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

**WRIT PETITION NO. 9809 OF 2019
WITH
INTERIM APPLICATION NO. 263 OF 2020
IN
WRIT PETITION NO. 9809 OF 2019
WITH
CIVIL APPLICATION NO. 269 OF 2020
IN
WRIT PETITION NO. 9809 OF 2019**

MANGAL RAGHO NAGAR CO-OP. HOUSING
SOCIETY LTD. (PROPOSED) THROUGH
SHRI LIMBRAJ MANIKRAO PAWAR .. PETITIONER

vs.

SMT. MANDA WIFE OF
SHRI CHANDRAKANT SHANIWAR BHOIR .. RESPONDENTS
SETH, BUILDER & ORS.

Mr. Limba M. Pawar for the petitioner/original applicant.

Mr. P.C. Kamble for respondent.

Mr. S.H. Kankal, AGP for State.

**CORAM : M.S.KARNIK, J.
DATE : MARCH 12, 2021**

P.C.

Heard learned counsel for the petitioner.

2. It is the contention of learned counsel for the petitioner - society (proposed) that the petitioner - society consists of members who are residing in the chawl since the year 1978. The chawl was constructed by the promoter after obtaining necessary permissions of the local authority is the submission of learned counsel for the petitioner - society.

3. As the promoter failed to submit an application to the Registrar for the registration of the society in the manner provided in the Maharashtra Co-operative Society Act, 1960 (hereinafter referred to as 'the Act of 1960' for short), the petitioner - society under the provisions of Section 10(1) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ('MOFA' for short) submitted an application to the Registrar for registration of the society.

4. By the impugned order the competent authority has refused to register the society under Section 10(1) of the MOFA. The tax receipts were taken into consideration in respect of the said chawl. The tax receipts indicated that the structure was unauthorised. The petitioner - society did not submit any document indicating permission from the local authority regarding the authorisation of the said structure. Hence the application under Section 10(1) of MOFA made by the petitioner was rejected by the competent authority.

5. Learned counsel relied upon Section 4 and Section 10(1) of the MOFA to contend that merely because the commencement certificate (CC) and occupation certificate (OC) or other permissions required for constructing the building are not submitted, cannot be a reason to reject the application under Section 10(1). According to him, there is no provision in the MOFA to reject the application made by the petitioner - society for

registration of the society on the ground mentioned by the competent authority. He submits that it is the responsibility of the promoter to obtain C.C. and O.C. and the responsibility to obtain requisite permissions in respect of the structure is not of the petitioner – society. The members have purchased the units from the promoter. According to him, as promoter failed to make an application for registration of the society and therefore the petitioner – society approached the competent authority under Section 10(1) of the MOFA.

6. I have gone through the provisions of Section 4 and Section 10 of the MOFA. If the promoter fails to make an application for registration of the society, in that case the flat purchasers can apply under Section 10(1) of MOFA for registration. Section 4 of the MOFA provides for the particulars to be enclosed along with agreement and that the agreement has to be registered. The particulars stipulated thereunder provide that the plan and specifications of the flats as approved by the concerned local authority are to be attached. Various other documents which are to be attached along with the agreement are stipulated under Section 4 of the MOFA.

7. The petitioner – society has not produced any permission from the local authority or authorisation of the construction of the said chawl. In these circumstances, if the competent authority has held that on the failure on the part of the petitioner – society to

produce any permission or authorisation in respect of the said chawl would disentitle the petitioner - society from getting a registration under Section 10(1) of the MOFA, in my opinion, it cannot be said that the order passed by the competent authority is perverse or erroneous to warrant interference.

8. I therefore do not find any substance in the Petition. The Petition stands rejected and disposed of accordingly.

9. In view of the disposal of the Petition, nothing survive for consideration in the applications. The Applications are disposed of.

Diksha
Rane

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(M.S.KARNIK, J.)