

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 326 OF 2021

ALONGWITH

INTERIM APPLICATION NO. 2843 OF 2021

(FOR STAY)

Sukruti Apartment Co-op Hsg.

Soc. Ltd.

} Appellant

(Orig. Defendant No.1)

V/S.

1. Tirumala Developers

} Respondent No.1

(Orig. Plaintiff)

2. District Dy. Registrar

Co-operative Societies

} Respondent No.2

3. Sukruti Builders

} Respondent No.3

(Promoter/Orig. Def No.3)

4. Kishor Associates

} Respondent No.4

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**Mr. A.G. Damle, Senior Advocate i/by. Ms. Leena Patil,
Advocate for the appellant.**

**Mr. Mayur Khandeparkar a/w. Mr. Maulik Tanna and
Ms. Disha Dave, Advocate for respondent no.1.**

CORAM : SANDEEP K. SHINDE, J.

JUDG. RESD. ON : 10th March, 2022.

JUDGMENT PRON. ON : 21st March, 2022.

JUDGMENT :

1. On 31st May 2016, Competent Authority under Section 5A of the Maharashtra Ownership Flats Act, 1963 (“said Act” for short), in exercise of powers under Section 11(4) of the said Act, issued a Certificate, in favour of Sukruti Apartment Co-operative Housing Society Limited-appellant, for enforcing unilateral execution of conveyance deed. M/s. Tirumala Developers (plaintiff-respondent no.1) questioned its validity in the suit instituted in the City Civil Court, Bombay. Pending suit, the learned Judge, by order dated 7th April, 2021 stayed the implementation of order of Competent Authority. Feeling aggrieved by that order, appellant-defendant no.1, has challenged it, in this appeal under Order 43(1)(r) of the Civil Procedure Code.

Background facts are as under :

2. M/s. Sukruti Builders-defendant no.3 (hereinafter called “Promoter”), by deed of conveyance dated 31st December, 1979 purchased land bearing Plot no.2, Survey No.161, C.T.S. No. 526/1 to 526/9, Mulund (E), Mumbai admeasuring about 1203.9 sq.mtrs (“said larger plot” for short) alongwith the structure standing

thereon known as “Bhavani Shankar Bungalow” from its owners, Urmila K. Madeka and others, through its partners for the consideration and on terms and conditions, more particularly set out therein. Whereafter, Promoter constructed a building on part of the said plot of land, known as “Sukruti Apartments” consisting of ground and seven upper floors and sold flats, vide individual agreements. Later, the flat purchasers formed a Co-operative Housing Society-the appellant herein. A, recital in the agreements, executed by the Promoter reads as under :

“AND WHEREAS M/s. Sukruti Builders are constructing the building consisting of ground and seven upper floors on the portion of the said land (excluding the land under the existing structures), tentatively named “Sukruti Apartments” as per plans, specifications and designs sanctioned by the B.M.C and the said portion of land under the said new building under construction and land appurtenant thereto admeasures about 668 sq.meters, as shown on the plan annexed to the agreement. (emphasis supplied)

The next recital, contains a stipulation that, the Co-operative Housing Society of the flat owners of the Sukruti Apartments, shall have ‘lessees interest’, in the said

portion of the said land on which the new building is being constructed, as per details set out in Clause-28 of the agreement. Clause-28 of the agreement, reads as under :

“28. The title which is intended to be created in favour of the Co-operative Society Association or Limited Company, as the case may be in respect of the said new property shall be as under :-

(a). There will be a lease for a term of 98 years at a token rent of Rs.150/- per annum in respect of the said portion of the said land under the aforesaid new building named ‘SUKRUTI APARTMENTS’ and the land appurtenant thereto being part of the said land described in the Schedule I hereunder written and shown on the aforesaid sketch plan hereto annexed, and a Conveyance of the said new building constructed thereon.”

AND

SCHEDULE I ABOVE REFERRED TO :

ALL THAT piece or parcel of land with hereditaments, premises and buildings, admeasuring 1203.90 square metres or thereabout, bearing Survey No.161, Pot No.2 and bearing City Survey No.526 and 526/1 to 9 of Mulund (East), bearing Municipal T-ward No.478 and 479 and situate at Lokmanya Tilak Road, Mulund (East), in the Registration Sub-District and District of Bombay City and Bombay Suburban and bounded on or towards North by Lokmanya Tilak Road, on or towards South by property known as Kesar Baug Dhayphule Private Scheme, on or towards East by the property of Lahensingh Shersingh and Ratanbai Bomanji Patel and on or towards West by property of Vasant Gauri Jadhavji Narbheram and Others.”

3. Thus, under the agreement for sale executed with flat purchasers, promoter had agreed to create 'lease interest' in respect of portion of larger plot admeasuring 668 sq.mtrs, in favour of the appellant Society for a term of 98 years.

