

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8930 OF 2021

Sandu Brothers Pvt Ltd

.. Petitioner

Versus

The Competent Authority & District Registrar of
Co-operative Societies & Ors.

.. Respondents

.....

- Mr. Cyrus Ardeshir a/w Mr. Ziyad Madon, Mr. Murari Madekar and Mr. Sachin Kudalkar i/by M/s. Madekar & Co for Petitioner
- Mr. Prashant Chawan a/w Princee Vaishnav for Respondent Nos. 49 to 57, 93 to 96, 107 to 114, 118 to 122 and 126
- Mr. S.D. Rayrikar, AGP for Respondent Nos. 1 and 2

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 07, 2023

P.C.:

1. Heard Mr. Ardeshir, learned Advocate for Petitioner; Mr. Chawan, learned Advocate for some of the Respondents and Mr. Rayrikar, learned AGP. None appears for Respondent No. 3 – Society in whose favour the impugned deemed conveyance has been granted by the Authority on 01.08.2019.

2. Though the matter is listed on board for hearing and Respondent No. 3 Society is represented by Advocate, Mr. Ardeshir, learned Advocate for Petitioner informed that Petitioner has also issued notice of today's hearing to the learned Advocate for Society. The said notice is taken on record and marked "X" for identification. Respondent No. 3 Society has not filed its reply to the Petition.

3. Mr. Ardeshir, learned Advocate for Petitioner contended that admittedly, the Petitioner who is Opponent No. 3 before the Competent Authority has not been served with the notice of the proceedings before the Competent Authority. This fact is confirmed from the notice dated 13.05.2019 issued by the Society which is placed at page No. 126 of the Petition. It is seen that the Society has itself submitted that they are not aware about the address of the Opponent No. 3 (Petitioner herein). Admittedly, perusal of the Application which is at page No. 139 filed by the Society shows that no address of the Opponent No. 3 i.e. Petitioner is mentioned in the cause title of the Application itself. However, in the impugned order, the Competent Authority has mentioned the address of the Petitioner as “Navprabhat Chambers, Ranade Road, Dadar, Mumbai – 400 028”. Mr. Ardeshir would contend that this is a wrong address and in fact the Society is / was always aware about the correct address of the Petitioner. This is so because the Petitioner is a neighbour in the adjacent property next to the Society’s property. That apart, perusal of the water bill which is annexed to the deed of conveyance of the Society itself would show that the address of the Petitioner is “7th Road, Sandu Wadi Sandu Bangalow, Station Avenue Road, Chembur, Mumbai – 400 071”.

3.1. That apart, he submitted that Petitioner is a Lessee of a larger holding of the non-agricultural land admeasuring 19,535 sq. mtrs. of CTS No.1311 in Village Chembur together with the structures standing thereon pursuant to a duly registered indenture of lease dated 16.03.1959. He submitted that considering the substantive rights of the Petitioner in the land in respect of which unilateral deemed conveyance has been granted, it was incumbent upon the Respondent No.1 to have caused an inquiry as contemplated under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act 1963 (for short "**MOFA Act**"). He submitted that the Application for certificate of unilateral deemed conveyance has been filed by the Society to the exclusion of the deceased land owners / owners and Petitioner as also Respondent Nos. 5 to 126 who are the legal heirs of the owners.

4. Mr. Chawan has joined Mr. Ardeshir in making the above submissions and would contend that Respondent Nos. 5 to 126 are the present land owners of the larger property and he represents some of them in the present Petition. According to Mr. Chawan, Respondent Nos.5 to 126 are the legal heirs of Govind Krishna Sandu and six others i.e. the Original Opponent No.2 in the Application filed by the Society for seeking deemed conveyance.

5. It is contended in the Petition that Petitioner was completely unaware about passing of the impugned order. It is only on 28.10.2020 that one of its shareholders came to know about the registration of the impugned deemed conveyance by Respondent No. 3 in respect of a portion admeasuring 4581.15 sq. mtrs. out of the larger property and it is only then that the Petitioner obtained certified copies of the necessary documents and realised that the unilateral deemed conveyance was obtained behind Petitioner's back without effecting proper service on Petitioner. Only after obtaining the papers, Petitioner realized that in the cause title of the Application made by the Society, the address of Petitioner as stated was incorrect and even in the public notice dated 13.05.2019 the Society did not provide any address of the Petitioner. It was further unearthed by the Petitioner that the packets containing the notice dated 13.05.2019 addressed to the Petitioner and Respondent No. 4 were returned back by the postal authorities to Respondent No. 1 with the remark 'Not Known' whereas the packet containing the notice addressed to Govind Krishna Sandu and six others (owners) and their legal heirs could not be traced in the record.

