

Shabnoor

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

WRIT PETITION NO.9943 OF 2022

New Kshitij Vihar Cooperative Housing
Society Limited ... Petitioner
V/s.
Kshitij Vihar Cooperative Housing
Society Limited & Ors ... Respondents

**WITH
WRIT PETITION (ST) NO.32779 OF 2022**

Sanjay Dnyanoba Bhujbal ... Petitioner
V/s.
Kshitij Vihar Cooperative Housing
Society Limited & Ors ... Respondents

Mr. Surel S. Shah a/w Mr. Sandeep S. Salunkhe, for
Petitioner in WP No.9943/2022.

Mr. P. B. Gujar, for Petitioner in WP (ST)
No.32779/2022 and for Respondent No.2 in WP
No.9943/2022.

Mr. S. D. Rayrikar, AGP for State/Respondent.

Mr. Nilesh Wable, for Respondent No.1 in WP
No.9943/2022.

CORAM : AMIT BORKAR, J.

DATED : MARCH 20, 2024

P.C.:

WRIT PETITION NO.9943 OF 2022

1. The petitioner/Cooperative Housing Society is challenging
an order dated 26 July 2022 passed by the Competent Authority in

exerciser of power under Section 11(3) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("MOFA" for short).

2. Respondent No.1 / Society filed an application under Section 11(3) of MOFA Act for issuing of deemed conveyance certificate in its favour. The total land in layout in relation to which respondent No.1 / Society applied for deemed conveyance of land was ad-measuring 4015 square meters. It is undisputed that the petitioner / Housing Society has been registered on 11 June 2013 with in the layout in relation to which respondent No.1 has sought deemed conveyance. The promoter brought this fact to the notice of the Competent Authority under the provisions of Section 11 of the MOFA Act. However, the Competent Authority rejected the promoter's objection to add petitioner as a party to the proceedings under Section 11 of MOFA Act on the ground that the construction of petitioner's building is illegal and, therefore, respondent No.1 is entitled to unilateral deemed conveyance in relation to entire land ad-measuring 4015 square meters.

3. The Government Resolution dated 22 June 2018 which has been authenticated under Article 166(2) of the Constitution of India and, therefore, has force of law requires existing Housing Society on the layout to be made as party to the proceedings under Section 11 of the MOFA Act. Despite such requirement under law, the Competent Authority refused to add petitioner as party to the proceedings under Section 11 of the MOFA Act. Therefore, in my opinion, the Competent Authority was not justified in refusing to add the petitioner/Housing Society as party to unilateral deemed

conveyance proceedings on the ground that petitioner's construction is illegal. Denying opportunity of hearing based on merits of litigants claim will be putting cart before horse. Once, law requires that the existing Housing Society on the layout need to be added as party to the proceedings under Section 11 of the MOFA Act, the Competent Authority could not have brush aside the promoter's objection particularly when there is no dispute about the fact that the Housing Society is on the layout applied by respondent No.2 for unilateral deemed conveyance.

4. Learned Advocate for respondent No.1 pointed out that after the impugned order conveyance has been executed in favour of respondent No.1. Therefore, in my opinion, following order would meet the ends of justice:

(a) The impugned order dated 26 July 2022 passed by the Competent Authority and the District Deputy Registrar, Cooperative Society, Pune Rural in Application No.3 of 2022 is quashed and set aside.

(b) Proceedings are remanded back to the District Deputy Registrar, Cooperative Society Pune for decision afresh by adding petitioner as party to the said proceedings.

(c) The District Deputy Registrar shall give an opportunity of hearing to both sides and shall pass fresh order.

(d) The conveyance executed in favour of respondent No.1 shall be subject to further decision of the District Deputy Registrar.

(e) Considering the pendency of this writ petition, the District

Deputy Registrar shall decide the proceedings within three months from the date of appearance of the parties.

(f) Parties shall appear before the District Deputy Registrar on **27 March 2024 at 10:30 a.m.**

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

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6. In view of the order passed in above petition, the writ petition of developer stands disposed of in above terms.

(AMIT BORKAR, J.)