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

WRIT PETITION NO.549 OF 2021

M/s. Vijay Builders and Developers
through its authorized partner
Mr. Sanjay S. Kimtani .. Petitioner
vs.

The Competent Authority, District
Deputy Registrar Co-operative Societies .. Respondent

Mr. R. P. Rathod for petitioner.
Smt. V. S. Nimbalkar, AGP for respondent nos. 1, 2 and 4 –
State.
Mr. Aditya Khamkar i/b. Dr. Uday P. Warunjikar for
respondent no.3.

CORAM : M. S. KARNIK, J.

DATE : AUGUST 2, 2022

ORAL JUDGMENT :

1. The challenge in this writ petition filed by the petitioner-original respondent no.1 – promoter (hereafter 'promoter', for short) under Article 227 of the Constitution of India, is to an order dated June 10, 2020, passed by the Competent Authority and the District Deputy Registrar, Co-operative Societies (hereafter 'the Competent Authority' for short) under the provisions of the Maharashtra Ownership of Flats (Regulation of The Promotion of Construction, Sale,

Management & Transfer) Act, 1963 (hereafter 'the MOFA' for short) granting deemed conveyance in favour of the respondent no.3 – original applicant – society (hereafter 'society', for short).

2. The facts of the case are set out in brief. An application for grant of deemed conveyance under the provisions of the MOFA was made by the society on February 26, 2020. The Competent Authority by a notice published in two local newspapers, English as well as Marathi, called upon those interested in the deemed conveyance application filed by the society to submit their say on the date fixed for hearing on March 19, 2020, at 3.30 p.m. The promoter through their advocate appeared before the Competent Authority on March 19, 2020. The vakalatnama was duly filed by advocate Shri R. P. Rathod representing the promoter. On the vakalatnama is an endorsement of having received the copies of the application on March 20, 2020. The copy of the vakalatnama is stated to have been obtained from the records of the Competent Authority. The Competent Authority by the order impugned allowed the application for grant of deemed conveyance.

3. The promoter pleads that the impugned order is passed in breach of principles of natural justice without hearing him and on the very date fixed for his appearance mentioned in the public notice. The promoter having realised that the application is disposed of in his absence,

made an application on April 25, 2022 to the Competent Authority for providing the certified copies of the entire file, proceedings, roznama and final order on the deemed conveyance application. Learned counsel for the promoter submitted that they were informed that due to Covid restrictions, the hearing will not take place. Learned counsel submits that the application has been allowed on March 19, 2020 itself on an erroneous interpretation of Government Resolution (G.R.) issued by the State Government imposing Covid restrictions by giving a go by to the principles of natural justice. In his submission, the Competent Authority appears to have misconstrued the G.R. to mean that it can override the statutory provisions prescribing the procedure for hearing of the application and therefore, the procedure adopted by the Competent Authority is completely *dehors* the provisions of MOFA and the Rules.

4. Learned counsel for the respondent no.3 on the other hand supported the impugned order. In his submission, the public notice clearly indicated that any person interested may appear on March 19, 2020 and submit say at the time of hearing. The consequence of failure to submit the say was provided. According to him, in view of the stipulation in the public notice that in case of failure to submit the say, it shall be presumed that nobody has any objection and further action will be taken, the promoter having failed to avail of the opportunity, now cannot make a grievance as to the non-compliance of the principles of natural justice. My

attention is invited by the learned counsel to the affidavit-in-reply filed on behalf of the respondent no.3 to contend that even on merits, the promoter does not have a case and the application has been rightly allowed by the Competent Authority on the basis of the pleadings and the materials before him.

5. Learned AGP appearing on behalf of the Competent Authority contended that the Competent Authority had issued a notice (page 52 of the paper-book) which referred to the G.R. dated March 18, 2020 of the State Government regarding the restrictions to be imposed in view of the outbreak of Covid pandemic. It is pointed out that the notice issued by the Competent Authority mentions that in the light of the G.R. dated March 18, 2020, all the applications listed on March 19, 2020 and March 20, 2020 for grant of deemed conveyance will not be heard and that in respect of such matters where a public notice has already been issued, the same are closed for orders. Learned AGP submitted that an opportunity was given to the applicants and respondents to submit written submissions, within a period of ten days on the E-mail Id provided in the public notice. Learned AGP submits that there is no reason to interfere with the well considered order passed by the Competent Authority.

