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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10945 OF 2023**

Jai Pragati Co-operative ... Petitioner
Housing Society Limited

Vs.

State of Maharashtra through the ... Respondents
District Deputy Registrar and Others

Mr. Siddhesh Borkar for the Petitioner.

Mr. Naushad Engineer a/w Mr. Shanay Shah and Mr. Vasim A. Shaikh
i/b. M/s. Pravin Mehta & Mithi & Co. for Respondent No.2.

Ms. Sulbha Chipade, AGP for the State.

CORAM : GAURI GODSE, J.

DATE : 15th MARCH 2024

P.C.

1. This petition takes an exception to the order dated 29th December 2022 passed under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("MOFA") on an application filed by the petitioner-society. By the said order an area of 1685.63 square meters out of the total area of 3027.04 square meters has been granted to the petitioner by way of unilateral deemed conveyance.

2. Learned counsel for the petitioner submitted that the petitioner-society is aggrieved by the said order as a lesser area has been granted in favour of the society. In support of his submissions that the petitioner-society was entitled to the entire area, he relied upon paragraph 39 of the flat purchase agreement. He submits that in the flat purchase agreement executed under MOFA, it was specifically agreed that the land on which the building was proposed to be constructed also consisted of a chawl which was occupied by the tenants. The said clause in the agreement further indicated that the tenants would be under the rights and control of the land owner till the formation of the Co-operative Society. He submits that the petitioner-society is formed in the year 1981. Hence, after formation of society, the land owner and the promoter, had no existing claim against the tenants and the area occupied by the tenants in the existing chawl. He submits that on formation of the society, the society is entitled to have the said area which is occupied by the said chawl.

3. Learned counsel further submitted that the tenants/occupants of the said chawl have been subsequently admitted as members of the petitioner-society and hence it was in the interest of the society that

the area occupied by the said chawl was also transferred to the society. To support his submission that the tenants/occupants of the chawl have been admitted as members of the society, he relies upon the ground (IV) of the memo of the petition and the list annexed to the petition showing the tenants were added as members of the petitioner society.

4. Learned counsel for the petitioner further submitted that the developer had admitted before the competent authority that the chawl had been occupied by the tenants. He submits that though it was admitted that the occupants/tenants of the said chawl were occupying the chawl which was also the subject matter of the application made by the petitioner, the impugned order was passed without hearing the said tenants/occupants though they were necessary parties.

5. He submitted that in clause (d) of paragraph 22 of the impugned order, the competent authority has recorded that the chawl still exists and is occupied by a total built-up area of 1934.82 square meters and this area occupied by the occupants/tenants needs to be protected and cannot be granted to the petitioner-society. He submits that the said observation is recorded without hearing the tenants/occupants of

the said chawl.

6. Learned counsel for the petitioner thus submitted that in view of the aforesaid facts, it is clear that the developer/promoter was under an obligation to transfer the entire area in favour of the petitioner-society. He submitted that Section 11 of the MOFA clearly indicates that the promoter's right, title interest is to be conveyed to the society. Hence, the petitioner would be entitled to the entire area as indicated in the flat purchase agreement and specifically described in paragraph 39 of the agreement.

7. Learned counsel appearing for respondent no. 2 submits that according to the said clause, no agreements are at any time executed in favour of the tenants/occupants of the said chawl. He thus submitted that in the absence of any agreement, society was not entitled to seek any rights in respect of the said area by relying upon the said clause.

8. I have considered the aforesaid submissions. Perused the papers. Paragraph 39 of the flat purchase agreement records the existence of the chawl and that the same is occupied by tenants. The

said clause records that tenants would be absolutely under the rights and control of the land owner till the formation of the Co-operative Society. The said clause records that the owner or the builders would sell these tenements to the respective tenants/occupants on an ownership basis on the price at their own discretion and that the room/structures not sold will be sold or handed over to the said Co-operative Society being formed and registered on the price and consideration of 100 months rent including taxes etc. A perusal of the said clause further indicates that the said buyers or individuals collectively would not object or refuse to accept them under the ownership of Co-operative Housing Society being formed by them.

9. Thus, the plain reading of the said clause categorically indicates that the area occupied by the said chawl was never agreed to be transferred in favour of the society. The said clause indicates that the tenants would be under the rights and control of the land owner till the formation of the society. However, the contents of the said clause would at the most be interpreted to mean that after the concerned tenements were sold to the tenants/occupants on an ownership basis they would be added as members of the society.

10. Though the petitioner-society has raised a ground that occupants/tenants of the said chawl are admitted as members, the memo of the petition is bereft of any particulars regarding the date of admitting them as members and/or agreement entitling the said occupants/tenants to claim membership of the petitioner-society. Even otherwise, adding the occupants/tenants of the said chawl as members of the society would not create any right in favour of the society for claiming deemed conveyance in respect of the area occupied by the said chawl.

11. There is no substance in the contention of the learned counsel for the petitioner the competent authority has in the absence of tenants/occupants recorded observation that the area occupied by the tenants in the chawl needs to be protected and cannot be granted to the petitioner-society. The said submission is contrary to the other submissions made on behalf of the petitioner-society that the tenants/occupants are admitted as members of the society. Assuming that the said tenants are added as members of the petitioner society, then obviously the petitioner-society represented the said tenants/occupants. The said argument does not support the

petitioner's claim for conveyance for the additional area.

12. Section 11 of the MOFA provides for the transfer of right, title and interest of the promoter in favour of the society. The clause of the agreement clearly indicates that the rights of the area occupied by the chawl were reserved by the land owner. Hence, there is no question of grant of any unilateral deemed conveyance in favour of the petitioner-society based on the said clause relied upon by the learned counsel for the petitioner.

13. The law regarding the scope of Section 11 of MOFA is no longer res integra. The said proceedings are summary in nature and do not decide any right, title or interest in the property. The procedure for grant of unilateral deemed conveyance has been laid down by way of guidelines given by the State Government under a circular dated 22nd June 2018. It is well settled principle of law that in the proceeding under Section 11 of MOFA the society would be entitled to an area by way of unilateral deemed conveyance in proportion to the constructed area of the society. Any right, title or interest in the property claimed by any party cannot be adjudicated in a summary procedure under Section 11 of MOFA.

14. It is not the case of the petitioner-society that the area transferred by way of unilateral deemed conveyance by the impugned order is not in proportion to the constructed area of the society. The claim of the society appears to be only for an additional area by relying upon the said clause in the agreement. The claim of the society for any additional area could not have been the subject matter of the proceeding under Section 11 of MOFA. It is well well-settled principle that the order of the unilateral deemed conveyance does not adjudicate rights and entitlement of the parties qua the title. Hence, in view of the well-settled principle of law, I do not find any reason to exercise power under Article 227 of the Constitution of India to interfere in the impugned order.

15. I do not find any illegality or error in the reasons recorded in the impugned order. For the aforesaid reasons, I do not see any substance in the ground raised on behalf of the petitioner. The petition is devoid of any merits. Hence, the petition is dismissed.

[GAURI GODSE, J.]