

SUPREME COURT OF INDIA

Taranjeet Singh Mohan Singh Sawhney & ors.

Vs.

District Deputy Registrar Cooperative Societies & ors.

C.A.No.4822 of 2013

(G.S.Singhvi and Ranjana P.Desai JJ.)

01.07.2013

JUDGMENT

G.S. SINGHVI, J.

1. Leave granted.

2. This appeal is directed against order dated 20.2.2013 by which the learned Single Judge of the Bombay High Court refused to stay the order passed by respondent No.1 – District Deputy Registrar Cooperative Societies-cumCompetent Authority, Mumbai City (3)–cum–Competent Authority appointed under Section 5A of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 for grant of certificate to respondent No.3 – Royal Diamond Park Co-operative Housing Society Ltd. to get a unilateral conveyance deed executed and registered in respect 1 Page 2 of an area measuring 2634.36 sq. mtrs. Out of CTS Nos.661 to 691 of Village Kole Kalyan, Bandra.

3. At the outset, we consider it proper to mention that when IA No.3/2013 filed by respondent No.3 was listed for hearing, learned counsel for the parties were heard on the merits of the case and the order was reserved.

4. Late Shri Mohan Singh (predecessor of the appellants) owned land measuring 4144.90 sq. mtrs. Comprised in CTS Nos. 661 to 691 of Village Kole Kalyan, Taluka Andheri. On 16.10.1979, he entered into an agreement with respondent No.4 for sale of land measuring 3762.45 sq. mtrs. After execution of the agreement, respondent No.4 constructed five buildings, which were occupied by the members of three Co-operative Housing Societies, i.e., respondent Nos. 3, 5 and 6.

5. Due to non-payment of the amount in terms of agreement dated 16.10.1979, the appellants, who are the legal heirs of late Shri Mohan Singh, issued notice dated 16.3.2005

and terminated agreement dated 16.10.1979. After four years, respondent No.5 approached the appellants for purchase of 702.341 sq. mts. out of the land owned by late Shri Mohan Singh. At the asking of the appellants, respondent No.5 produced the consent of respondent Nos. 3 and 6. Thereafter, the appellants executed conveyance dated 25.8.2011 in favour of respondent No.5 and the developer – M/s. Rahul Constructions.

6. Although the appellants had terminated agreement dated 16.10.1979, 2 Page 3 respondent No.3 entered into an agreement with M/s. Raja Constructions Company (M/s. Raja Builders) for redevelopment of the buildings of ‘C’, ‘D’ and ‘E’ Wings.

7. In furtherance of the agreement entered with M/s. Raja Builders, respondent No.3 filed an application in Form VII under Section 11(3) read with Section 11(4) of the 1963 Act and Rules 11, 12 and 13 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1964 and prayed for grant of a certificate for unilateral execution of the conveyance deed.

8. Respondent No.1 entertained the application and ordered notices to the appellants and respondent Nos. 4 to 6. In his reply dated 19.3.2012, appellant No.1 raised several objections to the maintainability of the application filed by respondent No.3. In the first place, he pleaded that the relief of specific performance of the agreement can be obtained only from a Civil Court and respondent No.1 did not have the jurisdiction to entertain the application. He also pleaded that the applicant (respondent No.3 herein) does not have the locus to file the application because agreement dated 16.10.1979 executed by Shri Mohan Singh in favour of respondent No.4 had already been terminated. According to appellant No.1, he had already executed an agreement with one of the Societies and M/s. Rahul Builders and, therefore, respondent No.3 was not entitled to seek execution of unilateral conveyance in respect of 2507.62 sq. mts. land. Some of the notices also filed their affidavits. Thereafter, respondent No.3 filed rejoinder affidavit.

9. Respondent No.1 fixed the matter for hearing on 23.1.2012, 27.2.2012, 7.3.2012, 13.3.2012, 19.3.2012, 27.3.2012, 3.4.2012 and 17.4.2012. On 7.5.2012, the case was adjourned for 15.5.2012 with a direction to the appellants to file written arguments. However, the appellants did not file written arguments and applied for adjournment. Thereupon, respondent No.1 adjourned the case to 19.6.2012.

