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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 2821 OF 2022

Vasant Nagri
Sector-3 Cooperative Housing Society Ltd. ...Petitioner
Versus
Competent Authority under MOFA/
District Deputy Registrar & Ors ...Respondents

Ms Jonita R Dabreo, for the Petitioner.
Mr P G Sawant, AGP for the State/Respondent.

CORAM G.S. Patel &
Madhav J. Jamdar, JJ.
DATED: 14th March 2022

PC:-

1. There is gross delay and laches in this Petition.
2. What is sought is a review of an order of 1st March 2014 passed by the 1st Respondent granting a unilateral deemed conveyance under the Maharashtra Ownership Flats Act to the Petitioner-society itself. The application was of an even earlier date, made in 2012, and numbered as 71 of 2012.
3. About the date of the order and the order of a unilateral conveyance there is no dispute at all.

4. The society then applied for adjudication of stamp duty. This is where paragraphs (e), (f), (g) and (h) of the Petition at pages 5 and 6 become material. This is how they read:

“(e) On receipt of the said order the Petitioner applied for adjudication of Stamp duty before the Stamp Collector, Thane and the Stamp Collector after assessing the stamp duty orally informed the Petitioners that the FSI balance with the society was approximately 6000 sq. mtrs. and therefore, the Petitioner was liable to pay stamp duty at the prevailing market rate for the same at the time of adjudication.

(f) Thereafter the Petitioner decided to conduct a physical survey of the land in possession of the Petitioner and accordingly appointed a surveyor to conduct the survey. After conducting the survey, the Petitioner realized that the land in possession of the Petitioner is only that of 11,815 sq. mtrs. and the area admeasuring to 4713.50 sq. mtrs. is the area of the Common Facility Centre (CFC) plot which the Developers have already sold to 3rd party. Annexed hereto and marked as Exhibit E is a copy of the survey report.

(g) Realising their mistake, the Petitioner thought of correcting the mistake and hence filed an application for correction of the order by reviewing the order before the competent authority on 17/09/2020. Annexed hereto and marked as Exhibit F is a copy of an Application of Review of order filed on 17/09/2020.

(h) The competent authority despite rigorous follow up has failed to consider the Review Application and has orally denied to take up the Review Application and informed the Petitioner that they have no jurisdiction to review the order hence present petition. The Petitioner seeks to prefer this present petition on following amount other grounds taken without prejudice to one another.”

5. Exhibit-F, the survey report referred to above, is of 19th August 2020, a full six years after the order of the unilateral deemed conveyance. There was clearly no impediment to the society obtaining a survey report in 2014 itself. The entire delay is not explained. Even worse is the wording of paragraph (g). The realization of a mistake by a Petitioner does not and will not confer review jurisdiction on an authority. It is settled law that there is no inherent power of review. That power has to be specifically conferred. Even if the review application is seen as an application for modification, any delay in that application would need to be explained thoroughly. In every context, whether it is bringing of a Writ Petition or issues of limitation, the Supreme Court has repeatedly said that sufficient cause must be shown explaining the delay, even if each and every single day's delay need not be explained. It most recently said so in *University of Delhi v Union of India & Ors.*¹ a routine explanation is insufficient. These are not considerations that can be abandoned just because a society feels that a correction is necessary.

6. The reason for the correction is clear. The society believes it needs to pay less stamp duty than adjudicated. This is clear from prayer clause (e).

7. The other ground is that the additional FSI is attributable to area of 4713.50 sq. mtrs. which is allegedly the area for the Common Facility Centre was sold by the developers to a third party. But the Petition makes a fundamental error. This itself raises a disputed

¹ (2020) 13 SCC 745.

question of fact. What the society holds is a title under a unilateral deemed conveyance. It is entitled to take all steps available to it in law to perfect its title to every piece of land under unilateral deemed conveyance. If part of that land (or the FSI) vests in another entity, then the only recourse is a civil suit — not a Writ Petition for a so-called ‘review’ of the original grant of a unilateral deemed conveyance. If the Common Facility Centre land (with or without FSI) vests in some other entity, then that is most likely because this society is part of a larger layout. If so, there will be another question of a conveyance to an apex or federation, in which the common facilities will vest.

8. The Petition is fundamentally misconceived. It is rejected. There will be no order as to costs.

9. However, it is clarified that this order will not come in way of the Petitioner adopting appropriate civil remedies.

(Madhav J. Jamdar, J)

(G. S. Patel, J)