



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7641 OF 2015

Peter Fernandes Proprietor of
M/s. Tania Builders and Developers

.....Petitioner

Vs.

Tania Rose Co-Operative Housing
Society Ltd. and Ors

.....Respondents

Ms. V. V. Botle h/f Mr. A. R. Gole for the petitioner
Mr. Yogendra Kumar a/w Mr. Arun Langani for respondent no. 1
Mr. Abhijit Naik AGP for the respondents

CORAM : GAURI GODSE, J.

DATE : 5th MARCH 2024

P.C.

1. Heard. Considering the grievance made on behalf of the petitioner, writ petition is taken up for final disposal.

2. Learned counsel for the petitioner submitted that order granting unilateral deemed conveyance in favour of respondent no. 1-society is granted without giving an opportunity to the petitioner who is

developer/promoter of the project.

3. Learned counsel for the petitioner relies upon the averments made in paragraph 5 of the petition by stating that petitioner had shifted to a new address on 6th October 2013 and since then, the notice board displaying the new address of the petitioner was put up on the old address. She therefore submits that inspite of notice displayed indicating new address, no steps were taken to serve the petitioner on the new address. She thus submits that the petitioner is required to be heard as per the provisions of the Section 11 of The Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963. ('MOFA').

4. Learned counsel for respondent no. 1 though disputes that the petitioner was not aware about the proceedings, he submits that in view of the grievance made on behalf the petitioner regarding not granting an opportunity of hearing, matter be remitted back for hearing afresh after giving an opportunity of hearing to the petitioner.

5. I have considered the submissions.

6. Sub-Section 4 of Section 11 of the MOFA provides for giving a reasonable opportunity of being heard to the promoter before passing any order of grant of unilateral deemed conveyance. Perusal of the impugned order does not indicate that notice was served upon the petitioner. Hence, considering the fact that the impugned order is passed without giving an opportunity of hearing to the petitioner who is a developer/promoter, in my view, it is necessary to remit the matter back to the competent authority for deciding it afresh after giving an opportunity of being heard to the petitioner. Hence, for the reasons stated above, writ petition is partly allowed by passing the following order:

ORDER

I. Order dated 11th May 2015 passed by respondent no. 4-competent authority in Application No. 276 of 2014 is quashed and set aside and the certificate issued thereunder also is quashed and set aside. Application No. 276 of 2014 is restored to the file of respondent no. 4-competent authority for deciding it afresh.

II. Parties shall appear before respondent no. 4-

competent authority on 20th March 2024 at 11.00 a.m. and the competent authority shall thereafter fix the schedule of hearing.

III. All concerned parties are at liberty to submit their respective reply in the proceedings.

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

7. Writ petition is disposed of in above terms.

[GAURI GODSE, J.]