6. Heard learned counsel for the parties. Perused the pleadings and the materials on record.

7. The application for grant of deemed conveyance was

filed by the society on February 26, 2020. The public notice fixed the date of appearance and hearing as March 19, 2020. The public notice indicates that upon failure to submit the say at the time of hearing, it shall be presumed that nobody has any objection and further action will be taken. The Competent Authority had also issued a notice dated March 4, 2020 to the promoter and other respondents indicating that the date of hearing is fixed on March 19, 2020 calling upon the concerned to appear and file say. The notice indicates that in case the concerned fail to appear, the application will be heard exparte. The promoter appeared through his lawyer on March 19, 2020. Though the vakalatnama was duly filed on March 19, 2020, the roznama of March 19, 2020 records the following: -

- “(a) Applicant absent.
- (b) Opponent absent.
- (c) Paper notice was published.
- (d) Closed.”

8. The question for consideration is whether the Competent Authority can dispense with the requirement of hearing and oral arguments while deciding the deemed conveyance application and whether the Competent Authority is justified in deciding the application by resorting to the procedure stipulated in the notice dated March 4, 2020.

9. The MOFA was enacted to regulate, in the State of Maharashtra, the promotion of the construction of the sale

and management, and the transfer of flats on ownership basis. Clause (a) of Section 2 of the MOFA defines "Competent Authority" means a Competent Authority appointed under section 5A. Section 5A provides that the State Government may, by notification in the Official Gazette, appoint an officer, not below the rank of the Deputy Registrar of Co-operative Societies, to be the Competent Authority, for an area or areas to be specified in such notification and different officers may be appointed as Competent Authority for different local areas, for the purposes of exercising the powers and performing the duties under sections 5, 10 and 11 of the MOFA. Section 10 ordains the promoter to take steps for formation of co-operative society or company in the manner provided thereunder. Section 11 of the MOFA obligates the promoter to convey title and execute documents according to agreement. It is necessary to reproduce Section 11 for a proper appreciation of the controversy. Section 11 reads thus: -

"11. Promoter to convey title, etc., and execute documents according to agreement.- [(1) A promoter shall take all necessary steps to complete his title and convey, to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid, or to an association of flat takers [or apartment owners] his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed under section 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.

[(2) It shall be the duty of the promoter to file with the

Competent Authority, within the prescribed period, a copy of the conveyance executed by him under sub-section (1).

(3) If the promoter fails to execute the conveyance in favour of the co-operative society formed under Section 10 or, as the case may be, the company or the association of apartment owners, as provided by sub-section (1), within the prescribed period, the members of such co-operative society or, as the case may be, the company or the association of apartment owners may, make an application, in writing, to the concerned Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the society or the company or the association, who have purchased the flats and all other relevant documents (including the occupation certificate, if any), for issuing a certificate that such society, or as the case may be, company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.

(4) The Competent Authority, on receiving such application, within reasonable time and in any case not later than six months, after making such enquiry as deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, shall issue a certificate to the Sub-Registrar or any other appropriate Registration Officer under the Registration Act, 1908, certifying that it is a fit case for enforcing unilateral execution of conveyance deed conveying the right, title and interest of the promoter in the land and building in favor of the applicant, as deemed conveyance.

(5) On submission by such society or as the case may be, the company or the association of apartment owners, to the Sub-Registrar or the concerned appropriate Registration Officer appointed under the Registration Act, 1908, the certificate issued by the Competent Authority along with the unilateral instrument of conveyance, the Sub-Registrar or the concerned appropriate Registration Officer shall, notwithstanding anything contained in the Registration Act, 1908, issue summons to the promoter to show cause why such unilateral instrument should not be registered as 'deemed conveyance' and after giving the promoter and the applicants a reasonable opportunity of being heard, may, on being satisfied that it was a fit case for unilateral conveyance, register that instrument as deemed conveyance.]”

(emphasis supplied by me)

10. In exercise of the rule making power under Section 15 of MOFA the State Government made "The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1964" (hereafter 'the said Rules' for short). So far as the procedure for presentation of the application under Section 10 and 11 of the MOFA is concerned, Rule 11 provides for the procedure thereof, which reads thus: -

"11. Applications under sections 10 and 11.- (1) (a) Every application under the proviso to sub-section (1) of section 10 or sub-section (3) of section 11 may be presented in person by the applicant or by their duly appointed Authorised Representative, to the Competent Authority during its office hours or may be sent to the Competent Authority by registered post.

