

VRJ

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

WRIT PETITION NO.2578 OF 2020

VAIBHAV
RAMESH
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Om Shakuntal Co-op. Housing
Society Ltd.

... Petitioner

V/s.

Patel Wood Works & Timber Mart & Anr.

... Respondents

Mr. Sagar Anant Joshi for the petitioner.

Mr. Mayur Khandeparkar with Mr. Anun Panicker, Mr.
Vinay Nair i/by Mr. Rajeev Sharma for respondent
No.1.

Mr. Rajesh S. Datar i/by Ms. Druti Datar for respondent
No.2.

CORAM : AMIT BORKAR, J.

DATED : MARCH 18, 2024

P.C.:

1. The society registered under the Maharashtra Cooperative Societies Act, 1960 is challenging an order passed by the competent authority 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) refusing to pass an order of deemed conveyance mainly on two grounds: (i) owner of the property has filed a suit against the promoter in relation to ownership rights; and (ii) the details of balance FSI has not been

placed on record by way of certificate issued by Architect.

2. Purpose of introducing section 11(3) of the MOFA Act was to expedite the process of deemed conveyance in favour of the purchasers. Refusal to exercise power under section 11(3) of the MOFA Act on the flimsy ground defeats the purpose. The authorities under section 11(3) of the MOFA Act must be alive to the purpose for which section 11(3) of the MOFA Act has been introduced by legislature. It is well settled by the judgment of this Court in **Mazda Construction Co. v. Sultanabad Darshan CHS Ltd.** reported in 2012 SCC OnLine Bom 1266 of confirmation of deemed conveyance and it is not for effect of conferring substantive rights on the society and the person aggrieved can get his right adjudicated before the Civil Court. Despite such position of law being settled almost 12 years back, still the authorities under section 11(3) of the MOFA Act are refusing to exercise their power under section 11(3) of the MOFA Act. Mere pendency of suit in absence of restraint orders from the Civil Court, would not take away the power competent authority to issue deemed conveyance under section 11(3) of the MOFA Act. Broad compliance with section 4 of the MOFA Act is necessary. Therefore, once the ingredients of section 4 read with relevant provisions of the Act are prima facie complied with by the society, the authority under section 11(3) of the MOFA Act is under obligation to issue order of deemed conveyance subject to rights of aggrieved party to institute civil suit. Hence, the impugned order passed by the competent authority cannot be sustained.

3. The impugned order dated 19th November 2019 is, therefore,

quashed and set aside.

4. Proceedings are remanded back to the competent authority for decision on merits.

5. Both sides are permitted to raise their objections before competent authority.

6. The competent authority shall decide the application within three months from the date of appearance of the parties.

7. The parties shall appear before the competent authority on 26th March 2024 at 10:30 a.m.

8. It is made clear that both parties are entitled to raise all contentions including the contentions raised in the petition before the competent authority.

(AMIT BORKAR, J.)