

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

WRIT PETITION NO.818 OF 2022

Jivanlal Harkisandas Golani since
deceased through his legal heirs

..Petitioners

Versus

State of Maharashtra & Anr.

.. Respondents

Mr. Nirav Shah i/b Mayur Shikhare for the Petitioners.

Mr. P. P. Kakade, GP a/w. Mr. P. P. Pujari, AGP for the Respondent-
State

Mr. Shoaib Memon for the Respondent No.2

CORAM : NITIN W. SAMBRE, J.

DATED : 28th JULY, 2022

P.C.:

1. The challenge in the petition is to the order dated 21/10/2021 passed by the District Deputy Registrar, Co-operative Societies (3), Mumbai whereby the deemed conveyance is ordered in favour of the respondent-Co-operative Housing Society.

2. The said order is questioned by the developer cum owner. By inviting my attention to the earlier order dated 06/03/2018 passed by the same authority in exercise of powers under section 5A of MOFA Act, read with section 11 it is urged that impugned order is illegal as same is passed without having regard to the order of rejection of similar prayers.

3. As such, he would urge that even if the provisions of CPC are not applicable, the principle akin to the same has to be applied to the proceedings in question and as such impugned order is hit by principle of res judicata.

4. He would as such urge that option left with the respondent-society was either to file an Appeal against the said order dated 06/03/2018 or to file the suit in the backdrop of the law laid down in the matter of *Mazda Construction Company vs. Sultanabad Darshan CHS Ltd.* reported in 2013 (2) ALL MR 278.

5. I have appreciated the said submissions.

6. The fact remains that the provisions of CPC, much less the principle of res judicata will not be attracted in case in hand i.e. to the orders passed by the Authorities under the provision of MOFA. As such the very requirement under the provision of section 11 cannot be inferred to have been satisfied.

7. Apart from above, the earlier communication/order of the authority passed on 06/03/2018 is for the reasons of failure of the respondents to produce the agreement. The said agreements are duly produced before the authority which has laid to passing of the impugned order dated 21/10/2021.

8. The respondent authority while exercising of power under

section 11, sub- section 3 of the MOFA has already recorded its satisfaction as regards the requirement thereunder of production of appropriate documents to that effect. The documents produced on record have specifically mentioned in the body of the order and are discussed in detail.

9. In the aforesaid background, I hardly see any reason which warrants interference in the order impugned.

10. The petition as such fails and same stands dismissed.

ANANT
KRISHNA
NAIK

Digitally signed by
ANANT KRISHNA
NAIK
Date: 2022.08.01
20:20:51 +0530

(NITIN W. SAMBRE, J.)