

Dusane

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

WRIT PETITION NO.15612 2023

Sherkhan Jalalkhan Pathan & Anr. ...Petitioners

V/s.

State of Maharashtra & Ors. ...Respondents

Ms. Siddhi Bhosale for Petitioners

Mr. A.B. Chate, Additional GP for State -
Respondent Nos. 1 to 3.

Mr. Vinayak Palande for Respondent No.4.

CORAM: MADHAV J. JAMDAR, J.

DATE: 19th December 2023

P.C.:

1. Heard Ms. Bhosale, learned Counsel appearing for the Petitioner, Mr. Palande, learned Counsel appearing for Respondent No.4 and Mr. Chate, learned Additional GP for Respondent Nos. 1 to 3.

2. By the present Writ Petition, the Petitioner has challenged the Order dated 6th November 2023 passed by the District Deputy Registrar, Co-operative Societies, Palghar @ Competent Authority, Palghar, by which deemed conveyance application filed by Respondent No. 4 has been allowed.

- 3.** The factual position on record shows that the Petitioners who are the owners of the plot in question have entered into a Development Agreement with the developer on 29th December 2005. The developer has constructed the building and the occupation certificate has been issued on 31st December 2007. The Society of the flat purchasers is registered on 11th May 2012 as per the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("**MOFA**")
- 4.** As per MOFA, it is the responsibility of the promoter to execute conveyance within a period of four months after registration of the Society. As per the definition of the promoter under Section 2(C) of the MOFA, the "promoter" includes person who constructs or causes to be constructed. Accordingly the Petitioners are also the promoter and it is their statutory responsibility to execute the conveyance.
- 5.** It is the contention of the Petitioner that order of deemed conveyance has been granted without serving the Petitioner and the deemed conveyance has been granted for more area. To substantiate said contention, Ms. Bhosale, learned Counsel has relied on Architect Certificate dated 10th August 2023.
- 6.** As far as contention that the Petitioner has not been

served, it is the statutory duty of the promoter to execute the conveyance deed within four months from the date of registration of the Society. The Society is registered on 11th May 2012. Thus, it is clear that the Petitioners have failed to perform their statutory duties.

7. The Supreme Court in the case of **State of U.P. Vs. Sudhir Kumar Singh and Ors.**¹, has considered the aspect whether in all cases where the principles of natural justice are not followed, remand is necessary. According to the Petitioner, the provisions of 11 are violated. The Supreme Court has held as follows :

"39. An analysis of the aforesaid judgments thus reveals:

*(1) **Natural justice is a flexible tool** in the hands of the judiciary to reach out in fit cases to remedy injustice. The **breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.***

*(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, **prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.***

¹ 2020 SCC OnLine SC 847

(3) No prejudice is caused to the person complaining of the breach of natural justice where 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.

(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

(5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."

(Emphasis added)

8. Thus, this is a case where no interference is warranted on the ground that the Petitioner has not been served.

9. Ms. Bhosale also raised contention on the basis of Architect Certificate that the conveyance be granted only for 1529 sq. mtr area i.e. the land area and the conveyance granted by taking into consideration TDR is not proper and is required to be rejected as said TDR is used for construction of building.

10. In the impugned order, the learned Competent Authority has made reference to the Architect Certificate produced on behalf of Respondent No. 2 mentioning that the Respondent No. 4- Society is entitled for conveyance of 3334.10 sq. mtrs area.

11. It is a settled legal position that the order granting deemed conveyance does not conclude the issue of Title.

12. Accordingly, no interference is warranted in the impugned order. The Writ Petition is dismissed.

13. However, it is clarified that the Petitioners are at liberty to file Civil Suit establishing its claim of Title. It is clarified that this Court has not considered the contentions to be raised in such a Suit and all contentions of the parties on merits to be raised in such a Suit are expressly kept open.

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(MADHAV J. JAMDAR, J.)