



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13614 OF 2023**

M/s. Shree Giridhar Enterprise

a Partnership Firm registered under
the provisions of the Indian Partnership
Act 1932, having address at G/11,
Shyam Krupa, Chanakya Chawk,
Virat Nagar, Virat (West),
Tal. Vasai, Dist. Palghar, Pin – 401 303
represented through one of its Partners
Mr. Ashish Balmukund Shah

....Petitioner

Vs.

**1. Shyam Sarita Co-operative Housing
Society Limited,**

a co-operative society, registered under
the provision of the Maharashtra
Co-operative Societies Act, 1960 under
Registration No. TNA/(USI)/HSG(TC)
22362 of 2010-11 dated 22-9-2010
having its address at Virat Nagar,
Virar West, Taluka-Vasai, District. Palghar
- 401 303

2. The District Deputy Registrar,
Co-operative Societies, Palghar and
Competent Authority appointed under
Section 5A of the Maharashtra
Ownership Flats (Regulation And

Promotion of Construction, Sale,
Management and Transfer Act, 1963
having its office at Administrative
Building “A” Room No. 206,
2nd Floor, Near Collector Office,
Boisar Road, Taluka and District
Palghar – 401 404.

3. The Office of Joint Sub-Registrar,
Vasai – 2 (Virar), having its office at
Gokul Plaza Building No. 2, 2nd Floor,
Vasai No. 2, Govadwadi, Virar (East)
District Palghar – 401 305

4. The State of Maharashtra,
through the Ministry of Co-operation,
Having its office at Mantralaya,
Mumbai – 400 032.

....Respondents

Mr. Vishal Kanade and Ms. Akanksha Patil a/w M. P. Vora i/b M/s.
Pramodkumar & Co., for Petitioner.

Mr. Amrut Joshi a/w Mr. Pratik Amin, Shruti Salian and Mr. Ayesh
Qureshi i/b Pratik Amin Associates for Respondent No. 1.

Mr. P.V. Nelson Rajan, AGP for the State.

CORAM : GAURI GODSE, J.

DATE : 27th FEBRUARY 2024

ORAL JUDGMENT:

1. Heard. Rule. Rule made returnable forthwith. Mr. Amrut Joshi

waives service for respondent no. 1 and learned AGP waives service for respondent nos. 2 to 4. By consent of the parties, the petition is taken up for final disposal.

2. This petition takes exception to the order passed by the Competent Authority under Section 11 of the Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("MOFA").

3. By the impugned order the application for Unilateral Deemed Conveyance filed by respondent no. 1 is allowed. The Petitioner is the developer/promoter of the project.

4. Learned counsel appearing the petitioner submitted that the application is decided by the Competent Authority without service of notice upon the petitioner. He pointed out paragraph no. 10 of the impugned order which refers to the issuance of notice in terms of Form X and Rule 13 (2) of Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Rules, 1964 ("MOFA Rules"). Though notice was issued in the prescribed

format, the same was not served upon the petitioner. Even the impugned order does not record the service of notice issued to the petitioner. On making inquiries the petitioner was supplied with the postal remarks regarding the notice that was issued to the petitioner. The said postal remark is annexed on page 91 of the petition. Even the postal remark records that the notice was returned as "no such person was found on the address".

5. Learned counsel for the petitioner further submitted that Section 11 of MOFA clearly provides that the application is to be decided after giving the promoter a reasonable opportunity to be heard. He submits that issuance of notice therefore is not an empty formality and the notice is required to be served on the promoter as the promoter is required to be heard for deciding the application for grant of Unilateral Deemed Conveyance.

6. With reference to the newspaper publication of the notice done as recorded in the impugned order is concerned, the learned counsel for the petitioner submits that the newspaper publication can be permitted only when service of notice in regular mode of service is not

possible. He refers to Sub Rule (2) of Rule 13 of the MOFA Rules which clearly indicates that notice has to be served on the opponents by registered post acknowledgment or under certificate of posting on the last known address. Since no attempts were made to serve the application through a regular mode of service, newspaper publication cannot be held a good service for hearing the application for grant of Unilateral Deemed Conveyance.

7. Apart from the objection raised regarding service of notice, learned counsel for the petitioner submitted that the certificate issued pursuant to the impugned order does not clearly state the exact area to be transferred and that there are blanks left in the certificate. He thus submitted that even on that ground the matter must be remitted back to the Competent Authority for a fresh hearing after giving an opportunity to the petitioner to be heard.

8. Learned counsel appearing for respondent no. 1 supports the impugned order. He submits that even if the petitioner was not served by postal service the petitioner was aware of the proceedings under Section 11 of MOFA. To support his submissions the learned counsel

for respondent no. 1 relies upon the notice issued to the petitioner before applying for Unilateral Deemed Conveyance and the response given by the petitioner to the said notice. He also relied upon the notice issued to the petitioner by the Joint Sub Registrar before registration of the Unilateral Deemed Conveyance. He submits that the said notice was served on the same address and the petitioner had also responded to the said notice. He thus submits that there is no substance in the objection raised on behalf of the petitioner that the matter requires to be remitted back for a fresh hearing on the ground that no notice was served upon the petitioner.

