

Prajakta Vartak

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

WRIT PETITION NO. 9830 OF 2014

Sigma One Co-operative Hsg. Soc. Ltd. ..Petitioner
Vs.
M/s. Sankalp Sakaar Associates & Ors. ..Respondents

Mr. G.S. Godbole with Mr. Drupad Patil for Petitioner.
Mr. A.Y. Sakhare, Senior Advocate with Mr. Joel Carlos i/b. Ms. Nikita
Trivedi for Respondent Nos.3 to 9 & 11 to 13.
Mr. C.D. Mali, AGP for State/Respondent No.14.

CORAM : G.S. KULKARNI, J.
DATE : JANUARY 05, 2023

P.C.:

1. Heard Mr. Godbole, learned Counsel for the petitioner, Mr. Sakhare, learned senior counsel with advocate Mr. Carlos for the private respondents and Mr. Mali, learned AGP for respondent no.14.
2. The order impugned in this petition is an order dated 11 August, 2014 passed by the Competent Authority and the District Deputy Registrar, Co-operative Societies, Pune whereby the application of the petitioner-society for a Deemed Conveyance has been partly allowed.
3. The case of the petitioner is that the petitioner had applied under the provisions of Section 11(3) of the Maharashtra Ownership Flats

(Regulation of the promotion of construction, sale, management and transfer) Act, 1963 for a deemed conveyance of the land on which the development was undertaken by the private respondents. In support of such application, the petitioner relied upon the agreement(s) as entered by the private respondents with the flat purchasers. The Court's attention is drawn to the area of the entire property as described in the Schedule to the said agreement, which is 10800 sq. mtrs. which is in relation to the project in question titled as 'Sigma One'.

4. Mr. Godbole has drawn the Court's attention to the additional arguments filed on behalf of the petitioner dated 10 June, 2014 (page 161) to submit that the society at that point of time had claimed transferable area of 7222.66 sq. mtrs. based on a Certificate of its Architect namely Unison Architects. The Certificate is dated 20 March, 2014 (page 163). Mr. Godbole has submitted that there was an apparent error in the said submission as also calculation of the area in the said certificate dated 20 March, 2014 of Unison Architects. Mr. Godbole submits that accordingly, the petitioner moved an application dated 01 July, 2014 before the Competent Authority praying for an amendment so as to correct the area to be conveyed from 7222.66 sq. mtrs to 9746.49 sq. mtrs on the basis of a fresh certificate

issued by Unison Architects dated 01 July, 2014 (page 167). The said certificate setting out the various calculations has referred to an area to be transferred to the society as 9746.49 sq. mtrs.

5. Mr. Godbole would submit that in the impugned order as passed by the competent authority, what has been granted to the petitioner is a conveyance of area of 7222.66 sq. mtrs. which is on the basis of the earlier certificate dated 20 March, 2014 which was erroneous, without the Competent Authority considering that there was an apparent error in the said calculation as pointed out in the amendment application as filed by the petitioner. The Court's attention is drawn to the relevant observations as made in paragraph 7 of the reasons as set out in the impugned order, wherein the Competent Authority although has specifically referred to the amendment application and to the area of 9746.49 which was sought to be claimed to be conveyed by the petitioner on the basis of the subsequent certificate of Unison Architects dated 01 July, 2014, the same has not been considered in passing the impugned order.

6. Mr. Godbole has submitted that the impugned order thus merely refers to the amendment application which is made and without the amendment application being decided and without application of mind

to the actual claim which was made by the petitioner in passing the impugned order on the basis of the earlier certificate of Unison Architects dated 20 March, 2014 which was not being pressed in view of subsequent certificate of Unison Architects dated 01 July, 2014 which was already placed on record. It is, therefore, submitted that the impugned order, which is passed without taking into consideration the claim as made by the petitioner as also the amendment application which grants to the petitioner area of 7222.66 sq. mtrs., is ex-facie illegal. It is therefore, his submission that the impugned order needs to be interfered.

7. Mr. Sakhare, learned senior counsel for respondent Nos.3 to 9 & 11 to 13 would fairly not dispute that an amendment application dated 01 July, 2014 was made by the petitioner-society and also a fresh certificate of Unison Architects dated 01 July, 2014 which was for a different area namely 9746.49 sq. mtrs. was placed on record of the Competent Authority. Mr. Sakhare cannot dispute that there is no reasoning whatsoever as contained in the impugned order in deciding the amendment application or rejecting the case of the petitioner on the basis of such amendment application.

8. I have accordingly heard the learned Counsel finally on this

petition.

9. In the aforesaid circumstances, in my opinion, the impugned order cannot be said to stand the test of law, as the same is passed without taking into consideration the petitioner's amendment application and the subsequent certificate dated 01 July, 2014 of Unison Architects under which the petitioner-society, had supported its claim along with the agreements as entered by the private respondents with the flat purchasers. Thus, there is an apparent error of law in the adjudication as noted above in the learned Competent Authority not accepting the petitioner's such claim as placed on record by way of the amendment application.

10. In view of the above discussion, the petition is required to be allowed. Hence the following order:-

ORDER

- i. The impugned order dated 11 August, 2014 passed by the Competent Authority and the District Deputy Registrar, Co-operative Societies, Pune is quashed and set aside.
- ii. The parties are relegated to the competent authority.
- iii. The parties are directed to appear before the Competent Authority on on 17 January, 2023. The Competent Authority shall take into consideration the amendment application and after granting an opportunity of a hearing to all the parties, pass a fresh order in

accordance with law.

iv. All contentions of the parties in the proceedings before the Competent Authority are expressly kept open.

v. Petition is disposed of in the above terms. No costs.

vi. The learned AGP shall communicate the present order to the Office of the learned Competent Authority.

[G.S. KULKARNI, J.]