10. After sometime, he suo motu changed the date of hearing from 19.6.2012 to 21.5.2012 and a notice to this effect was issued by his office on 16.5.2012. On 21.5.2012, respondent No.1 heard the arguments of the counsel for the applicant and closed the matter. He finally decided the application vide order dated 12.6.2012, the operative portion of which is reproduced below:

“ORDER AND THE CERTIFICATE

In exercise of the powers conferred on me under section 5A of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, I, S. P. Ghorpade, District Deputy Registrar, Cooperative Societies, Mumbai City (3), Competent Authority under section 5A of the Maharashtra Ownership Flats Act, 1963.

1. Certify under section 11(3) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, that the Royal Diamond Park Co-operative Housing Society Ltd., Datta Mandir Road, Kole Kalyan Vakola, Santacruz (E), Mumbai 400 055 is entitled and is a fit case to grant unilateral conveyance executed as deemed conveyance in their favour and to have it registered. Thus, it is entitled to have unilateral conveyance of land admeasuring gross plot area entitlement of 2634.36 Sq. Meters and net plot area of 2451.12 Sq. Meters out of the said larger land bearing CTS No. 661 to 691 of Village Kole Kalyan, Bandra, District Mumbai Suburban and the building constructed 4 Page 5 thereon known as Royal Diamond Park and is entitled to get the unilateral conveyance deed prepared and executed, as deemed conveyance and get it registered as provided under the Act.

2. I hereby authorize the applicant society to prepare a Conveyance Deed to be executed as unilateral conveyance as deemed conveyance of all the right, title and interest of the promoter M/S. Diamond Enterprises and Shri Mohansingh Bhagwansingh Sawheny and on his demise his legal heirs referred as opponent No.1 to 8 namely viz (1) Mr. Taranjeet Singh Mohan Singh Sawhney, (2) Mrs. Jaspalkaur Chadha (3) Mr. Sardar Tejinder Singh, (4) Mrs. Gurmeet Kaur Sawhney, (5) Mr. Inderpreet Singh Sawhney, (6) Mrs. Amit Kaur Sabarwal, (7) Mrs. Surjit Kaur Sawhney and (8) Mrs. Gajender Pal Kaur, (being the land owners) and or their legal heirs/ Assignees and the executors in respect of land admeasuring about land admeasuring gross plot area entitlement of 2634.36 Sq. Meters and net plot area of 2451.12 Sq. Meters out of the said larger land bearing CIS No. 661 to 691 of Village Kole Kalyan, Bandra, District Mumbai Suburban and the building known as 'Royal Diamond Park (C, D and E wings)' constructed on the said plot of land in favour of it and also as provided under section 11(5) of the Act, direct the sub registrar or the concerned appropriate Registration officer appointed under the Registration Act, 1908 (16 of 1908) to register this certificate issued by me along with the Instrument of conveyance as unilateral conveyance as I have been exempted under the Act to appear before the registration Authority, and after complying with the provisions of the law register such conveyance deed as deemed conveyance.

3. The applicant is directed to submit the certified copy of Conveyance deed, an unilateral instrument of conveyance as deemed conveyance registered by the Sub-Registrar or the Registration officer appointed under Registration Act, 1908 along with certified copy of index II within two months of such registration as required under 9(2) of the Rules.

4. The Sub Registrar shall take further action under the Bombay Stamp Act, 1958, The Registration Act, 1908 and Transfer of Property Act, 1882.

5. However this order is issued on the basis of documents and information submitted by the Applicant and in the belief that there are no dispute regarding the title of the said land and subject to the following conditions.

i. The information/documents furnished by the applicant are correct and genuine. ii. That if the above documents produced by the applicant are found hereinafter to be incorrect and not genuine, the applicant will be liable to be face the consequences in accordance with the law.”

11. The appellants challenged the aforesaid order in Writ Petition No.10287/2012. One of the grounds taken by the appellants was that respondent No.1 unilaterally changed the date of hearing and finally decided the matter without ensuring service of notice issued to the parties about the changed date of hearing. This is evident from the following statements contained in paragraphs f) and g) of the writ petition:

