

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

WRIT PETITION NO. 11340 OF 2018

M/s. Sigma Housing & Ors.

..Petitioner

v/s.

The District Deputy Registrar, Co-op.
Societies, Pune City & Ors.

..Respondents

Mr. Narendra Walawalkar, Sr. Advocate a/w. Mr. S.M.Sabrad, Mr.
Ameya Sawant for the Petitioners

Mr.S.H.Kankal, AGP for the Respondent No.1.

Mr. Ashutosh Gole, for the Respondent No.2.

Mr. Yuvraj Patil for the Respondent Nos.3 to 10.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 1st FEBRUARY , 2019.**

P.C.

1. The petitioner has challenged the order dated 7.4.2018 passed by the respondent no.1 under the provisions of Maharashtra Owner of Flats Act (Regulation of Construction, Sale, Management and Transfer) Act, 1963. (in short "MOFA").

2. Shri Walawalkar, the Sr. Counsel for the petitioner submits that the Competent Authority has exceeded the jurisdiction in granting

deemed conveyance of an area admeasuring 11668 sq. mts which includes common excess road. He submits that the agreement entered into between the petitioners and the members of the respondent no.2 society clearly stipulates that the members have acknowledged the right of the petitioner to develop the said land by amalgamating the said land with other adjoining lands. The members have in clear terms agreed that they would not object use of the common access road, amenities, open space and other common facilities by the unit purchasers of the other building/phases on any count whatsoever. The learned Sr. Counsel contends that the respondent no.1 has passed the order of the deemed conveyance in contravention of the agreed terms of the agreement.

3. Mr. Gole, the learned Counsel for the Respondent No.2 submits that the access road is not shown in the layout plan. He further submits that the petitioner has not specified the adjoining lands which are to be amalgamated. He further submits that the consent in clause 2 of the agreement is of general nature, and such generalized consent is not a consent within the meaning of Section 7 of the MOFA Act. He further submits that the respondent no.1 has

conveyed title in accordance with the provisions of Section 11 and can always be raised before the Civil Court.

4. The scope of Section 10 and 11 of MOFA has been considered and explained by the Single Judge of this Court (S.C.Dharmadhikari, J.) in ***Mazda Construction Co & Ors. vs. Sultanabad Darshan CHS Ltd & Ors.*** 2013 (2) ALL MR 278 as under:

“To my mind, reading of Sections 10 and 11 together with Section 5A would make it amply clear that what is to be performed by the Competent Authority is a duty and obligation which the promoter is to perform in law. That is to convey the title and execute the documents according to the agreement. If that is the duty which is to be performed by the promoter, but which he fails to perform, then, the Competent Authority steps in to fulfill it. That is a duty towards the flat purchasers and which duty cannot be avoided except at the cost and pains of legal proceedings including a criminal prosecution. In these circumstances and when Section 10 and 11 are read together and harmoniously with the preceding sections including those which contain the particulars of the agreement, then, it becomes absolutely clear that what has to be conveyed even by a deemed conveyance, which is an unilateral act and which enables the flat purchasers to acquire the Promoter's right, title and interest in the land and the building. Therefore, it cannot be said that an unilateral deemed conveyance conveys something more than what belongs to the promoter. Section 11(1) provides for conveyance of Promoter's right, title and interest in the land and building as is clear from the words “his right, title and interest...” appearing therein. ...

To my mind, this is not a power which can be exercised by the Competent Authority in ignorance of or by brushing aside the earlier provisions and contents of the agreement with the flat purchasers. Equally, the Competent Authority has to take into consideration the contents of other relevant documents”

5. Considering the ambit and scope of Section 11 of MOFA, there can be no doubt that the respondent no.1 authority is not competent to decide whether in terms of the agreement, the petitioners are entitled to amalgamate the adjoining lands, and whether the unit holders from the amalgamated land, are entitled to use the internal access or the other common amenities provided to the members of the respondent no.2 society. Suffice it to say that the petitioners are always at liberty to file a Civil Suit or other proceedings to assert their rights under the agreement.

6. Under the circumstances, the impugned order does not warrant any interference in exercise of jurisdiction under Article 226 and 227 of the Constitution of India.

7. It is clarified that notwithstanding the impugned order, the petitioners are always at liberty to institute appropriate proceedings

before the Civil Court. In the event such suit is filed, the Civil Court shall decide the same on its own merits without being prejudiced by any of the observations made either in the impugned order or in this order.

8. The petition is dismissed with liberty as stated above. No order as to costs.

(ANUJA PRABHUDESSAI, J.)