(b) Where an application is signed and presented by an Authorised Representative, it shall be accompanied by a letter of authority appointing him as such and duly signed by the applicant and accepted by the Authorised Representative.

(c) Every application shall be made in accordance with the provisions of the Act, the rules and notifications and shall be affixed with such court fee stamps, as may be prescribed and pay the necessary enquiry fees.

(2) Notice of date of hearing. - The Competent Authority shall issue necessary notice all the parties regarding the date fixed for hearing the application and publish or display the date fixed for the hearing thereof on the office notice board sufficiently in advance.

(3) Place of Hearing. - All applications filed under the proviso to sub-section (7) of section 10 or sub-section (3) of section 11 shall ordinarily be heard at the respective offices of the Competent Authority.

(4) Office hours. - The office of the Competent Authority shall observe the same office hours as other offices of the Government of Maharashtra observes. It shall remain closed on Sundays and on such other days as may be declared to be holidays for the offices of the State Government."

11. Rule 13 of the said Rules deals with the scrutiny of application and notice to the parties, etc., which reads thus:-

"13. Scrutiny of applications and notice to the parties, etc.- (1) Registration of applications.- (a) On receipt of an application, the office of the Competent Authority shall endorse on it the date of its receipt and shall as soon as possible, examine it and satisfy itself that the person presenting it has authority to do so and that it conforms with all the provisions of the Act and the Rules made thereunder.

(b) If the Competent Authority is satisfied that the application is complete in all respect, it shall cause the application to be registered, as admitted, in the appropriate register maintained under these rules.

(c) If the application is not complete, the Competent Authority may send notice in the Form VIII, to the applicant/s to rectify the defects or comply with such requirements, as it may deem fit to conform with all the provisions of the Act, and these Rules, within a period of fifteen days of the receipt of the said notice. The Competent Authority may, for sufficient cause, may give further extension of not more than fifteen days to comply with the requirements.

If the above defect in an application is rectified, the Competent Authority shall cause it to be admitted and register the application in the appropriate register.

(2) Maintenance of registers and procedure for issuing notice, etc. - The Competent Authority shall maintain the Register of applications received by it in Form IX.

On admitting the application, the Competent Authority shall, within a period of fifteen days thereof, issue a notice in Form X to the opponent/s requiring him/them to file the written statement on the day, date and place as may be specified therein. Such notice shall be served on the opponents by registered post acknowledgment due or under certificate of posting on the last known address.

(3) Appearance of parties and consequence of non-appearance.- (a) On the date fixed as aforesaid, the opponent shall appear either in person or through his Advocate or his authorized Representative before the Competent Authority and shall file a written statement.

(b) On the date of hearing, if the applicant appears and the opponent or any of the opponents does not or do not appear, as the case may be, the Competent Authority shall decide the Application ex-parte:

Provided that, before deciding the Application, if the Opponent appears and shows a sufficient cause for his non-appearance on the earlier occasions, he shall be heard in the matter as if he had appeared before the Competent Authority on the first day.

(c) If on the date fixed for hearing or on any other day to which the hearing may be adjourned, the applicant does not appear either in person or by his Authorised Representative, when application is called for hearing, the Competent Authority may dismiss the application.

(d) If, on the date fixed for hearing or any other day to which the hearing may be adjourned, the Opponent/s does/do not appear either in person or through his/their Authorised Representative, when the Application is called for hearing, the Competent Authority may decide the same on merits after hearing the Applicant or his Authorised Representative, if present.

(4) Production and inspection of documents.- (a) The parties shall file the documents referred to in the pleadings at the time of filing application and written statement, as the case may be. If either party satisfies the Competent Authority that any document is relevant and the same is in the custody of the opposite party, the Competent Authority may, by an order in writing, direct such party to produce such document on the next date of hearing.

(b) If the party so ordered, fails to produce such documents on the next date of hearing, the Competent Authority may draw adverse inference against such party and hearing of the original application shall not be postponed till filing of such documents or for the reasons of such non compliance of the order.

