



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15024 OF 2023

Om Developers Project BanerPetitioner
Partnership Firm Through its partnes

Vs.

Om Vista Residency Co OpRespondent
Hsg. Soc. Ltd through its Secretary
Shrikant G Bhagwat

Dr. Uday Warunjikar a/w Ms. Sonali Chavan for the petitioner
Smt. Savita Prabhune AGP for the State

CORAM : GAURI GODSE, J.

DATE : 12th MARCH 2024

P.C.

1. This petition takes an exception to the order passed under section 11 of the Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ('MOFA') granting unilateral deemed conveyance in favour of respondent no. 1-society. This petition was substantially argued on 8th March 2024 and learned counsel for the petitioners had taken time to take instructions on

whether the petitioners were agreeable to withdraw the petition and file appropriate civil proceedings to agitate the grievance regarding the rights of the petitioners claiming additional FSI.

2. Today again, the petition is sought to be argued by the learned Advocate on record on the same grounds which were already argued on 8th March 2024. Learned advocate for the petitioners submitted that in clause 5 of the conclusions recorded in the impugned order, it is specifically recorded that the chairman of the society had submitted no objection as recorded in the general body meeting of the society regarding FSI/TDR to be used by the opponents i.e. present petitioners. Learned advocate for the petitioners submitted that though the same was referred to by the competent authority, it does not find a place in the operative part of the impugned order.

3. I have considered the submissions. Perused the record. The law in respect of the scope of section 11 of MOFA is no longer *res integra*. The scope of section 11 of MOFA for the grant of unilateral deemed conveyance is explained in various decisions of this Court by following the principles laid down in the decision of ***Mazda Construction Company and***

*Ors v. Sultanabad Darshan CHS Ltd and Ors*¹. It is thus a well-settled principle of law that the proceedings under section 11 of the MOFA are summary proceedings and the question of title to the property is not decided by the competent authority.

4. The submissions made on behalf of the petitioners are only regarding the rights of the petitioners claiming additional FSI/TDR. It is not the case of the petitioners that the proportionate area transferred to the society by way of unilateral deemed conveyance is not with reference to the area of construction of the building of the society. Hence, I do not see any error or any illegality in the reasons recorded by the competent authority in the impugned order. No case is made out for invocation of the powers under Article 227 of the Constitution of India in the present petition. The petition is devoid of any merits.

5. Hence, for the reasons recorded above, the petition is dismissed.

[GAURI GODSE, J.]

¹ 2013 (2) ALL MR 278