

Sayali Upasani

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

**WRIT PETITION NO.11547 OF 2022
WITH
INTERIM APPLICATION NO. 18641 OF 2022
IN
WRIT PETITION NO.11547 OF 2022**

1. M/s. Riddhi Siddhi Skyline (LLP)
Through Abhishek Parmar,
Carrying on business from 201,
Arihant Building, Agiary Lane,
Tembhi Naka, Thane (W)-400 601 **PETITIONER.**

VERSUS

1. The Chairman/Secretary
Thane Sundaram Cooperative
Housing Society Ltd Having address
at Dharamveer Marg, Panchpakhadi,
Thane-400 601
2. M/s. Bhojani Constructions 2,
Shiv Darshan, Sarojani Road,
Santacruz (W), Mumbai-400 054.

3. Saraswati Mohanlal Parmar
Age: Adult, Occ.-Not known
4. Dilip Mohanlal Parmar
Age: Adult, Occ.-Not known
5. Suresh Mohanlal Parmar
Age: Adult, Occ.-Not known
6. Kamla Babulal Parmar
Age: Adult, Occ.-Not known
7. Manisha Babulal Parmar
Age: Minor, Occ.-Student
Minor, through natural guardian
and mother respondent No. 6 above.
8. Anju Babulal Parmar
Age: Minor, Occ.-Student
Minor, through natural guardian
and mother respondent No. 6 above.
9. Yashwant Savalaram Gharat
Age: Adult, Occ.-Not known
10. Kokila Navnithlal Shah
Age: Adult, Occ.-Not known

Respondent Nos. 3 to 10 residing at
Pakeeza Market, Maulana Shaukat
Ali Road, Grant Road,
Mumbai- 400 009

11. Competent Authority and
District Deputy Registrar,
Co-operative Societies, Thane
having his office at Gaondevi
Market Building, 1st floor, Near
Gaondevi Maidan, Gokhale Road,
Thane, (W)- 400 602

....RESPONDENTS

Mr. Rajesh Datar a/w Dhruti R. Datar, for Petitioner.

Mr. Sandesh D. Patil and Chintan Y. Shah i/b Prithviraj S.
Gole, for Respondent No. 1- Thane Sundaram CHSL.

Ms. Madhubala Kajale- B Panel Counsel for Respondent
No.11.

Mr. Mandar Limaye, for Respondent No. 12.

CORAM:- N. J. JAMADAR, J.

RESERVED ON:- 28th APRIL, 2023

PRONOUNCED ON:- 5th JUNE, 2023

JUDGMENT:-

1) Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties heard finally.

2) This Petition takes exception to an order dated 25th April, 2022, passed by the Deputy Registrar Co-operative Societies and the Competent Authority on an application, being application No.42 of 2020, thereby declaring that the respondent No. 1- Society is entitled to have unilateral deemed conveyance executed and registered in its favour under Section 11(3) of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 ("MOFA 1963").

3) Background facts can be stated in brief:

(a) Mr. R.S. Shah and Shri. J.D. Desai were the owners of plots of land bearing Survey Nos.479/7, 344/12, 344/6 and 479/5 corresponding City Survey Nos.944, 1061, 948 and 947 and original plot Nos. 320, 321, 325, and 318 situated at Panchpakhadi, Thane. In the town planning scheme, the plots were demarcated and given final plot Nos. 292, 298 and 305 and delivered to the holders of the original plots by Thane Municipal Corporation.

(b) Respondent No. 1 is a Co-operative Housing Society, registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 ("the Act, 1960"). It is the claim of the respondent No. 1 that Mr. R.S. Shah had sold the plot of land bearing Survey No. 479, Hissa No. 7, (Original Plot No.320, Final Plot No.305 Part) to Mr. Champaklal Somalal Desai, who, in turn, had sold an area admeasuring 556 sq. Mtrs out of the total area of 1152 Sq. Mtrs, from Final Plot No.305 (Part) to one Smt. Kokila Navnitlal Shah, the predecessor in title of M/s Bhojani Construction- respondent No. 2. In turn, the respondent No. 2 had granted development rights in respect of the said land i.e. final Plot Nos.305 (part) and 306 in favour of the respondent No. 1 and, thereupon, the respondent No. 1- Society constructed a building with requisite sanction and approvals of the Competent Authority. Occupation Certificate came to be granted on 28th May, 1986. Eventually, respondent No. 1- Society was formed and registration certificate came to be issued on 11th September 1986.

