

Arjun

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

WRIT PETITION NO.4665 OF 2023

Deepak Sadanand Neroorkar .Petitioner

V/s.

The Bandra Shiv Samruddhi .Respondents
Co-operative Housing Soc. Ltd. & Ors.

Mr. Akshay R. Kapadia, Advocate, for the Petitioner

Ms. V. S. Nimbalkar, AGP, for Respondent Nos. 4 & 6 -
State

CORAM : MADHAV J. JAMDAR, J.

DATED : AUGUST 22, 2023

ORAL JUDGMENT

1. Heard Mr. Kapadia, learned counsel appearing for the Petitioner and Ms. Nimbalkar, learned AGP appearing for Respondent Nos. 4 and 6.

2. The present Writ Petition is an absolute abuse of the process of the law. The Petitioner who claims to be one of the legal heir of late Sumitrabai Sadanand Neroorkar by way of the present Writ Petition filed under Article 227 of the Constitution of India has challenged the order dated 18th April 2016 passed by the Competent Authority @ District

Deputy Registrar Co-operative Societies (3), Mumbai in Application No.153 of 2015.

3. The said Application No.153 of 2015 was filed by the Respondent No.1-Society against said Sumitrabai Sadanand Neroorkar and M/s. P. D. Builders. The said Application was filed under Section 11(3) and Section 11 (4) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as “**the MOFA Act**”) seeking unilateral execution of a conveyance deed.

4. The factual position on record shows that the Respondent No.1 - Society was registered on 27th April 1981 having address at 11/3 Off Turner Road, Bandra(West), Mumbai - 400 050. In the said Application, M/s. P. D. Builders was impleaded as Opponent No. 2 who has constructed the said building. It is significant to note that said Opponent No. 2 is not impleaded as Respondent to the present Writ Petition. It is significant to note that the impugned order of deemed conveyance has been passed against Opponents including said M/s. P. D. Builders. It is an

admitted position that the said M/s. P. D. Builders who has actually constructed the building has not challenged the impugned order of deemed conveyance and even said M/s. P. D. Builders is not made party to the present Petition.

5. The factual position on record is as follows :-

(i) By an agreement for sale dated 20th March 1978 entered into between the said Sumitrabai Sadanand Neroorkar of the one part and the said M/s. P. D. Builders of the other part, the said Sumitrabai Sadanand Neroorkar has agreed to sale and the Vendors/ M/s. P. Builders has agreed to purchase the said property at or for the price and upon the terms and subject to the conditions mentioned in the said agreement;

(ii) It appears that the subject property was the property of father of said Sumitrabai and the same was gifted to her by her father. Therefore, the said property is the absolute property of said Sumitrabai;

(iii) Said M/s. P. D. Builders executed agreement with various flat purchasers in or about 1980;

(iv) The Respondent No. 1 - Society was formed on 27th April 1981;

(v) The Occupation Certificate for the said building was obtained on 24th January 1984;

(vi) Said Sumitrabai Sadanand Neroorkar who was made party as Opponent No.1 to the Application seeking Deemed Conveyance filed in the year 2015 before the Competent Authority passed away in 1991;

(vii) It is further significant to note that one Mrs. Shama Nayak who is the daughter of said deceased Sumitrabai appeared in the said proceedings before the Competent Authority and stated that she be impleaded as party. In view of the said development, the Competent Authority directed that the said Application be amended and, accordingly, said Mrs. Shama Nayak was made party. However, thereafter, in spite of service of the said Application after the amendment, she has failed to appear. It is also to be noted that said Mrs. Shama Nayak did not give information about other heirs of the deceased Sumitrabai;

(viii) It is significant to note that although the said Sumitrabai Sadanand Neroorkar is survived by four heirs i. e. two sons and two daughters, only the Petitioner-Deepak Sadanand Neroorkar has filed the present Writ Petition. It is

further significant to note that neither the builder nor said Mrs. Shama Nayak has been impleaded as party to the present Writ Petition.

6. In the light of above factual position, it is further significant to note that the impugned order of the Competent Authority is dated 18th April 2016 and the present Petition has been filed on 13th January 2021 i.e. after a period of about five years. The explanation which is given for such a huge delay and latches in clause 21 of the Petition is as follows :

“21) The Petitioner state that no bar of limitation applies to the filing of this civil writ petition.”

Mr. Kapadia, learned counsel appearing fothe Petitioner pointed out some explanation given in clause 15 of the Petition. The said clause 15 Reads as under :

“15) The Petitioner submits that there is no wilful delay or latches on the part of the Petitioners in approaching this Hon’ble court. However, if any technical delay is caused while seeking documents / justice and is observed the same may be condoned in the larger interest of justice to Sr. Citizens and with

respect to fulfil the desire of the dead person that is (late) Sumitrabai Sadanand Neroorkar, by its Legal Heirs as per Constitutional Rights to hold property and as per The Hindu Succession Act and The Contract Act.”

