

Nikita

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

WRIT PETITION NO.473 OF 2024

Rajendra Ganpatrao Kamble

... Petitioner

V/s.

The Competent Authority And District
Dy. Registrar and Ors.

... Respondents

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Mr. Rahul Karnik i/b Mr. K. R. Maniyar, for the
Petitioner.

Mr. Y. D. Patil, AGP for the State.

Mr. Sachin S. Kulkarni for Respondent Nos. 4 to 6.

CORAM : AMIT BORKAR, J.

DATED : APRIL 10, 2024

P.C.:

1. Challenge in this petition is to the order dated 31st March 2023 passed by the Competent Authority under the provisions of the Maharashtra Ownership Flat (Regulation of the Promotion of Construction, Sale Management and Transfer), Act, 1963 ("the Act") granting unilateral deemed conveyance in favour of respondent No.6-Society. The facts necessary for adjudication of the issue involved are as under:

2. The petitioner been promoter entered into registered agreement with the purchasers. The agreement does not contain a

recital regarding nature of the Association to be formed by the purchaser.

3. On failure of the petitioner to convey the title of building and land in favour of the proposed Society of purchasers, they filed an Application No.144 of 2022 under the provisions of the Act.

4. The Competent Authority issued notice to the petitioner. The respondent No.6-Society produced R.P.A.D. slip of such notice on site address. Despite service of the notice, the petitioner failed to remain present. Therefore, the Competent Authority on 31st January 2023 published a public notice in “Daily Samna”. However despite publishing such notice, the petitioner failed to remain present, Hence, the Competent Authority based on merits passed an order directing execution of the unilateral deemed conveyance in favour of respondent No.6-Society. Hence, the present petition.

5. Learned counsel for the petitioner submitted that proper opportunity of hearing was not granted to the petitioner; since the petitioner has already registered Association under the provisions of the 1970 Act, and since the deed of apartment and declaration is executed, as per Sub-section 2 of Section 10 of the Act, registration of housing society is not permissible.

6. Insofar as the contention of lack of proper opportunity of hearing raised on behalf of the petitioner is concerned, the record indicates that the notice of proceedings was sent to the site address of the petitioner. According to the petitioner, petitioner had closed the site. This fact was not within the knowledge of the applicant before the Authority. Therefore, to grant one more opportunity to

the petitioner, the notice of such proceedings were published in “Daily Samna”. Despite publishing such notice, petitioner failed to appear. Therefore, the contention raised on behalf of the petitioner no proper opportunity of hearing was given cannot be accepted. Even otherwise, the petitioner has failed to prove legal prejudice caused to the petitioner. He is promoter who is under statutory obligation to confer title of land and building to the Association of the purchasers. Failure of petitioner to convey the title in favour of the purchasers association constrained the purchasers to initiate proceedings under the Act. Therefore, in absence of legal prejudice caused to the petitioner, he is not entitled to urge that lack of proper opportunity of hearing.

7. Insofar as the second contention raised on behalf of the petitioner is concerned, the agreement executed with the purchaser do not indicate that the provisions of the 1970 Act shall be made applicable. At this stage, it is necessary to refer to the judgment of Co-ordinate Bench of this Court in the case of **Rahul Enterprises Vs. Abhineha Park Sahakari Gruha Rachana Samstha Maryadit and Ors.** AIR 2013 NOC (Supp) 452(Bom). The Co-ordinate Bench of this Court has held that in absence of obligation of promoter to inform the Registrar about the date of execution of deed of apartment, the developer cannot impose his choice over the flat takers. Relying on Division Bench’s judgment of this Court which held that the promoter has to submit an application to the Registrar, within prescribed period under the provisions of the Act and the agreement entered into under Section 4 of the 1963 Act, must specifically spell out as to place every flat purchasers on

notice about nature of organization by which relationship will be governed. In the facts of the case as noted earlier, there is no such recital in the agreement which spelt out such requirement of nature of organization. Therefore, registration of deed of agreement and registration of the project under the provisions of the Act was rightly held to be not binding on the respondent No.4.

8. Hence, impugned order which confers on respondent No.4 to be entitled to registrar a Society under the provisions of the Act does not suffer from legal infirmity.

9. The writ petition, is therefore, dismissed.

(AMIT BORKAR, J.)