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

WRIT PETITION NO.5133 OF 2024

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Balaji Corporation,
Through Its Partners

... Petitioner

V/s.

Delta Central Cooperative Housing
Society Limited & Ors.

... Respondents

Mr. Veerendra Tulzapurkar, Senior Advocate with Mr. Siddhesh Bhole, Mr. Srikant Kharkar, Ms. Deepali Shetty, Ms. Nikita Kadam, Mr. Shrikant K., Mr. Ashwin Pimple and Mr. Apporva Kulkarni i/by SSB Legal and Advisory for the petitioner.

Mr. Hamid D. Mulla, AGP for the State.

Mr. Pankaj Sawant, Senior Advocate with Mr. Pranil Sonawane and Mr. Deepak Hariasra i/by KLS Legal for the respondents.

CORAM : AMIT BORKAR, J.

DATED : MAY 10, 2024

P.C.:

1. The petitioner takes exception to the order dated 7 March 2024 passed by the competent authority/Deputy Registrar, Cooperative Societies, CIDCO, Navi Mumbai granting a unilateral deemed conveyance under section 11 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (hereafter, "MOFA Act",

for short) in respect of premises bearing Plot No.4, Sector 23, Village Kharghar, Navi Mumbai admeasuring 8694.03 square meters.

2. The facts and circumstances giving rise to the present writ petition are as under:

3. Petitioner is a partnership firm. Respondent No.1 is a cooperative society registered under the provisions of the Maharashtra Cooperative Societies Act, 1960. Respondent No.2 is a public sector undertaking of the Government of Maharashtra notified by the State Government as the New Town Development Authority. Respondent No.3 is the competent authority under the provisions of the MOFA Act who has passed the impugned order.

4. The petitioner proposed to develop certain lands in village Kharghar of Navi Mumbai and, therefore, respondent No.2 executed an agreement to lease in favour of the petitioner in relation to Plot No.4, Sector 23, Village Kharghar, Navi Mumbai, admeasuring 8694.03 square meters. According to the petitioner, under such agreement to lease, the petitioner applied for building permission, and respondent No.2 sanctioned the building plans with development permission dated 27 April 2017. The petitioner, thereafter, submitted revised building plans, which were granted by letters dated 24 December 2018 and 25 March 2019. According to the petitioner, the construction of the 'Delta Central' project was partially completed. Accordingly, the petitioner constructed 4 Wings, namely Wing A, Wing B, Wing C and Wing D.

5. According to the petitioner, he never utilised the entire permissible FSI on the said land and, therefore, applied for necessary permission for revised plans proposing to consume the entire FSI available on the said land and construct a project comprising Wings A to D and Wing E consisting of G+17 floors and Club House of G+3 floors. According to the petitioner, by no-objection certificate dated 11 October 2021, the petitioner proposed constructing building Wing E with G+20 floors (Club House 3 floors+17 upper floors and four additional floors in Wing C). According to the petitioner, on 29 October 2021, respondent No.2 granted an occupancy certificate.

6. According to the petitioner, the petitioner executed individual agreements with flat purchasers post-December 2020. The flat purchasers formed a cooperative society, which was granted registration on 29 August 2023.

7. Respondent No.1 society called upon the petitioner to execute conveyance in respect of the said land; however, the petitioner communicated to respondent No.1 that the conveyance should be granted only after completion of Wing E and additional floors on Wing C. Respondent No.1, therefore, applied section 11 of the MOFA Act before respondent No.3 seeking unilateral deemed conveyance. Respondent No.3, by the impugned order, granted unilateral deemed conveyance in favour of respondent No.1 in relation to Plot No.4, Sector 23, Village Kharghar, Navi Mumbai admeasuring 8694.03 square meters. Aggrieved thereby, the petitioner has filed a present writ petition.

8. Mr. Veerendra Tulzapurkar learned that the Senior Advocate submitted that the impugned order lacks reasons for consideration of points raised by the petitioner. He submitted that though the competent authority had incorporated the parties' contentions, it proceeded to pass the impugned order without considering the contentions raised or giving detailed reasons. Relying on Rule 9 of the Maharashtra Real Estate (Regulation and Development) (Registration of real estate projects, Registration of real estate agents, rates of interests and disclosures on website) (Amendment) Rules, 2019 (hereafter, "RERA Rules", for short), it is submitted that respondent No.1 was entitled to file an application for unilateral deemed conveyance only after issue of occupancy certificate of last building or wing in the layout is complete. He, therefore, submitted that the grant of conveyance of the entire area of 8694.03 square meters, including the area under Wing E, constitutes illegality requiring interference under the extraordinary constitutional jurisdiction of this Court.