(c) On 11th May, 2016, Thane Municipal Corporation addressed a notice to respondent No. 1 to stop the use of plot No. 305. Since there was no response to the said notice, on 11th

November, 2017, Thane Municipal Corporation apprised the respondent No. 1 that plot No. 305 would be demarcated on 17th January, 2017, and possession thereof would be handed over to the final plot holder, as per scheme. Respondent No. 1 instituted a suit being Regular Civil Suit No. 34 of 2017 in the Civil Court at Thane, seeking declaration that the said notice dated 11th January, 2017, issued by Thane Municipal Corporation was illegal and also to restrain Thane Municipal Corporation from acting upon the said notice.

(d) In the meanwhile, the petitioner, a limited liability partnership firm, claimed to have purchased land admeasuring 11529 Sq. Mtrs Final Plot No. 305 from the successors in the interest of Mr. R.S. Shah under a sale-deed dated 5th May, 2018, for a valuable consideration of Rs.4,15,00,000/-, on 'as is where is basis'.

(e) During the pendency of RCS No.34 of 2017, the respondent No. 1 filed an application under Section 11 of the MOFA, 1963, for grant of deemed conveyance with respect to the plot No. 305, admeasuring 482.233 Sq. Mtrs (subject property) and plot No. 306.

4) Petitioner asserts without providing an effective opportunity of hearing to the petitioner, the Competent Authority-respondent No. 11 passed an order dated 6th July, 2020, declaring the respondent No. 1 to be entitled to have a unilateral conveyance executed and registered under Section 11 (3) of MOFA, 1963. Post haste, the respondent No. 1- Society got the deemed conveyance registered on 7th October, 2020. Name of the respondent No. 1-Society came to be mutated to the City Survey record.

5) The petitioner initially filed Writ Petition No. 3177 of 2021. By an order dated 24th March, 2022, the said order dated 6th July, 2020, was quashed and set aside and the respondent No. 11 was directed to hear and decide the application afresh. Post hearing, the respondent No. 11 passed the impugned order on 25th April, 2022, again declaring the respondent No. 1 to be entitled to have a deemed conveyance.

6) Being aggrieved the petitioner has approached this Court again.

7) Petitioner asserts the Competent Authority could not have passed order under Section 11 (3) of MOFA, 1963, as Regular Civil Suit No. 34 of 2017, instituted by respondent No. 1 in

respect of the title to final plot No. 305 was still pending. In the face of a clear dispute about the title to final plot No. 305, the Competent Authority exceeded its jurisdiction in granting deemed conveyance.

8) An affidavit-in-reply is filed on behalf of the respondent No. 1 resisting the Petition. Respondent No. 1, *inter alia*, contends that the successor in interest of Mr. R.S. Shah had no subsisting right, title and interest in the subject property. The Deed of Conveyance dated 5th May, 2018, under which the petitioner claims to have acquired interest in the subject property is a sham and bogus instrument and non est in the eye of law. The purported Power of Attorney executed in favour of Mr. Pradeep Ratilal Shah, the executant of Deed of Conveyance, does not find mention of final plot No. 305. Appropriate proceedings including prosecution, have been initiated against Mr. Pradeep Shah and the representative of the petitioner.

9) I have heard Mr. Rajesh Datar, the learned Counsel for the petitioner, Mr. Sandesh Patil, the learned Counsel for respondent No. 1, Ms. Madhubala Kajale, the learned Counsel for respondent No. 11 and Mr. Mandar Limaye, the learned

Counsel for respondent No. 12- Thane Municipal Corporation in Interim Application No. 18641 of 2022 (for impleadment).