“f) This application was opposed by the petitioners as also the respondent nos. 5 and pleadings filed thereat. The Hon'ble Competent Authority despite the fact that the Advocate for the respondent no. 3 submitting that she is not filing the rejoinder has taken the rejoinder on file and despite the fact that the matter was adjourned for filing surrejoinder/hearing on 19th June 2012, proponed the same to 12th June 2012 without giving Notice to the parties and passed a judgment and order on 12th June 2012 stating that the matter was closed for order on 21st May 2012. Annexed hereto and marked as Exhibit A is the copy of the Order and Judgment dated 12th June 2012 passed by Respondent no. 1 viz. the Deputy District Registrar (the Competent Authority) under section 5A of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 entitling the respondents no. 3 to an order for Unilateral Conveyance executed as Deemed Conveyance in their favour for land admeasuring gross plot area entitlement of 2634.36 sq. mtrs and net plot area of 2451.12 sq mtrs out of the common plot of land bearing Hissa No. 9 & 10 of survey No. 422 and Hissa No. 5 & 3 (part) of survey no. 423 corresponding CTS no. 661 to 691 of Village Kole Kalyan, Taluka Andheri MSD admeasuring 4114.90 sq. mtrs, when the respondents were only concerned with the plot of land of 3762.45 sq. mtrs only.

g) The Respondents no. 3 after the impugned order dated 12th June 6 Page 7 2012, immediately without due notice as required under the provisions of law with the assistance of the Respondent no. 1 executed and registered the Deemed Conveyance executed on 14th June 2012 and registered on 18th July 2012 bearing registration no. BDR-9/5980/2012 with the Respondent no. 2. The said Conveyance is thus bad in law and improper as no notice under the Registration Act was given to the petitioners.”

12. In paragraphs (2) and (3) of the counter affidavit filed before the High Court, respondent No.1 averred as under:

“2. I say and submit that, the matter was heard on many occasions viz. on 23.1.2012, 27.2.2012, 7.3.2012, 13.3.2012, 19.3.2012, 27.3.2012, 3.4.2012, 17.4.2012, 7.5.2012 and 15.5.2012. Petitioners have been given ample opportunity by my predecessor to file their say in the interest of natural justice. Petitioners have already filed written reply on 19.3.2012 and thereafter opportunity of arguing the matter was given to the Petitioners on 3.4.2012. Advocate of Applicant society submitted that she doesn't want to file rejoinder and was ready for arguments. There after it was incumbent on Petitioners to argue the matter or else to file written arguments. On the same date matter was adjourned for arguments to 17.4.2012. Advocate for Petitioners neither raise any objections nor he pleaded for longer date. Thereafter also on 17.4.2012 Advocate for Applicant society filed rejoinder and copy was served on Petitioners on 17.5.2012. Petitioners were directed to file written arguments on or before next hearing which was fixed on 15.5.2012. On 15.5.2012 also Petitioners didn't file written arguments and submitted letter for keeping matter after 9.6.2012. Therefore matter was fixed on 19.6.2012. But later on it was revealed that on 19.6.2012 near about 41 Revision Applications were listed on the board for hearing before this respondent and therefore it was decided to pre-pone the matter to 21.5.2012 and notices to that effect were sent to Petitioners by registered post but this office has not received acknowledgement from the postal department.

3. I say and submit that, the decision of preponing the matter was taken by my predecessor solely in bonafide interest with a view to complete the proceeding within a period of six months as contemplated in Section 11(4) of MOFA 1963.”

(emphasis added)

13. Along with the writ petition, the appellants filed an application for interim stay. The learned Single Judge took cognizance of the assertion made in the writ petition that notice of preponement of the date of hearing was not served upon them, but refused to grant stay on the ground that the writ petition was filed after four months of the order passed by respondent No.1 and during the intervening period conveyance deed had already been registered for a sum of Rs.95 lacs and the Society and respondent No.3 had entered into development agreements with builders.

14. Shri Mukul Rohatgi, learned senior counsel for the appellants argued that the order passed by respondent No.1 is liable to be declared as nullity because he arbitrarily preponed the date of hearing and decided the application of respondent No.3 without bothering to find out whether the notice issued to the parties about the changed date had been delivered/served. Shri Rohatgi referred to the English translation of the order sheets recorded by respondent No.1, xerox copies of communications dated 15.2.2013 sent by Senior Superintendent of Post Offices, Mumbai City (North) to Ms. Pritha Dave, counsel for respondent No.3 and the