9. Per contra Mr. Sawant, the learned Senior Advocate supported the impugned judgment. He invited my attention to the relevant clauses of the registered agreement entered into with the individual purchasers to urge that clauses 10, 14 and 15 indicate the original project to be restricted to 4 Wings only. Respondent No.2 granted an occupancy certificate by letter dated 29 October 2021, which fact has been admitted by the petitioner in his petition in paragraph No.11. He, therefore, submitted that in the absence of a specific period agreed between the parties in the agreement, under Rule 9 of MOFA Rules and even under Rule 9

Sub-rule (2) of the RERA Rules of 2019, the petitioner was entitled to comply for deemed conveyance. He invited my attention to the schedule of the agreement and other clauses to urge that the petitioner agreed to convey an area of 8694.03 square meters and, therefore, there is no illegality committed by respondent No.3 while passing the impugned order. He relied on the judgment of the Co-ordinate Bench of this Court in **ACME Enterprises and Ors. vs. Deputy Registrar, Cooperative Societies (2), Eastern Suburb and Ors.** reported in 2023 (4) AIR Bom. R 817 to support his contention.

10. Before dealing with the contention on behalf of the parties, it is necessary to refer to the relevant observations of the Single Judge of this Court in **ACME Enterprises** (supra), which has taken into consideration the consistent view of this Court by observing as under:

“30. From the above statutory provisions and enunciation, the emerging position can be summarised as under. The authority to grant deemed conveyance is conditioned and controlled by the primary obligation of the Promoter to convey to the organisation of flat purchasers right, title and interest in the land and buildings by the agreement executed under Section 4. The competent authority cannot convey more than what the Promoter had agreed to convey under the agreement executed under Section 4. What competent authority is thus required to consider is the extent of the obligation incurred by the Promoter, whether the obligation to execute the conveyance became enforceable and whether the Promoter committed default in, or otherwise disabled himself from, executing the conveyance.

31. The enquiry is thus of a limited nature. The competent authority cannot delve into the aspects of the title. Nor does the finding of the competent authority preclude a party from agitating the grievance as to the entitlement of the organisation of purchasers to have the conveyance before the Civil Court. The remit of enquiry by the competent authority is, thus, whether the conditions stipulated for enforcement of the obligation to execute the conveyance have been satisfied and, if yes, order a unilateral deemed conveyance."

11. It is also necessary to refer to paragraph 20 in the case of **Mazda Construction Company And Others Vs. Sultanabad Darshan CHS Ltd. And Others**, reported in (2012) SCC OnLine Bom. 1266, which 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...."

12. In the light of the law laid down by this Court, it is necessary to consider the facts of the case. On perusal of the agreement and other material on record, it appears that the agreement entered into between the individual purchasers and the petitioner was in respect of land measuring 8694.03 square meters. Even as per the averments made in the writ petition, there is no serious dispute between the parties that the initial project sanctioned and completed by the petitioner was restricted to 4 Wings, namely Wing A, Wing B, Wing C and Wing D. It is also not in dispute in view of averments made in paragraph No.11 of the writ petition that occupancy certificate about 4 Wings was granted on 29 October 2021. Reading of paragraphs Nos.8 and 9 of the writ petition indicate that the proposal for construction of Wing E was filed before the planning authority after the substantial completion of 4 wings, which is evident from the date of occupancy certificate issued on 29 October 2021 and the no-objection certificate issued by respondent No.2 in relation to Wing E on 11 October 2021. Once it is established that in relation to 4 Wings, respondent No.2 granted occupancy certificated on 29 October 2021, then it was the duty of the petitioner, in the absence of time agreed between the parties, to complete the conveyance as per Rule 9 of the MOFA

Rules and Rule 9 of the RERA Rules of 2019. However, on the failure of the petitioner to execute conveyance, the competent authority under the Act rightly issued direction for issuance of unilateral deemed conveyance for an area admeasuring 8694.03 square meters, which is the area agreed to be conveyed under the agreement entered into with the individual purchasers. The effect of the grant of unilateral deemed conveyance as already held by the Co-ordinate Bench of this Court is that it enables flat purchasers to acquire the Promoter's right, title and interest in the land and the building.

13. Commencement of construction of Wing E, in my opinion, would not affect respondent No.1's rights to get unilateral deemed conveyance as the initial project was restricted to 4 Wings. If the substantive rights of the petitioner are affected by the order of unilateral deemed conveyance, as held by a series of decisions of this Court, the proper remedy for the petitioner is to institute a substantive suit before the Civil Court for ventilation of his grievance and conferment of unilateral deemed conveyance could not affect his rights to approach Civil Court.

14. Hence, the following order:

- a)** The writ petition stands dismissed.
- b)** The petitioner, however, shall have the liberty to institute a civil suit to agitate his claim in relation to the entire Plot No.4, admeasuring 8694.03 square meters, and the observations made in the present order shall not come in

the way of Civil Court in case the petitioner institutes the suit.

c) No order as to costs.

15. At this stage, learned advocate for the petitioner seeks continuation of ad-interim relief which was in force during pendency of the writ petition. Considering the facts of the case, the ad-interim relief is continued for period of eight weeks from today.

(AMIT BORKAR, J.)