(c) If the Competent Authority is satisfied that the documents required to be produced, cannot be brought before the Competent Authority for sufficient reasons like its volume or otherwise, the Competent Authority may allow the opposite party to take inspection of the documents within seven days from the date of order of such inspection.

(d) If the Competent Authority is satisfied that the opponent had no access to the documents earlier and the filing of additional statement is necessary, it may

allow the filing of such additional statement.

(5) Procedure for hearing the application.- (a) On receipt of the statement of the opponent, the applicant shall prove contents of the application and also deal with the contention of defenses. The opponent likewise may file reply in support of the defense on the next date, if he so desires. No cross-examination of any of the parties shall be permitted.

(b) On receipt of the replies, the Competent Authority shall proceed to hear oral arguments of the parties and after hearing, shall close the proceedings for the order.

(c) The Competent Authority shall, within reasonable time and in any case not later than six months from the date of receipt of the application, after making such enquiry deemed necessary and after verifying the authenticity of the documents submitted by the parties and after hearing them and giving the parties sufficient opportunities as required under the Act and the principles of natural justice, pass such appropriate order as it deems fit, as provided under the Act.

(6) Signing of order and the notice and the official seal.- (a) Every judgment, order and the certificate of the Competent Authority shall be delivered or supplied or provided to all the concerned parties.

(b) The Competent Authority shall have an Official Seal of its own, which shall be kept in the custody of the Competent Authority.

(c) Every judgment, order, certificate and the notice issued under the Act or these Rules shall be signed by the Competent Authority and shall bear the official seal on it.

(d) All the records of the Competent Authority shall be kept in its custody."

(emphasis supplied by me)

12. A bare reading of Section 11 makes it clear that it provides for the procedure to be followed by the Competent Authority on receiving an application for grant of deemed conveyance before certifying it to be a fit case for enforcing unilateral execution of conveyance deed conveying the right, title and interest of the promoter in the land and building in favour of the applicant, as deemed conveyance.

As per sub-section (4) of Section 11, the Competent Authority has to make such enquiry as deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, that such certificate is issued. Further, Section 13C stipulates that all proceedings before a Competent Authority shall be deemed to be judicial proceedings for the purposes of Sections 193 and 228 of the Indian Penal Code. Section 13D provides that every Competent Authority shall be deemed to be a Civil Court for the purposes of Sections 345 and 347 of the Code of Criminal Procedure, 1973.

13. Rule 11, 12 and 13 of the said Rules are added by the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) (Amendment) Rules, 2010, vide Notification No. FOB. 2008/CR.170/RR-II, dated September 27, 2010. As per sub-rule (2) of Rule 11, the Competent Authority has to issue necessary notice to all the parties regarding the date fixed for hearing the application. The procedure for receiving the application under Section 11 is prescribed by sub-rule (1) of Rule 13. The appearance of parties and consequence of non-appearance on the date fixed for hearing is provided by sub-rule (3) of Rule 13. Sub-rule (3)(a) of Rule 13 provides that on the date fixed for appearance, the opponent shall appear either in person or through his Advocate or his

authorized Representative before the Competent Authority and shall file a written statement. Sub-rule (4) of Rule 13 provides for the procedure for production and inspection of documents. Sub-rule (5)(a) of Rule 13 contemplates that on receipt of the statement of the opponent, the applicant shall prove contents of the application and also deal with the contention of defenses. It further provides that the opponent likewise may file reply in support of the defense on the next date, if he so desires. No cross-examination of any of the parties is permitted. Clause (b) of sub-rule (5) of Rule 13 provides that on receipt of the replies, the Competent Authority shall proceed to hear oral arguments of the parties and after hearing, shall close the proceedings for the order. Sub-rule (5) (c) of Rule 13, in no uncertain terms, postulates that the Competent Authority has to abide by the principles of natural justice, hear the parties and give them sufficient opportunities as required under MOFA and then pass appropriate order as it deems fit. The provisions of MOFA and the Rules framed thereunder, leave no manner of doubt that the Competent Authority cannot dispense with the requirement of oral arguments while deciding the application for grant of deemed conveyance.

14. In the instant case, on the date fixed for appearance of the promoter, the Competent Authority closed the application for orders. The notice of the Competent Authority as well as the public notice for appearance and hearing came to be issued prior to the issuance of the G.R.

dated March 18, 2020. By issuance of such G.R., the State Government listed measures for containment of the spread of Corona virus. One such measure was to reduce footfall in government offices and various establishments. There was an air of panic prevailing among the citizens due to spread of the Corona virus. The State Government was concerned and therefore the measures were enlisted in the G.R. for containing the spread of the Corona virus.

