no indulgence should be shown to the Petitioners.

4. No doubt, the Petitioners appeared before the Competent Authority on 22/03/2021 through their Advocate. On the later dates i.e. 01/04/2021, 16/04/2021 and on the date of passing of the impugned order, there was no representation on behalf of the Petitioners. The reason given in the Petition is the ongoing pandemic and break the chain orders which were in force. The Petitioners lawyer was under the impression that hearings would not proceed due to this reason and the matter would be deferred. Learned Counsel for the Petitioners submitted that if an opportunity is given to them, the Petitioners would co-operate with the Competent Authority and make submissions within the time stipulated. Considering the reasons stated in the Petition, the explanation appears to be satisfactory and in any case the facts are not so gross that even costs will not make good the default. In my opinion, an opportunity needs to be given to the Petitioners in the interest of justice to represent themselves before the Competent Authority.

5. It is also necessary to put the Petitioners to terms so far as proposal which has been made by them for amendment of original building plan and which is pending with the Corporation. Learned Counsel for the Petitioners makes a statement on instructions of Shri Vishal Kapadia who is the partner of the

Petitioner No.1 that the Petitioners will not make any further application or process the proposal submitted by the Petitioners to the Corporation for utilization of any FSI /TDR on the plot till the disposal of the proceedings before the Competent Authority and further undertake not to start construction activities at the site. Statement is accepted. Needless to mention that it is always open for the Respondent No.1 to resort to appropriate remedies challenging the amended approval/concession in accordance with law. Hence, the following order.

ORDER

- (i) The impugned order dated 11/06/2021 at Exhibit 'A' is quashed and set aside.
- (ii) The statement recorded hereinabove is accepted as an undertaking to this Court.
- (iii) Competent Authority viz. Respondent No.2 is requested to decide the application expeditiously and in any event, within a period of 6 weeks from 10/08/2021.
- (iv) The Petitioners and Respondent No.1 undertake to appear before Respondent No.2 along with the copy of this order on 10/08/2021 at 11.00 a.m. and expressly state that they will co-operate with the Competent Authority and will not ask for unnecessary adjournments.

(v) Learned Counsel for the Petitioners on instructions graciously agreed to pay cost of Rs.1 lakh to the Mumbai Animal Association within a period of 2 weeks from today and submit a compliance report to the Registrar. List the Petition on 20th August, 2021 for compliance.

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

(M.S.KARNIK, J.)