

Shabnoor

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

WRIT PETITION NO.14359 OF 2022

The Life Insurance Corporation of India ... Petitioner

V/s.

State of Maharashtra Through
The Principle Secretary Department of
Cooperation & Ors ... Respondents

Mr. Ajay G. Khaire, for Petitioner.

Mr. Atul Damle, Sr. Advocate and Mr. Atul Singh, for
Respondent No.3.

Mr. P. V. Nelson Rajan, AGP for State, Respondent Nos.1
& 2.

CORAM : AMIT BORKAR, J.

DATED : MARCH 13, 2024

P.C.:

1. The challenge in this writ petition is to the order dated 9 September 2021 passed by the District Deputy Registrar of the Cooperative Societies 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 (for short 'MOFA Act').

2. The petitioner is opponent No.1 in an application filed by respondent No.4 under Section 11 of the MOFA Act. The petitioner entered into a development agreement with the

condition of the society/respondent No.3 for construction of building under the provisions of the MOFA Act. Accordingly, the registered agreement were executed in favour of the members of the society/respondent No.3. After the construction of the said building as per the agreement, the petitioner had agreed to convey the plot alongwith consequential benefits in favour of respondent Nos.3/society within 4 months from the date of formation of the society. Since, the petitioner failed to execute the conveyance as agreed in the registered agreement as per Section 4 of the MOFA Act, the respondent No.2 filed an application before the Competent Authority under the provisions of MOFA Act.

3. The petitioner relying on communication dated 15 May 1981 issued by the Additional Secretary, Ministry of Finance restraining the petitioner from disposing of the property expressed its inability convey the property in favour of respondent No.3.

4. The Competent Authority under the provisions of MOFA Act by the impugned order directed petitioner to execute unilateral deemed conveyance in favour of respondent No.3/society and issued a certificate to that effect. Said order dated 9 September 2021 alongwith certificate is the subject matter of challenge.

5. Learned Advocate for the petitioner relying on the communication dated 16 May 1981, submitted that the said communication restrains the petitioner from disposing of any assets of petitioner without prior permission from the Government.

6. I have perused the communication, the said communication dated 15 May 1981 restrains the petitioner/Corporation from

disposing of any assets without prior clearance from the Government. Such communication could have empowered the Government to retain such assets surplus, if the transfer by the Corporation was for public use. However, the liability to execute deemed conveyance is created under the provisions of MOFA Act. Such statutory liability created under the provisions of the said Act cannot be whittled down by communication issued by the Additional Secretary on behalf of the Ministry of Finance. Express provisions of Statute would over ride the communication between the statutory Corporation and the Central Government. It is not in dispute that the petitioner is the promoter under the provisions of the MOFA Act. It is also not in dispute that the agreement entered by the petitioner with the members of respondent No.3/society are registered which create an obligation on petitioner to convey title in favour of respondent No.3. Therefore, such communication cannot take away statutory rights conferred on members of respondent No.3/society under the provisions of MOFA Act. Hence, no interference under the extraordinary constitutional jurisdiction is called for.

7. However, it is made clear that the conferment of deemed conveyance would not affect petitioner's right to file civil suit for ventilation of its grievance, if any.

8. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)