15. The Competent Authority appears to have misinterpreted the G.R. to mean that even the statutory requirement of the procedure for hearing the application and oral arguments could be dispensed with and instead substitute it with written submissions. While issuing the notice at Exhibit 'C', the Competent Authority appears to have not only dispensed with the requirement of oral arguments, but even dispensed with the procedure laid down for hearing of the application. The Competent Authority made it clear that on the date fixed for appearance itself the application would be closed for orders, however, gave an opportunity to the parties to file their written submissions within 10 days from the date fixed for appearance. In my view, such a course adopted by the Competent Authority is in the teeth of sub-section (4) of Section 11 and Rule 13 of the said Rules. An order for grant of a deemed conveyance in favour of the applicant is not an empty formality. Rule 11, 12 and 13 provide the procedure to be followed, before the Competent Authority passes

appropriate orders on the application. The Competent Authority misconstrued the G.R. dated March 18, 2020. The Competent Authority was not justified in dispensing with the requirement of hearing and oral arguments. The approach of the Competent Authority is completely flawed and contrary to the provisions of MOFA and the Rules framed thereunder.

16. Another aspect needs mention. The roznama dated March 19, 2020 records the absence of the Society as well as the promoter. It further records that the application is closed. However, reading of the impugned order reveals that Advocate Shri P. T. Brahmarakshas appeared on behalf of the applicant (Respondent No.3 herein) and made oral arguments. So far as the promoter is concerned, it is recorded that Advocate Shri R. P. Rathod has been engaged to represent the promoter but he has not made any submissions thereafter. The impugned order further records that despite giving an opportunity to the promoter to remain present, the promoter did not file written statement or advance oral arguments and therefore, the Competent Authority was of the opinion that the promoter is not interested in the hearing. I find that even on this count, the impugned order calls for interference. The provisions of the MOFA and the Rules mandates the Competent Authority to comply with the principles of natural justice. The Rules specifically provide for giving the parties sufficient opportunities as required by MOFA. It is only after receipt of

the replies as prescribed by sub-rule (5)(a) of Rule 13 that the Competent Authority proceeds to hear oral arguments in terms of sub-rule (5)(b) of Rule 13. The Competent Authority on the very first day fixed for appearance of the promoter closed the application for orders. Even if the roznama is to be ignored, the impugned order and the materials on record clearly reveals that the Competent Authority has failed to provide sufficient opportunity to the promoter to contest the application as required by MOFA and the Rules framed thereunder.

17. I do not find any force in the submission of learned AGP and the counsel for the respondent no.3 that asking the parties to furnish written submissions, without complying with the requirement of the opportunity of advancing oral arguments to the promoter, can be regarded as sufficient compliance of the provisions of MOFA, while deciding the application for grant of deemed conveyance. A specific and an additional provision in the nature sub-Rule 5(c) of Rule 13, requiring the Competent Authority to comply with the principles of natural justice and give the parties sufficient opportunities, apart from the other provisions regarding oral arguments and hearing is all the more a reason why the Competent Authority must scrupulously follow the principles of natural justice. The impugned order calls for interference. The writ petition succeeds and is accordingly allowed in the following terms :-

- (i) The impugned order dated June 10, 2020 passed by the Competent Authority at Exhibit 'A' is quashed and set aside.
- (ii) The application is remitted to the Competent Authority to be heard afresh.
- (iii) The Competent Authority to proceed with the hearing of the application in accordance with the provisions of MOFA and the Rules and in accordance with law.
- (iv) The parties to appear before the Competent Authority on August 26, 2022 at 11.00 a.m. This will be considered as a sufficient notice to the parties.
- (v) The parties to co-operate with the Competent Authority in speedy disposal of the application and will not seek any unnecessary adjournments.
- (vi) The Competent Authority is requested to hear the application on its own merits and in accordance with law expeditiously and preferably within a period of four (4) months from August 26, 2022.

18. I may not be understood to have expressed any opinion on merits of the contentions. All contentions are kept open.

19. The writ petition is allowed with no order as to costs and accordingly disposed of.

(M. S. KARNIK, J.)