7. Mr. Kapadia, learned counsel appearing for the Petitioner failed to point out any averment in the Petition when the Petitioner came to know about the order dated 18th April 2016. However, there is an averment in the Petition that the Criminal Complaint No. SW/120078 of 2020 has been filed before the 12th MMC Court at Bandra (E) for obtaining the deemed conveyance by the Society and the said Complaint is annexed at pages 172 to 211 to the Petition. It is significant to note that the said Complaint has been filed not only against the office bearers of the Society i. e. the Chairman and Secretary of the Respondent No.1-Society but also against the learned Advocate who represented the Society, the District Deputy Registrar who dealt with the said matter and the District Deputy Registrar who has passed the order have also been arrayed as accused.

8. It is significant to note that said Sumitrabai

Sadanand Neroorkar, the mother of the Petitioner, was the absolute owner of the property and entered into agreement for sale dated 20th March 1978 in favour of M/s. P. D. Builders which has constructed the building. Thus, in terms of Section 2(c) of the MOFA Act which provides that promoter means who constructs or causes to be constructed a block or building of flats for the purpose of selling some or all of them to other persons, not only said M/s. P. D. Builders but also said Sumitrabai is the “Promoter” within the meaning of Section 2(c) of the MOFA Act.

9. It is an admitted position that the said Society was registered in the year 1981 and the Occupation Certificate was obtained in the year 1984. Thus, it is the statutory duty of the said M/s. P. D. Builders as well as Sumitrabai Sadanand Neroorkar to execute conveyance in favour of the Society within 4 months from the date of registration of the Society or atleast from the date of obtaining Occupation Certificate and they have failed in performing the same. The Society filed said Application under Section 11(3) and 11(4) of the MOFA Act on 29th September 2015 and the Competent

Authority has passed the order on 18th April 2016. It is significant to note that the builder i. e. M/s. P. D. Builder who have actually constructed the building and sold the flats to the flat purchasers has not challenged the Deemed Conveyance and the same is challenged by one of the heirs of the original owner who has created right, title and interest in favour of said M/s. P. D. Builders by Agreement of Sale dated 20th May 1978 i. e. about 45 years ago.

10. It is the contention of Mr. Kapadia, learned counsel appearing for the Petitioner that the Petitioner is one of the legal heir of said deceased Sumitrabai and he has not been made party to the said proceedings. The order has been passed without hearing him and, therefore, there is no violation of the principles of natural justice and that the Petitioner is disputing the agreements executed in favour of flat purchasers.

11. Before considering the above submissions, it is significant to note that the impugned order has been passed on 18th April 2016 and the present Petition has been filed on

13th January 2021. In the entire Petition, it is not mentioned when the Petitioner has come to know the impugned order. In any case, it is further significant to note that Ms. Shama Nayak, only one of the legal heir of deceased Sumitrabai appeared before the Competent Authority but has not informed about the names of other legal heirs. Apart from that, although she has been made party to the said proceedings, she remained absent in spite of service.

12. The Supreme Court in the decision of ***State of U. P. Vs. Sudhir Kumar Singh & Ors.***¹ has considered the aspect of whether non-observance of the principles of natural justice in every case requires that the matter be remanded. After analysing various decisions of the Supreme Court on this aspect, the Supreme Court has laid down the legal position in paragraph 39 holding that natural justice is a flexible tool in the hands of judiciary to reach out in fit cases to remedy injustice. The breach of said principle of *audi alteram partem* cannot by itself, without more, lead to the conclusion that prejudice is thereby caused. No prejudice is caused to the person complaining of the breach of natural justice where

1 (2020) SCC Online SC 847

such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

13. In the present case, the Society was registered in 1981 and the Occupation Certificate was obtained in 1984. Mrs. Sumitrabai Sadanand Neroorkar passed away in 1991. It was her statutory duty as a promoter under the provisions of the MOFA Act to execute the conveyance in favour of the Society but she failed to fulfil her statutory duty.

14. It is further significant to note that said Sumitrabai during her lifetime, has not raised any contention that the Society has no right, title and interest. The Petitioner who is one of the legal heir is claiming such right in 2020 i. e. after a lapse of about 45 years. Thus, it is clear that, the present Petition is an abuse of the process of law. The conduct of the Petitioner shows that, he has filed criminal complaint not only against the Chairman and

Secretary of the Society but also the Advocate who has represented the Society in the deemed conveyance proceedings and also the District Deputy Registrar who has passed the impugned order.

15. Therefore, this is a case which not only deserves dismissal but the same is required to be dismissed with exemplary costs.

16. Accordingly, the Writ Petition is dismissed with cost of Rs. 60,000/- to be paid to various Taluka Bar Associations of Ratnagiri District in the following manner within a period of one week from today.

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| (i) Ratnagiri District Bar Association | - | Rs. 10,000/-; |
| (ii) Mandangad Taluka Bar Association | - | Rs. 20,000/-; |
| (iii) Khed Taluka Bar Association | - | Rs. 10,000/-; |
| (iii) Rajapur Taluka Bar Association | - | Rs. 10,000/-; |
| (v) Chiplun Taluka Bar Association | - | Rs.10,000/- |

17. Stand over to **28.08.2023**, for compliance of this order.

[MADHAV J. JAMDAR, J.]