



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15766 OF 2023

Smt. Sindhu Vinayak Pawar and Others. ...Petitioners.

Versus

Shree Pushpak CHS Ltd and Others. ...Respondents.

Mr. Sandeep Mishra for the Petitioner.
Mr. R. S. Datar for the Respondent No. 1.
Mr. Hamid Mulla for the Respondent-State.

Coram : Sharmila U. Deshmukh, J.

Date : April 29, 2024.

P. C. :

1. Heard.
2. By this petition, challenge is to the order dated 10th November 2023 passed by the Respondent No.3 as "corrigendum" to the order granting deemed conveyance passed in Application No.880 of 2013.
3. The Respondent No.1-society had filed an application under Section 11 of the Maharashtra Ownership of Flats Act, 1963 [for short "MOFA"] seeking unilateral deemed conveyance, which was allowed by the Respondent No.3 vide order dated 13th October 2014. Subsequently, by application dated 21st June 2023, the Respondent

No.1 sought addition of the legal heirs of late Vinayak Pawar and Gajanan Pawar as party Defendants to the application for deemed conveyance, i.e., Application No. 880 of 2013. Notice came to be issued on 19th July 2023 to the Petitioners who appeared and resisted the said application. By judgment dated 10th November 2023, the Respondent No.3 added the Petitioners herein in the array of Respondents in the original order dated 13th October 2014.

4. Heard Mr. Sandeep Mishra, learned counsel appearing for the Petitioners and Mr. Datar, learned counsel appearing for the Respondent No.1.

5. Learned counsel appearing for the Petitioner submits that by way of corrigendum, the authority has exercised the power of review which was not available to the authority constituted under Section 5A of the MOFA Act. He submits that the issue is no longer *res integra* and settled by the decision of the learned Single Judge of this Court in ***K. P. Reality Pvt. Ltd v. State of Mah. [2021(3) Mh.L.J. 778]***. He submits that once the order of deemed conveyance is passed, the authority becomes *functus officio* and has no jurisdiction to review the order.

6. *Per contra* learned counsel appearing for the Respondent No.1

submits that the Petitioners were legal heirs of deceased Vinayak Pawar who was owner of the property and the same is borne out from the 7/12 extracts. He submits that as in the application seeking grant of unilateral deemed conveyance, the Petitioners who were the legal heirs of owners were not arrayed as Respondents, by way of an application only in the array of Respondents the impleadment of the Petitioners was sought. He submits that the same does not amount to review of the order and the Respondent No.3 in exercise of inherent powers could have rectified the error.

7. Considered the submissions and perused the record.

8. The facts are not in dispute that pursuant to an application seeking unilateral deemed conveyance, the competent authority had passed an order issuing certificate for enforcing unilateral execution of conveyance deed and the application for impleading the Petitioners as legal heirs came to be filed subsequent to the passing of order by the competent authority. Perusal of the application as well as the impugned judgment would indicate that the corrigendum did not correct any typographical or arithmetical error, instead by way of corrigendum, the Petitioners who were not party to the original application, were sought to be impleaded as Respondents in the original application and in the order issuing certificate for unilateral

deemed conveyance.

9. Learned Single Judge of this Court in the case of ***K. P. Reality (supra)*** was considering a similar issue where it has held that the corrigendum is essentially issued to correct typographical or arithmetical error which can be corrected in exercise of incidental or ancillary powers inherent in every judicial and quasi judicial authority, however, the same cannot be exercised to review the order which is not inherent power but is a creature of statute. The learned Single Judge further held that after the disposal of application under sub-section (3) of Section 11 of the MOFA Act, the competent authority becomes *functus officio* and not being in siesin of the matter, had no jurisdiction to review the orders unless vested with the powers of review under the law.

10. The decision in ***K. P. Reality (supra)*** is squarely applicable to the facts of the present case and is binding upon this Court. The error which was sought to be corrected by way of a corrigendum was not a typographical or arithmetical error but was in fact an exercise of powers of review which the competent authority does not possess under the provisions of MOFA.

11. In the light of above discussion, the order dated 10th November

2023 is hereby quashed and set aside and the petition stands allowed.

12. In the present petition, there is no challenge to the order and the certificate of unilateral deemed conveyance issued prior to the corrigendum and by virtue of setting aside of corrigendum, the earlier order dated 27th May 2015 and the subsequent registration of unilateral deemed conveyance is not affected.

[Sharmila U. Deshmukh, J.]