9. With reference to the objection raised regarding the blanks in the certificate, the learned counsel for respondent no. 1 submits that there is no substance in the said objection as the impugned order clearly indicates the area required to be transferred in favour of the respondent no. 1 - society. Thus, there is no substance in the grounds of challenge raised in the petition. However, in the alternative, he submits that if this court is inclined to remit back the matter to the Competent Authority for a fresh hearing, the petitioner may be directed

to supply fresh address for service of notice. He further submitted that in the eventuality of a fresh hearing, all contentions of the parties on merits be kept open.

10. Learned AGP supports the impugned order and submits that the impugned order records that service has been effected on the petitioner.

11. I have considered the submissions made by the parties. Perused the record. Perusal of the impugned order indicates that notice as prescribed under Rule 13 (2) was issued to the petitioner. However, there is no finding recorded by the Competent Authority that the said notice was served. Though there is a reference made that newspaper publication was issued there is nothing produced on record to show that under what circumstances the substituted service was permitted. Sub Rule (2) of Rule 13 of the MOFA Rules provides for issuance of notice in Form 'X' to the opponents calling upon them to file a written statement on the day, date, and place as may be specified therein. The said Rule further provides that said notice has to be served on the opponents by registered post acknowledgment or under certificate of

posting on the last known address.

12. Thus, the aforesaid Rule indicates that issuance of notice to the opponent in the application for grant of Unilateral Deemed Conveyance is not an empty formality and the notice is required to be served upon the opponents. Thus, in the event the notice is not served as provided under said Rule, there has to be an order passed for permitting substituted service by newspaper publication. Only newspaper publication by way of substituted service cannot be said to be in compliance with Sub Rule (2) of Rule 13 of the MOFA Rules. Section 11 of MOFA provides that the Competent Authority after making inquiry and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard and on being satisfied that it is a fit case to grant unilateral deemed conveyance, can issue a certificate for Unilateral Deemed Conveyance. Thus, the proceedings under Section 11 of MOFA are summary proceedings that are required to be decided as prescribed under the said Section as well as the Rules framed under the said Act.

13. With reference to the submissions made on behalf of respondent

no. 1 that prior to filing the application, there was a notice served upon the petitioner on the same address and that the notice issued by the Sub Registrar for registration of the document was also served upon the same address has no substance. The response of the petitioner dated 28th October 2023 relied upon by the learned counsel for respondent no. 1 states that the notice issued at the same address was received by the petitioner on their new address as the postman of the vicinity was aware of the new address of the petitioner. Thus, the said response supports the contentions of the petitioner that notice was never served upon the petitioner. There was another submission made on behalf of respondent no. 1 that the petitioner was deliberately avoiding service of notice. However, I do not find any merit in the said submission in as much as the aforesaid response of the petitioner shows that as soon as the petitioner was served with the notice for registration of the Unilateral Deemed Conveyance on the new address, it appears that immediate further steps are taken by the petitioner after knowledge of the grant Unilateral Deemed Conveyance.

14. Perusal of the record nowhere indicates that the petitioner was served with the notice. Hence, the application for the grant of Unilateral Deemed Conveyance is allowed without giving any opportunity for hearing to the petitioner who is the developer/promoter. I find substance in the grounds of challenge raised on behalf of the petitioner. Hence, the matter is required to be remitted back to the Competent Authority for a fresh hearing with an opportunity for the petitioner to be heard. In view of the aforesaid facts and circumstances, fresh notice of hearing is not required to be given to the petitioner and the parties shall attend the office of respondent no. 2 as directed in the operative part of this order.

15. Learned counsel for the petitioner has submitted that though notice was issued for registration of the Unilateral Deemed Conveyance the same is not yet registered.

16. Hence, for the reasons recorded above, the petition is partly allowed by passing following order. :-

ORDER

(i) The impugned order dated 28th August 2023 passed

by respondent no. 2 on an unnumbered application dated 29th May 2023 filed by respondent no. 1-Society and the certificate dated 28th August 2023 are quashed and set aside.

(ii) Unnumbered application dated 29th May 2023 filed by respondent no. 1 - society is restored to the file of respondent no. 2 for hearing afresh after giving an opportunity of hearing to the petitioner as well as other necessary parties.

(iii) Parties shall attend the office of respondent no. 2 on 5th April 2024 at 11.00 a.m. and thereafter respondent no. 2 shall fix the schedule of hearing.

(iv) It is clarified that the rival contentions of the parties on the merits of the application for the grant of Unilateral Deemed Conveyance are not examined by me. Hence, the rival contentions of all the parties on merits of the application are kept open.

(v) Writ petition is disposed of in above terms.

[GAURI GODSE, J.]