6. Mr. Ardeshir and Mr. Chawan have thus submitted that the impugned order and the impugned deemed conveyance are therefore *void ab initio* and non-est for want of proper service and non-

compliance of the statutory provisions of Section 11 of the MOFA Act and Rule 13(2) of the 1964 Rules and therefore deserve to be set aside.

7. On the above grounds Petitioner has sought setting aside of the deemed conveyance order dated 01.08.2019 passed by Respondent No. 1 and the deemed conveyance.

8. Mr. Rayrikar, learned AGP has drawn my attention to the affidavit dated 16.09.2022 filed by Respondent Nos. 1 and 2. In so far as the issue of service on the Petitioner is concerned, the entire affidavit is silent. All that is contended in the affidavit is with respect to some service effected on the Petitioner Society as stated in paragraph No. 5 of the said affidavit. There is no disclosure of service of notice on Petitioner.

9. In the present case, provisions of Section 11 of MOFA are relevant. It is seen that Petitioner admittedly is a lessee of a large portion of the property out of which the Society has sought deemed conveyance of a smaller portion. In that view of the matter, the Petitioner has been arrayed as a proper and necessary party by the Society in its Application made before the Competent Authority. Perusal of the Application at page No. 139 shows that Petitioner has not mentioned the address of the Petitioner, save and except to state that Petitioner is a lessee shown in the property card and the lease

has expired in 2009. The fact that Petitioner has been made a proper and necessary party in the Application filed by the Society is itself sufficient for the Competent Authority to enquire and ensure that the provisions of Section 11(4) of the MOFA are complied with qua the Petitioner. The Application at page No. 139 of the Petition is an Application made under Section 11(3) of MOFA by the Society. The three Opponent parties mentioned in the Application are M/s Goodwill Construction (Developer) – Opponent No. 1, Govind Krishna Sandu & Ors. (Owners) – Opponent No. 2 and M/s. Dattatraya Krishna Sandu Bandhu Pvt Ltd (Lessee in property card) – Opponent No. 3. Respondent Nos. 5 to 126 are the legal heirs of Govind Krishna Sandu and 6 others who are the owners of the property but are not impleaded at all. That apart, the Petitioner is arrayed as a lessee of the property. However in the impugned order, it is seen that the address of both Respondents / Opponent Nos. 2 and 3 before the Competent Authority is shown as ‘Navprabhat Chambers, Ranade Road, Dadar, Mumbai – 400 028’.

10. Admittedly, the Petitioner and Respondent Nos. 5 to 126 are not served by the Competent Authority. In so far as the issue of service is concerned, the affidavit-in-reply dated 16.09.2022 filed by Eshwar Devshi working as In charge – Joint Sub-Registrar, Class II, Kurla 5 on behalf of Respondent Nos. 1 and 2 in paragraph No. 5

states as under:

“5. I further say that, in furtherance to in compliance with the said provisions, the Office of the Registrar, after being presented “an Instrument of Conveyance” by the Applicant i.e. Respondent No. 2 Society, issued the communication / Notice dated 26.06.2020. It is suffice to mention at this juncture that, the Petitioner-Society at the relevant point of time or was very well aware, of the Orders dated 01.08.2019 and 26.02.2020, passed by the District Deputy Registrar and the Competent Authority, issuing necessary “certificate of Deemed Conveyance” in favour of Respondent No. 2 – Society.”

11. Save and except the above convoluted submission of the Competent Authority regarding effecting service, which in fact does not show whether service was effected on the Petitioner and the Opponent / Respondent No. 2, there is no other material placed on record by the learned AGP to satisfy compliance of the notice of hearing. It was thus incumbent upon the Competent Authority to cause such inquiry as deemed necessary with respect to service of notice under Section 11(4) of MOFA on the owners of the land and the Petitioner, who has a substantive right in the land. Reading of the affidavit-in-reply filed by the learned AGP clearly reveals that no such efforts have been taken or inquiry caused to effect service of the notice on the Opponents / Respondent Nos. 2 and 3 as stated in the Application of the Society. All that sub-Section 11(4) contemplates is verification by the authority of the documents submitted and a reasonable opportunity of being heard to be given. In the present case, once the Society has impleaded the Petitioner and owner, they are proper and necessary party and are required to be heard before

grant of the unilateral deemed conveyance certificate. Petitioner and Respondent Nos. 5 to 126 have agitated that they have not been served with the hearing notice. Affidavit placed on record by the learned AGP on behalf of Respondent No. 1 also does not show that they have been served. Mr. Rayrikar has after reading the affidavit before me has agreed to this fact.

