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

WRIT PETITION NO.1482 OF 2024

VAIBHAV
RAMESH
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VAIBHAV RAMESH
JADHAV
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Queenie Terry Pereira & Ors. ... Petitioners

V/s.

The Competent Authority & District
Deputy Registrar of Cooperative
Societies & Ors. ... Respondents

Mr. Sushil A. Inamdar with Mr. Rupesh Ghode for the
petitioners.

Mr. Vishal Kanade with Ms. Vishaka Bhatia for
respondent No.3.

Mr. Zain Mookhi with Mr. Kartik Tiwari, Mr. Devang
Shah and Mr. Aditya Kanchan i/by Lakshyavedhi Legal
for respondent No.6.

Mr. P. G. Sawant, AGP for the State/respondent Nos.1
and 2.

CORAM : AMIT BORKAR, J.

DATED : MARCH 26, 2024

P.C.:

1. The petitioners who claim to be owner of the property in relation to which an order under section 11(3) of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (hereafter, "MOFA Act", for short) has been passed by respondent No.1 conferring deemed conveyance on respondent No.3-society are challenging the order

mainly on the ground of absence of notice of hearing.

2. The petitioners claim to be owner of CTS No.89/C admeasuring 4274.70 sq.mtr. at village Kandivali (West), Mumbai. Respondent No.3 was registered in relation to property in question in the year 1984. It consisted of 108 flats. According to the petitioners, on 15th February 1980, respondent No.7 executed development agreement and Power of Attorney in favour of respondent No.4 i.e. Chief Promoter of Silva Nagar Cooperative Housing Society and accordingly the property was developed by respondent No.4. Therefore, respondent No.4 is the promoter within meaning of the MOFA Act.

3. Respondent No.3-society, on 21st February 2023, issued notice under section 11 of the MOFA Act to the petitioners calling upon them to give consent for a conveyance of said property in favour of respondent No.3. On their failure, respondent No.3, on 6th March 2023, initiated proceedings under section 11 of the MOFA Act for unilateral deemed conveyance. Respondent No.1, on 12th June 2023, passed an order of unilateral deemed conveyance in favour of respondent No.3-society and certificate to that effect was also issued. On 26th September 2023, respondent No.3, registered conveyance in their favour. The petitioners have, therefore, filed present writ petition.

4. Learned advocate for the petitioners submitted that the petitioners being owners are entitled to opportunity of hearing before passing order under section 11(3) of the MOFA Act. The material on record indicates that the packets sent through post are

returned with remark “petitioners left their address”. However, respondent No.1 relying on public notice has issued an order of unilateral deemed conveyance. According to him, therefore, the impugned order is in breach of principles of natural justice.

5. Per contra, learned advocate for respondent No.3-society, submitted that pre-institution notice on the address mentioned in lis pendens notice registered by one of the owner was sent at that address. Pre-institution notice has been duly received by the petitioners. The post-institution notice was sent on the address mentioned in lis pendens notice. One of the owners received the postal packet on the said address, however, rest of the packets were returned with remark “petitioners left their address”. Therefore, respondent No.3 applied for service by publication which application was allowed by the Competent Authority and despite publishing a public notice, the petitioners failed to appear before the authority. Hence, it is submitted that the petitioners despite having knowledge of pendency of the proceedings chose not to appear which resulted in passing the order.

6. I have heard the parties and perused the material on record. On perusal of the record and the affidavit-in-reply filed by respondent No.3-society, it appears that the address mentioned in the application is same address which is there in lis pendens notice. The pre-institution notice sent by respondent No.3-society on the same address has been received by the petitioners. Even post-institution notice sent on same address has been received by one of the owners. In so far as rest of the petitioners are concerned, the respondent No.3 applied for publication of public

notice. The public notice is placed on record. The public notice indicates that the hearing of the proceeding was fixed before the Competent Authority on 27th March 2023. The impugned order is dated 12th June 2023, therefore, petitioners had sufficient time to appear before the authority.

7. One more aspect of the matter needs consideration. This Court in series of judgments has taken a view that the conferment of unilateral deemed conveyance confers rights which developer had in the property which the owners had conveyed in favour of the developer. In case of exercise of such power, remedy of aggrieved person is to institute a civil suit for giving his rights adjudicated.

8. Moreover, the law on the point of breach of principles of natural justice has undergone sea change in recent years. The earlier position of law wherein the Apex Court in the case of **S. L. Kapoor vs. Jagmohan & Ors.** reported in 1980 (4) SCC 379 had taken a view that breach of principles of natural justice is itself prejudice and no independent prejudice need to be shown has been explained and watered down by subsequent judgments of the Apex Court. In the recent judgment in **State of Uttar Pradesh vs. Sudhir Kumar Singh** reported in AIR 2020 SC 5115, three Judges Bench of the Apex Court in a case reported in (2021) 19 SCC 706 held that Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused. 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 unless prejudice is cause to the litigant. If no prejudice is shown to be caused to the person complaining breach of natural justice where such person does not dispute the case against him or it. The facts which are 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. Such conclusion must be drawn by the Court on an appraisal of the facts of the case, and not by the authority who denies natural justice to a person. Such prejudice must be shown to be more than mere apprehension and it should exist as a matter of fact.

9. In the facts of the case, the execution of development agreement in favour of respondent No.4 is not in dispute. The inquiry under section 11(3) of the MOFA Act is to ascertain nature of rights conferred under section 4 of the Act. Therefore, whatever rights are conferred by the owners in favour of the developer, such rights shall deemed to be transferred to the society. As observed earlier, the right of owner to institute civil suit to ventilate his substantive rights over property in dispute is still available to the petitioners. Therefore, considering the nature of proceeding and conferment of limited rights of respondent No.3-society, in my opinion, taking overall view of the matter in the light of the aforesaid facts noted that one of the owners received notice, the petitioners received pre-institution notice on the same address and in absence of legal prejudice caused to the petitioner, no case for interference under Article 227 of the Constitution of India is made

out.

10. The writ petition is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)