

(1987) 02 SC CK 0034

In the Supreme Court Of India

Case No : Criminal Appeal No's. 856-57 of 1985

Swarup Builders and Others

APPELLANT

Vs

Sheikh Mohd. Sanghi and Others

RESPONDENT

Date of Decision : 12-02-1987

Acts Referred:

Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 — Section 10, 11, 13, 4, 5

Citation : AIR 1987 SC 1651 : (1987) 89 BOMLR 629 : (1987) 1 JT 495 : (1987) SCC 181 Supp

Hon'ble Judges : V. Balakrishna Eradi, J;A. N. Sen, J

Bench : Division Bench

Advocate : V.H. Tarkunds and H.K. Puri, for the Appellant; V.N. Sanpule, for the Respondent

Final Decision : Dismissed

Judgement

1. After hearing learned Counsel for the appellants at considerable length, we are of the opinion that the reasoning of the learned single Judge does not suffer from any infirmity and does not call for interference. The decision of the Division Bench of the High Court in Association of Commerce House Block Owners Ltd. Vs. Vishandas Samaldas and Others, is clearly distinguishable on facts and it is not necessary for us to go into its correctness. The High Court in that case was concerned with the question whether in view of Section 4 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 a suit for specific performance was maintainable. It was held that the requirements of Section 4 of the Act are mandatory and in the absence of a registered agreement, the plaintiff was not entitled to the relief sought. There was no occasion for the High Court to consider whether the promoters could not be held criminally liable for breach of the various provisions of the Act for want of a registered agreement. It cannot be doubted that the requirements of Section 4 of the Act are mandatory and its breach is a penal offence u/s 13, so also the breaches of Sections 5, 7, 10 and 11. The unreported

decision of Desai, J. in A.K. Velu Vs. K.S. Ramkrishnan and Another, that an agreement which is not duly registered u/s 4 of the Act cannot be made the foundation of criminal liability, in that such an agreement is ineffective and invalid for all purposes, including the liability for criminal prosecution, does not seem to be correct.

2. The result therefore is that the appeals fail and are dismissed. The respondents are permitted to withdraw the amount deposited by the appellants in this Court towards costs.