counter filed on behalf of respondent No.1 before the High Court to show that the notice issued in terms of the direction given by respondent No.1 on 16.5.2012 was not served upon the appellants. Learned senior counsel then argued that due to non service of notice, the appellants could not appear on 21.5.2012 and on that account their cause has been seriously prejudiced. Shri Rohatgi then submitted that the absence of the counsel/representatives of all the parties except respondent No.3 on 21.5.2012 should have alerted respondent No.1 that there was something wrong 8 Page 9 with the service of notice and prompted him to make an inquiry to ascertain whether the notice had been served on all the parties, but the concerned officer deliberately did not take any action in this regard and proceeded to close the matter for orders. Shri Rohatgi argued that the explanation given by respondent No.1 for preponing the date of hearing, i.e., fixation of excess number of cases on the particular date, i.e., 19.6.2012 should not be accepted because even on 15.5.2012, the concerned officer must have been aware of the fact that he had already fixed large number of cases on 19.6.2012.

15. Shri Shyam Divan, learned senior counsel for respondent No.3, supported the decision of respondent No.1 to prepone the date of hearing by pointing out that the officer concerned was compelled to do so because he was required to decide the application within six months of its institution. Shri Divan referred to letter dated 15/18.2.2013 sent by Senior Superintendent of Post Offices, Mumbai City (North 2) to Ms. Pritha Dave and argued that the intimation given to the appellants' counsel was sufficient to make them aware of the decision taken by respondent No.1 to prepone the date of hearing. Shri Divan submitted that the appellants cannot plead denial of hearing by respondent No.1 as the ground for quashing the order passed by him because their advocate had been duly intimated about the changed date of hearing. However, learned senior counsel could not offer any clarification about the delivery of notice to the sender on 22.5.2012.

16. We have considered the respective arguments and carefully scrutinized the record.

17. By producing xerox copies of the receipt of speed post and two communications dated 15.2.2013 sent by Senior Superintendent of Post Offices, Mumbai City (North) to Ms. Pritha Dave, respondent No.3 has made an attempt to show that the appellants had been informed about the changed date of hearing, but we have not felt convinced. In the first place, the justification offered for preponement of the date of hearing is too weak to be accepted. It is neither the pleaded case of respondent Nos. 1 and 3 nor it has been argued before us that the application filed by respondent No.3 was the only one dealt with by the officer concerned. Rather, the assertion contained in the counter filed by respondent No.1 before the High Court shows that large number of similar cases were handled by the officer. Therefore, it can be presumed that he was aware of the imperative to decide the application within six months. Notwithstanding this, respondent No.1 fixed large number of cases on 19.6.2012. Why he did so has not been explained. Why he singled out the application of respondent No.3 for preponing the date of hearing has also not been explained. Therefore, it is reasonable to infer that the action of respondent No.1 to prepone the date of hearing of the application was founded on extraneous reasons and was totally unwarranted and unjustified.

18. Secondly, the documents produced before this Court unmistakably show that notice issued to the appellants to apprise them about the changed date of hearing was not delivered to them. The statement made in paragraph (Z) of the counter affidavit filed by respondent No.1 substantially supports the appellants' assertion that they had not received intimation about preponement of the date of hearing. It also belies the assertion of respondent No.3 that notice was delivered to appellants before the date of hearing, i.e., 21.5.2012. If the notice had been duly served upon the appellants, then respondent No.1 would have produced the receipt of delivery. His failure to do so leads to an irresistible inference that the appellants were not made aware of the fact that the date of hearing had been changed from 19.6.2012 to 21.5.2012. The documents produced by respondent No.3 do not help us in resolving the controversy regarding service of notice on the appellants. The contents of these documents only adds to the confusion. If the second letter dated 15.2.2013 sent by the Senior Superintendent of Post Office was delivered on 22.5.2012 then we have no option but to hold that the notice issued by the office of respondent No.1 was delivered to the addressee on 22.5.2012, i.e., one day after the date fixed for hearing.

19. As a corollary to the above findings, it must be held that order dated 12.6.2012 passed by respondent No.1 is vitiated due to violation of the rule of audi alteram partem and is liable to be set aside. 20. In the result, the appeal is allowed. The impugned order as also order dated 12.6.2012 passed by respondent No.1 are set aside and the matter is remitted to respondent No.1 for fresh disposal of the application filed by respondent No.3 for grant of certificate for unilateral execution of conveyance. Respondent No.1 shall make an endeavour to decide the application of respondent No.3 within a period of three months from the date of receipt/production of a copy of this judgment without being influenced by order dated