Dates and Events after Agreements with Flat Purchasers :

4. On 6th October 1986, flat purchasers registered the Society. On 17th October 2015, the Promoter (defendant no.3), sold said larger plot admeasuring 1203.9 sq.mtrs to defendant no.4, subject to rights of the appellant-Society. Later, by Deed of Conveyance dated 31st March, 2016 defendant no.4, sold his rights in the larger plot to the plaintiffs, M/s. Tirumala Developers-respondent no.1. In the meanwhile, on 4th September, 2015 the appellant-Society filed an application under Section 11(3) of the said Act, for a Certificate to execute unilateral deemed conveyance in respect of said larger plot admeasuring 1203.9 sq.mtrs. Whereafter on 11th April 2016, M/s. Tirumala Developers (plaintiffs), sought intervention in the proceedings before the Competent

Authority. However, on 31st May 2016, Competent Authority, issued a Certificate in favour of Society for executing unilateral conveyance deed in respect of larger plot admeasuring 1209.90 sq.mtrs. Feeling aggrieved by the order dated 31st May 2016, passed by the Competent Authority, plaintiffs questioned its validity in Writ Petition. On 5th July 2019, petition was withdrawn with a liberty to file substantive suit. Pursuant to the liberty, M/s. Tirumala Developers-plaintiffs, instituted S.C. Suit No. 2354/2019 in the City Civil Court at Bombay, seeking declaration that, order dated 31st May, 2016 passed by the Competent Authority, granting unilateral execution of conveyance deed in respect of larger plot admeasuring 1203.90 sq.mtrs was illegal, bad in law, null and void and not binding upon the plaintiffs. Pending suit, the learned trial Court, stayed the effect and implementation of the said order dated 31st May 2016 and restrained the appellants from acting in furtherance of the said order.

5. Question, that falls for consideration is, "Whether, order of Competent Authority, granting unilateral execution of conveyance deed, in favour of

appellant-society, in respect of larger plot, was in accordance with the Agreements for sale, executed by the Promoter in favour of flat purchasers ?”

6. In cases of (i) **Zainul Abedin Yusufali Massawawala Vs. Competent Authority District**, 2016 SCC Online Bom. 6028; (ii) **Mazda Construction Company v. Sultanabad Darshan CHS Ltd.** 2012 SCC Online 1266; (iii) **Jamuna Darshan CHSL Vs. J.M.C. & Meghani Builders and Ors.**, 2009 SCC Online Bom 42; and (iv) **Grand Paradi CHSL Vs. Mont Blanc Properties & Industries Pvt. Ltd. & Anr.** 2010 SCC Online Bom.608, this Court held, that :

(i) Reading of Section 10 and 11 of the MOFA, with Section 5A would make it amply clear, what is to be performed by the Competent Authority is the duty and obligation which the Promoter is to perform in law i.e. to convey the title and execute the documents according to agreements;

(ii) When Section 10 and 11 are read together and harmoniously with the preceding Sections, it is to be held that, the Competent Authority has to

take into account, entitlement of parties in terms of agreement executed between them and the Promoter.

(iii) Competent Authority cannot permit the parties to pray something that is beyond their agreement with the Promoters and other relevant documents.

7. Therefore, if the Promoter fails to execute the conveyance in favour of Society or Company, or Association of apartment owners, as the case may be, the Company or Association of apartment owners, may apply under Section 11(3) of the Act, for a Certificate of their entitlement to have unilateral deemed conveyance; In that event, jurisdiction of Competent Authority is confined to sub-section (4) of Section 11. In the case of **Angeline Pereira**, (WP-4373/2017), this Court has held that, “Contentions regarding title, in respect of the property in question or adjudication in respect of the property in question or adjudication in respect of entitlement of exact quantification of FSI on plot in question, cannot be gone into the proceedings under Section 11 of the MOFA”.

Herein, the Promoter had executed agreement with flat purchaser in the year 1981 i.e. before the format of the agreement was prescribed under the MOFA. However, format, under the Act, was prescribed for the first time in the year 1986. Therefore, flat purchasers would be entitled for conveyance of the property, only in terms of agreements with Promoter and nothing more.

Therefore, Society could not have applied for conveyance of said larger plot in question and further Competent Authority could not have granted the same. Reason being, Promoters had agreed to create 'lease interest' in favour of Society in plot admeasuring 668 sq.mtrs only and not 1203.90 sq.mtrs. Contention of Mr. Damle, learned Counsel for the appellants, that plot admeasuring 668 sq.mtrs (part of said larger plot), which Promoter has agreed to convey, being disproportionate to constructed area of the building and since appellants are paying Municipal taxes for the area exceeding 668. sq.mtrs, Certificate granted by Competent Authority, cannot be faulted with, requires no consideration. Contention is rejected. However, appellants are not precluded from

seeking adjudication of their right, title and interest in property in question by filing suit. For all that reasons, impugned order calls for no interference. Appeal is dismissed.

8. With dismissal of the Appeal from Order, Interim Application No. 2843 of 2021, taken out for stay, does not survive. The same also stands disposed of.

9. Hearing of S.C. Suit No.2354/2019 is expedited.

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(SANDEEP K. SHINDE, J.)