



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7453 OF 2023

M/s. Sonal Construction

.....Petitioner

Vs.

Sonal B CHS Ltd and Ors

.....Respondents

Mr. Aseem Naphade a/w Mr. Yatin R. Shah, Mr. Vipul Makwana and Mr. Keyur A. for the petitioner

Mr. Vishal Kanade a/w Mr. Kartik Tiwari, Mr. Devang Shah, Mr. Aditya Kanchan i/b Lakshyavedhi Legal for respondent no. 1

Ms. M. P. Thakur, AGP for the State

CORAM : GAURI GODSE, J.

DATE : 20th MARCH 2024

P.C.

1. This petition filed by the developer takes exception to the Order passed by the Competent Authority granting unilateral deemed conveyance in favour of respondent no. 1 society. Learned counsel for the petitioner submitted that the fresh architect's certificate submitted by the society after oral arguments of the parties were over was not

supplied to the petitioner. However, the learned counsel for the petitioner is unable to point out any prejudice caused to the petitioner by the impugned Order granting unilateral deemed conveyance for an area of 794.80 square meters out of 1568 square meters. It appears that the original architect certificate stated an area of 838.19 square meters, and in view of the fresh architect certificate, a lesser area of 794.80 square meters is stated to have been the society's entitlement for the unilateral deemed conveyance.

2. Learned counsel for the petitioner submitted that as per the development agreement, the development rights and structures standing on the land were given to the petitioner. He submits that in view of the location of the structures and for want of clarity on the calculations of FSI in the earlier application filed by the society, the competent authority had refused to grant unilateral deemed conveyance. He further submitted that by Order dated 14th October 2021, in the earlier application, the competent authority had therefore granted liberty to the society to file a fresh application. Hence, in the present impugned Order, the competent authority, without discussing

the imbalance regarding the calculation of FSI, could not have granted deemed conveyance as there were disputed facts on record.

3. I have perused the impugned Order. The competent authority has examined the submissions made by the learned counsel for the petitioner. The respondent society does not dispute the petitioner's grievance regarding the non-supply of the fresh architect certificate. However, learned counsel for the petitioner cannot point out any prejudice caused to the petitioner in view of the grant of unilateral deemed conveyance for a lesser area based on the fresh architect's certificate. It is not the case of the petitioner that, in view of the area transferred by way of unilateral deemed conveyance, the petitioner's rights under the development agreement are affected in any manner. It is also not disputed that the area transferred in favour of society is proportionate to the constructed area of the respondent society.

4. The proceedings under Section 11 of The Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 ("MOFA") are summary proceedings which do not decide the rights of the parties qua the

property title. The law regarding the scope of Section 11 of the MOFA and the grant of unilateral deemed conveyance is no longer *res integra*. The unilateral deemed conveyance does not decide the parties' rights regarding the property's title.

5. There is no gross error, any manifest failure of justice, or breach of basic principles of natural justice. I do not see any error or any illegality in the impugned Order. Hence, there is no reason to invoke powers under Article 227 of the Constitution of India to interfere in the impugned Order.

6. The petition is devoid of any merits. Hence, the petition is dismissed.

[GAURI GODSE, J.]