12. In view of the above admitted facts, since the Opponent / Respondent Nos. 2 and 3 have not been issued / served with the proper / statutory notice as contemplated under Section 11(4) of MOFA, the impugned order granting deemed conveyance without hearing the said parties cannot be sustained.

13. I have noted the objections raised by the learned Advocate for Petitioner and minutely perused the record of the case. I find the submissions advanced by the Petitioner being borne out by the record and I am therefore inclined to accept the submissions of the Petitioner.

14. A useful reference in this regards can be made to G.R. dated 22.06.2018 issued by the Government of Maharashtra for the procedure to be followed while issuing deemed conveyance Order and certificate. In this G.R. it stated that after ensuring that the documents are enclosed as required by law, a hearing Notice according to MOFA and Rule 13 (2) of the said Rules, 1964 should be issued to all concerned parties. It is further stated that after issuing the hearing

Notice the competent authority is required to ensure at the time of hearing that if someone has remained to be made a party, then order should be given to the Applicant to make all those concerned as parties to the proceedings. In the present case it is an admitted position that Opponent No. 3 has not been served with the hearing Notice. Further the address of both the Opponents therein is incorrectly mentioned. That apart in so far as Opponent No. 3 is concerned, the Applicant has merely stated the name of the party as Govind Krishna Sandu and 6 others as owners. They are arrayed as Respondent Nos. 5 to 126 in the present petition and have raised an objection. Opponent No. 3 is the Petitioner herein whose address has not been correctly stated at all despite the Petitioner being available on the neighbouring plot next to the Society. Thus it is seen that the crucial conditions as contemplated by Section 11 (4), Rule 13 (2) and the G.R. dated 22.06.2018 have not been complied with in the present case. Respondent No. 2 (Society) has also not filed any reply in the present petition. In this context, reliance can be placed on the following two decisions of this Court:-

- (i) **Farhat Co-op. Housing Society Ltd Vs. Malkarni Enterprises & Ors¹;**
- (ii) **Mazda Construction Company Vs. Sultanabad Darshan CHS Ltd².**

1 2014 SCC Online Bom 1265

2 2012 SCC Online Bom 1266

15. In view of the above observations and findings, the impugned order dated 01.08.2019 is quashed and set aside. Consequently, the unilateral deemed conveyance dated 16.03.2020 is also set aside.

16. Writ Petition thus stands allowed in terms of prayer clauses (a) and (b) which read thus:-

“(a) This Hon’ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other writ, order or direction under Article 226 and Article 227 of the Constitution of India, calling for the papers and proceedings in Application No. 1006099 of 2019 filed by Respondent No. 3 before Respondent No. 1, and after going into the legality and propriety thereof, to quash and set aside the Impugned Order dated 01.08.2019 [being Exhibit ‘A’ hereto];

(b) This Hon’ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other writ order or direction under Article 226 and Article 227 of the Constitution of India calling for the papers and proceedings of Impugned Deemed Conveyance (being Exhibit C hereto) registered by Respondent No. 2 in favour of Respondent No. 3 and after going into the legality and propriety thereof, to quash and set aside the same.”

17. As a consequence, Respondent No. 1 is directed to hear the Application dated 13.05.2019 of the Society afresh after issuing fresh notice to the concerned parties and after hearing the parties, pass a speaking order. Hearing shall be given to the parties and the Application shall be disposed of within a period of eight weeks from today strictly in accordance with law. All parties are permitted to file their reply / written submissions before Competent Authority alongwith relevant case laws in support of their case/s.

18. All contentions of the parties are expressly kept open.

19. Parties shall present themselves before Respondent No.1 on 11.01.2023 at 12:00 noon for seeking directions for hearing on that date or any date thereafter.

20. Parties to act on an authenticated copy of this order.

21. Writ Petition is disposed.

[MILIND N. JADHAV, J.]

RAVINDRA
MOHAN
AMBERKAR

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signed by
RAVINDRA
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