10) Mr. Datar submitted that the Competent Authority committed a manifest error in passing an order under Section 11 (3) of the MOFA, 1963, despite being fully cognizant of the fact that the title of respondent No. 1 to the subject property was in dispute. Taking the Court through the notice dated 11th January, 2017, issued by Thane Municipal Corporation and the prayers in the suit being RCS No. 34 of 2017, instituted by the respondent No. 1 impugning the said notice, Mr. Datar submitted that the Competent Authority clearly exceeded its jurisdiction. The explanation sought to be offered by the Competent Authority that the said suit was confined to legality and validity of the notice dated 11th January, 2017, is legally unsustainable. Therefore, the impugned order deserves to be quashed and set aside, submitted Mr. Datar.

11) In contrast, Mr. Patil submitted that the petitioner has, in fact, no locus to assail the order granting deemed conveyance. If at all the petitioner has any grievance as regards the proprietary title over the subject property, it was for the petitioner to institute a suit on title as the determination under Section 11 (3)

of the MOFA, 1963, does not impinge upon the title to the property.

12) Placing reliance on the judgments of this Court in the cases of **Mazda Construction Company and Others Vs. Sultanabad Darshan CHS Ltd., and Others¹**, **M/s Shree Chintamani Builders Vs. State of Maharashtra and Others²** and **Angeline Randolph Pereira and Others Vs. Suyog Industrial Estate Premises Co-operative Society Ltd., and Others³**, Mr. Patil would urge that the Petition is wholly misconceived.

13) Mr. Limaye, the learned Counsel for the Thane Municipal Corporation- respondent No. 12 in the Interim Application submitted that the respondent No. 12 is unnecessarily being dragged into litigation and has no concern with the dispute between the parties over the title to the subject property.

14) This Court has in a catena of judgments including **Mazda Construction Company** (supra) and **M/s Shree Chintamani Builders** (supra) has laid down in clear and explicit terms that an order of deemed conveyance under Section 11 (3) of MOFA, 1963, does not conclude the issue of right, title and interest in

1 2012 SCC Online Bom 1266

2 2016 SCC Online Bom 9343

3 2018 SCC Online Bom 687

the immovable property, and, thus, a party asserting right to property, which is the subject matter of deemed conveyance is not precluded from instituting a suit and claiming appropriate reliefs including title thereto. This, legal premise needs to be kept in view.

15) Mr. Datar would urge that since Thane Municipal Corporation has issued a notice to respondent No. 1 under Section 89 and 90 of the Maharashtra Regional and Town Planning Act, 1966 ("the Act, 1966") to enforce the scheme settled thereunder, the petitioner, who is the successor in interest of the holders to whom the subject property has been allotted under the Scheme, is not enjoined to institute a suit to establish title to the subject property.

16) I find it difficult to accede to this submission. It is pertinent to note that the respondent No. 1- Society asserts that the successor in interest of Mr. R.S. Shah, the original holder of the subject property, had no subsisting interest in the subject property, which could have been conveyed in favour of the petitioner. That surely raises a substantial issue as to the sustainability of the petitioner's claim of proprietary title over the subject property.

17) In view of the pronouncement of the Supreme Court in the case of **the Municipal Corporation For Greater Bombay and Another Vs. The Advance Builders (India) Private Ltd and Others⁴**, the law is settled that the effect of the settlement of the scheme under the Act, 1963, and it's coming into force is that all rights in the original plots of the private owners would determine and if, in the scheme reconstituted or final plots are allowed to them, they shall become final subject to the rights settled by the Arbitrator. However, the question as to whether the vendors of the petitioner were the persons whom the subject property came to be allotted under the scheme is a matter for adjudication. Therefore, the petitioner can not draw any mileage from the fact that the respondent No. 1- Society had assailed the legality and validity of the notice issued by Thane Municipal Corporation under Section 89 and 90 of the Act, 1966.

18) At any rate, the grant of deemed conveyance does not determine title to the subject land. The Competent Authority has rightly confined the remit of inquiry to the entitlement of the respondent No. 1 for deemed conveyance under Section 11 of the MOFA, 1963. No fault can be found with the impugned order. Resultantly, the Petition fails.

4 1971 (3) SCC 381

19) Hence, the following order.

-:ORDER:-

- i) The Petition stands dismissed.
- ii) Rule discharged.
- iii) No order as to costs.
- iv) In view of the dismissal of the Petition, the Interim Application (for impleadment) also stands dismissed.

[N. J. JAMADAR, J.]