

PMB

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11935 OF 2015**

M/s. Sharad Construction and ors. .. Petitioners

vs.

The State of Maharashtra and ors. .. Respondents

Mr. S. P. Chavan for the Petitioners.

Smt. V.S. Nimbalkar, AGP for the State.

Mr. Vinod C. Sampat for Respondent No.2.

CORAM : M.S.KARNIK, J.

DATE : AUGUST 18, 2021

P.C.

Heard learned counsel for the parties.

2. The Petitioners challenge an order passed by the Competent Authority under the provisions of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 ('MOFA' for short) granting deemed conveyance in favour of the Respondent No.2-Society. The Petitioners are the developers.

3. It is the contention of learned counsel for the Petitioners that they had no notice of the proceedings and therefore did not appear before the Competent Authority. According to learned counsel for the Petitioners, the notices were not served on the

Petitioners. The order impugned records that the notices are published in two newspapers i.e. Pudhari (Marathi Newspaper) and Afternoon Dispatch and Courier (English Newspaper) on 23.07.2015.

4. It is the contention of the Petitioners that for the first time it came to their knowledge about the proceedings only on 13.08.2015 when the public notice was brought to their notice. They thereupon approached the Competent Authority when it was informed that the matter was closed for orders on 10.08.2015. The Petitioners filed an affidavit before the Competent Authority on 25.08.2015 in response to the application. By the impugned order dated 15.10.2015, the deemed conveyance was granted in favour of the Society.

5. It is the contention of learned counsel for the Petitioners that a reasonable opportunity of hearing was not given to the Petitioners.

6. On the other hand learned counsel for the Respondent No.2 supported the impugned order. He submitted that the Petitioners were always aware of the pending proceedings. He also invited my attention to communication addressed by the Petitioners indicating that the Petitioners would be granting the conveyance in favour of the Society. He further submits that the conveyance is in terms of the flat purchasers agreement. Only with a view of illegally deprive

the benefits to the Society in respect of the land to which the Society is entitled, now this contention is taken up. Learned counsel further submits that if the promoter has any dispute, it is always open for them to institute suit before the Competent Authority in terms of the law laid down by this Court in the case of **Mazda Construction Company & Others Vs. Sultanabad Darshan CHS Ltd. & Others**¹.

7. Heard. I do find some substance in the contention of learned counsel for the Respondent No.2. It is only after the matter is closed for orders on 10.08.2015 that the Petitioners appeared before the Competent Authority on 13.08.2015. An affidavit-in-reply to the application was filed on 25.08.2015. The Competent Authority in the impugned order has mentioned about the filing of the affidavit and noted the objections raised by the Petitioners. According to the Petitioners, the open space of land which the Society claims by virtue of the conveyance in fact belongs to the Petitioners. It is the Petitioners contention that over this land the Respondent No.2 has no right to claim any title or interest. No doubt the order granting deemed conveyance does not confer title in respect of the property which is the subject matter of the conveyance, nonetheless, the provisions of Sub-Section 4 of Section 11 of the MOFA provide that a reasonable opportunity of being heard is to be given to the promoter and on being satisfied that it is a fit case for issuing such certificate, the Competent

¹ 2013 (2) ALL MR 278

Authority shall issue a certificate. Considering these provisions and having regard to the fact that the Competent Authority has taken note of the affidavit filed by the Petitioners, in my opinion, an opportunity then ought to have been granted to the Petitioners of being heard in support thereof.

8. Taking an over all view of the matter, in my opinion, this is a fit case to impose exemplary cost on the Petitioners while allowing the Petition. Hence, the following order :-

ORDER

(i) The impugned order is set aside subject to the Petitioners paying cost of Rs.2,00,000/- (Rupees Two Lakhs only) in the manner indicated hereafter.

(ii) The parties to appear before the Competent Authority on 26.08.2021 at 11.00 a.m. along with the copy of this order.

(iii) The Competent Authority to decide the application within a period of eight weeks from 26.08.2021.

(iv) The parties shall co-operate and as far as possible the Petitioners shall not seek adjournment.

(v) Additional pleadings, if any, to be filed on or before 30.08.2021. All contentions are kept open.

9. The Secretary of the Respondent No.2 Society graciously submitted that the cost of Rs.2 lakhs be paid to the following organisations in the following manner :-

(i) The cost of Rs.1 lakh to be paid in the below mentioned account of the Bar Council of Maharashtra and Goa Covid-19 :

Bank Name : Bank of India
Branch Name : Main Branch, Fort, Mumbai
A/c. Name : “Bar Council of Maharashtra and Goa Covid-19”.
A/c No. : 000110110013597
IFSC Code : BKID0000001

(ii) The balance cost of Rs.1 lakh to be paid in the below mentioned account of the Mumbai Police Welfare Fund :-

Bank Name : Axis Bank
Branch Name : Lamington Road Branch
A/c. Name : Mumbai Police Welfare Fund
A/c No. : 465010100008693
IFSC Code : UTIB0000465

10. The cost to be paid on or before 26.08.2021.

11. The Writ Petition is disposed of.

12. List the Petition on 30.08.2021 under the caption ‘for compliance’.

(M.S.KARNIK, J.)