



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 320 OF 2023

M/s. V. M. Group

.....Petitioner

Vs.

Vijay Nagar Sahakari Griha Rachana
Sanstha Mydt. And Ors

.....Respondents

Mr. Yogeshwar Bhate a/w Mr. Kuldip T. Pawar for the petitioner
Mr. Ajay A. Joshi for the respondent
Ms. S. S. Bhende, AGP for the State

CORAM : GAURI GODSE, J.

DATE : 5th APRIL 2024

P.C.

1. Heard. This petition takes an exception to the order passed under Section 11 of The Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 ('MOFA') granting unilateral deemed conveyance in favour of respondent no. 1-society. The petitioner claims to be developer-promoter of the project. The learned counsel for the petitioner submits that there is interse dispute

between the owners and Regular Civil Suit No. 1203 of 2015 for partition is pending. The said suit is filed by respondent no. 57. He submits that in the said suit, there was an order directing the parties to maintain status-quo. He refers to the reference to the order of status-quo reflected in the impugned order while recording the submissions made on behalf of respondent no. 57. He thus submits that though there was an order of status-quo passed by the Civil Court, the competent authority proceeded to decide the application and granted unilateral deemed conveyance. He further submits that the petitioner is entitled to additional FSI and TDR in terms of the agreements executed in his favour. He therefore submits that the application could not have been allowed by the competent authority.

2. Learned counsel appearing for the society submits that the order of status-quo relied upon by the petitioner indicates that the same is passed in an application for interim relief in suit for partition pending interse between the owners. He submits that neither the society is party to the suit nor the developer/promoter is party to the suit. Hence, the order of status-quo would not have any effect to the application filed under Section 11 for grant of unilateral deemed conveyance. He further submits that though served and appeared before the competent

authority, the petitioner had not filed any written reply and/or made any oral submissions before the competent authority. Hence, the present petition filed on behalf of the promoter/developer need not be entertained. He submits that even otherwise the unilateral deemed conveyance is granted for an area in proportion to construction of the society.

3. I have perused the papers. Considered the submissions made on behalf of the petitioners. It is not disputed that the petitioner did not file any reply and/or make any oral arguments before the competent authority. The conclusions recorded in the impugned order indicates that the petitioner appeared before the competent authority, however, did not file any written reply or make any oral arguments. It is not the case of the petitioner that any area not in proportion with the constructed area of the society is granted by way of unilateral deemed conveyance. The submissions made based on the order of status-quo would not be of any assistance to the arguments on behalf of the petitioner for challenging the order of grant of unilateral deemed conveyance. As correctly pointed out by the learned counsel for

respondent no. 1, the order of status-quo, if any, in a suit for partition is pending between the owners. It is not disputed that the petitioner and the society is not party to the said suit.

4. Learned counsel for the petitioner has placed on record the copy of the plaint and the order of status-quo. The copy of the order passed by the Civil Court dated 18th August 2015 indicates that the parties to the suit were directed to maintain status-quo till filing of the reply. The returnable date as stated in the application was 4th September 2015. Learned counsel for the petitioner is unable to point out any further orders by the Civil Court. The impugned order is passed on 31st January 2022. Perusal of the order of status-quo indicates that the parties to the suit were directed to maintain status-quo. The said order will have no bearing to the proceedings under Section 11 of the MOFA filed by the respondent-society for grant of unilateral deemed conveyance on the ground that the promoter had failed to comply with his obligations.

5. Considering the aforesaid admitted facts of the case, I do not see any valid reason to entertain the petition. On perusal of the

impugned order, I do not find any error or illegality in the reasons recorded in the impugned order. The petition is devoid of any merits.

6. Hence, for the reasons recorded above, the petition is dismissed.

7. Learned counsel for the petitioner at this stage requests to stay the execution and implementation of the impugned order for 8 weeks.

For the reasons as recorded above, I do not see any valid ground to stay the impugned order which is passed in the year 2022. Hence, the prayer for stay is rejected.

[GAURI GODSE, J.]