

VRJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2614 OF 2024

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RAMESH
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VAIBHAV RAMESH
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Yashwant Narayan Joshi & Ors.

... Petitioners

V/s.

The State of Maharashtra

Through Department of Cooperation &
Ors.

... Respondents

Mr. Bhushan Walimbe for the petitioners.

Mr. P. G. Sawant, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 28, 2024

PC.:

1. The promoter is challenging impugned order passed in exercise of power under section 11(3) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereafter, "MOFA Act", for short) granting deemed conveyance in favour of respondent No.3. The challenge by the petitioners is based on the contention that excess land than the land sold in favour of purchasers has been granted by the impugned order.

2. The decision of this Court in the case of **Mazda Construction Company And Others Vs. Sultanabad Darshan CHS Ltd. And Others**, reported in (2012) SCC OnLine Bom 1266 makes an

elaborate analysis of the provisions contained in the MOFA Act. The Single Judge of this Court has explained the nature of power exercised by the Competent Authority in paragraph 20 of the said judgment as under:

“20. 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 sections 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....”

3. At this stage, it is necessary to refer to the Division Bench judgment of this Court in the case of **M/s. Shree Chintamani Builders Petitioner Vs. State of Maharashtra & Ors.**, reported in (2016) SCC OnLine Bom 9343 wherein it was observed that an order granting deemed conveyance would not conclude the issue

of right, title of the immovable property. It was not as if such an order was passed, the owner/builder had no remedy to question the act of society on the strength of such deemed conveyance. It is open for the developer/owner to bring a substantive suit on the title and point out the issues concerning right, title or interest on the immovable property.

4. In the case of **Zainul Abedin Yusufali Massawawala And Others Vs. Competent Authority District Deputy Registrar of Co-operative Housing Societies, Mumbai And Others**, reported in (2016) SCC OnLine Bom 6028, the Division Bench of this Court was considering challenging the order of deemed conveyance in the context of societies to claim of excess area than the schedule in the development agreement. In the context of aforesaid controversy, the Division Bench, in paragraph 9 of the judgment, again clarified the nature of power exercised by the Competent Authority under Section 11 of the MOFA Act as under:

“9....If while granting the deemed conveyance, the Competent Authority has in any manner, traveled beyond the stipulations in the agreement, and the grievance of the petitioners is that a larger property is allowed to be claimed by the society contrary to the covenant and recitals of the two agreements, then the remedy of the petitioners even in terms of two decisions of this court in *Tushar Jivram Chauhan v. State of Maharashtra* (2015) 4 Mah LJ 867 and *Mazda Construction Company v. Sultanabad Darshan CHS Ltd.*, 2012 SCC OnLine Bom 1266 relied upon by Mr. Khandeparkar is not to file a writ petition under Article 226 in this court, but to approach competent civil court and establish this right, title and interest in relation to the larger property. While establishing and seeking to prove it, the

petitioners can also allege that contrary to the Development Agreement and a MOFA Agreement, the society claimed a larger property and relying upon those submissions the Competent Authority has granted the relief in relation thereto. That is the prejudice caused and which the petitioners can seek a redressal thereof by approaching such a court....”

5. In view of aforesaid position, the proper remedy for the petitioners is to ventilate their rights by way of civil suit which is already filed by the petitioners. In the context of said contention, it is made clear that grant of conveyance by authorities under the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 shall not come in the way of the Civil Court while deciding the Regular Civil Suit No.321 of 2022.

6. The Civil Court shall decide the substantive rights of the parties uninfluenced by the impugned order. With this clarification, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)