



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3540 OF 2023

Dilip L Porwal

.....Petitioner

Vs.

State of Maharashtra and Ors

.....Respondents

Mr. Ankit Lohia a/w Mr. Ajay Basutkar, Ms. Shruti Bedekar for the
Petitioner

Mr. Sanjeev Mishra a/w Mr. Parvez Alam, Mr. Uditkumar Gupta for
Respondent No. 3

Mr. Deepak Shukla a/w Mr. Ajay Deoraj and Hitesh Patel for
Respondent No. 4

Smt. M. S. Bane, AGP for the State

CORAM : GAURI GODSE, J.

DATE : 9th FEBRUARY 2024.

P.C.

1. Learned counsel for the Petitioner states that as per the purchase agreement executed under The Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 ('MOFA') the area to be transferred to the

Society of flat purchasers is described in the Third Schedule of the agreement. He further submits that by the impugned order, the larger area of 4268.13 Sqare Meters is directed to be conveyed by way of unilateral deemed conveyance. Learned counsel further pointed out the Architect's certificate and submitted on behalf of the Society that He submits that even in the said statement, the plot area of all the seven buildings is referred to for calculating the area required for the deemed conveyance of the Petitioner-Society which consist of only three buildings.

2. Learned counsel for the Petitioner submits that in the Application for deemed conveyance filed by the Society, the Petitioner's address was mentioned only as owner of the survey number where the Respondent No. 1-Society is constructed. He submits that in such circumstances, order granting unilateral deemed conveyance was passed without giving an opportunity of hearing to the Petitioner. He submits that the Petitioner was never served with the proceedings.

3. Learned counsel appearing for Respondent No. 4 who is a developer-promoter states that even Respondent No. 4 was not

served with any notice and hence, the order of unilateral deemed conveyance is issued without giving an opportunity of hearing to the developer-promoter.

4. There is an affidavit-in-reply filed on behalf of the Respondent No. 3-Society. However, there is no record produced to indicate that notice of the proceedings for unilateral deemed conveyance was anytime served upon the Petitioner who is the owner of the land or to Respondent No. 4 who is the developer-promoter.

5. Since no document is produced on record which indicates that the owner of the land as well as the developer-promoter was served of the proceedings, all the parties to the Petition agree that the Petition can be partly allowed by remanding the matter back to the Competent Authority for deciding the Application afresh.

6. Learned counsel for the Petitioner further states that pursuant to the impugned order, the document of unilateral deemed conveyance has been registered without issuing any notice to the Petitioner and without any inquiry as contemplated under Sub-Section 5 of Section 11 of MOFA. He submits that registration of the unilateral deemed

conveyance is done during the pendency of the Petition, hence, the same is not independently challenged. He also submits that after registration of the unilateral deemed conveyance, same is also been given effect to in the revenue records.

7. Learned AGP states that notices were issued and the notice was also published in the newspapers. However, she is unable to point out as to whether the notices were served upon the Petitioner and the Respondent No. 4.

8. In these circumstances, it is not disputed that the Petitioner who is the owner of the land and Respondent No. 4 who is developer-promoter were not heard in the proceedings for grant of unilateral deemed conveyance in favour of Respondent No. 3.

9. In view of the aforesaid submissions, following order is passed by consent of Respondent Nos. 3 and 4.

ORDER

I. Impugned order dated 4th August 2022 passed by Respondent No. 2 in Application No. 277 of 2022 is quashed and set aside.

II. Application No. 277 of 2022 is restored to the file of Respondent No. 2 for hearing afresh after giving an opportunity of hearing to the Petitioner as well as to Respondent Nos. 3 and 4.

III. In view of the setting aside of the impugned order dated 4th August 2022, consequential orders for registration of the unilateral deemed conveyance as well as entry in the revenue records is rendered ineffective and the Petitioner is at liberty to file appropriate Application for cancellation of the same.

IV. It is clarified that I have not examined the rival contentions of the parties on merits. Hence, all contentions of all the parties are kept open.

10. Writ Petition is disposed of in the above terms.

[GAURI GODSE, J.]