

VRJ

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

WRIT PETITION NO.3752 OF 2022

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Shyam Balaram Mhatre & Anr. ... Petitioners

V/s.

Mahadev Dadu Dhekale,
Through The Chairman Mahalaxmi
Vaibhav Cooperative Housing Society
Limited & Ors. ... Respondents

Mr. R. M. Haridas i/by Mr. Dilip B. Shinde for the petitioners.

Mr. A.S. Khandeparkar with Mr. Saurabh Mittal, Mr. Rohit Mahadik, Mr. Vaibhav Kulkarni i/by Khandeparkar & Associates for respondent No.1.

Ms. M. S. Srivastava, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 24, 2024

PC.:

1. The petitioners claiming to be owners of the property are challenging the order dated 28th September 2021 passed by the Competent Authority granting deemed conveyance in favour of respondent No.1.

2. According to the petitioners, there is no privity of contract between the petitioners and the promoter. There is neither a power of attorney, development agreement or any other document

executed in favour of the promoter permitting him to construct over the property in dispute. In the absence of transfer of right, title and interest by the petitioners in favour of the promoter, the authority under the provisions of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (hereafter, "MOFA Act", for short) could not have passed an order of deemed conveyance in the exercise of power under section 11(3) of the MOFA Act. According to the petitioners, Sub-section (1) of section 11 of the MOFA Act requires the promoter to complete his title before executing conveyance and in the absence of completion, such title order under section 11(3) of the MOFA Act could not have been passed by the Competent Authority. For the purpose of considering the said submission, it is necessary to set out relevant provisions of the MOFA Act, which are as under:-

“2.

(a)...

(b)...

(c) “promoter” means a person and includes a partnership firm or a body or association of persons whether registered or not who constructs or causes to be constructed a block or building of flats or apartments for the purpose of selling some or all of them to other persons, or to a company, co-operative society or other association of persons, and includes his assignees; and where the person who builds and the person who sells are different persons, the term includes both.

11.(1) A promoter shall take all necessary steps to complete his tile and convey to the organisation of persons, who take

flats, which is registered either as a co-operative society or as a company as aforesaid or to an association of flat takers or apartment owners, his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed under section 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.

(2)....

(3) If the promoter fails to execute the conveyance in favour of the Co-operative society formed under section 10 or, as the case may be, the Company or the association of apartment owners, as provided by sub-section (1), within the prescribed period, the members of such Co-operative society or, as the case may be, the Company or the association of apartment owners may, make an application, in writing, to the concerned Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the society or the Company or the association, who have purchased the flats and all other relevant documents (including the occupation certificate, if any), for issuing a certificate that such society, or as the case may be, Company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.

(4) The Competent Authority, on receiving such application, within reasonable time and in any case not later than six months, after making such enquiry as deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, shall issue a certificate to the Sub-Registrar or any other appropriate

Registration Officer under the Registration Act, 1908, certifying that it is a fit case for enforcing unilateral execution, of conveyance deed conveying the right, title and interest of the promoter in the land and building in favour of the applicant, as deemed conveyance.

3. On careful reading of the definition of promoter along with section 11 of the MOFA Act, it appears that Sub-section (1) of section 11 of the MOFA Act creates an obligation on the promoter to form a cooperative society or a company and to transfer his right, title and interest in the land and building. Sub-section (3) of section 11 of the MOFA Act permits the Competent Authority in case of failure of promoter to execute conveyance in favour of cooperative society on an application filed by such association. Sub-section (4) of section 11 of the MOFA Act lays down the scope of inquiry and power of the Competent Authority.

4. According to the learned advocate for the petitioners, in the absence of right, title and interest in favour of the promoter, he could not have transferred any right, title and interest in favour of society as Sub-section (1) of section 11 of the MOFA Act requires the promoter first to complete his title and then execute conveyance in favour of the society. The submission appears attractive; however, in the context of the scope of power of the Competent Authority, in my opinion, such adjudication is beyond the powers of the Competent Authority. The nature of inquiry required by the Competent Authority is verification of documents submitted by the association. Sub-section (3) of section 11 of the MOFA Act requires the association to submit true copies of

registered agreements for sale executed by the promoter and other relevant documents, including an occupation certificate, if any. Sub-section (4) of section 11 of the MOFA Act requires the Competent Authority to verify the authenticity of documents produced. Therefore, the inquiry contemplated by Sub-sections (3) and (4) of section 11 of the MOFA Act is to ensure that the certificate of deemed conveyance under Sub-section (4) of section 11 of the MOFA Act is issued as per the agreement executed by the promoter with the purchasers and whether the documents produced by the association are authentic or not. Whether the promoter had complete title over the property needs to be decided conclusively by the Civil Court as the questions of title as only the Civil Court has the power to decide the title of immovable properties. Sub-sections (3) and (4) of section 11 of the MOFA Act have been enacted to benefit purchasers so that expeditious conveyance is executed in favour of the association. A consistent view of this Court is that the conferment of deemed conveyance by itself is not a conclusive proof of conferment of title on the association, and any person aggrieved by such certificate of deemed conveyance can institute a civil Suit for enforcement of his civil rights.

5. In the facts of the case, if the petitioners claim to be owners of the property, the remedy for them is to file a civil suit, if permissible in law, seeking appropriate reliefs in relation to the absence of right, title and interest of the promoter and seeking a declaration that consequent conferment of deemed conveyance under the provisions of the act is void. Since the order of deemed

conveyance does not affect the substantive rights of the parties, granting liberty to the petitioners to adopt remedy of civil suit if permissible in law, the writ petition is dismissed. No costs.

(AMIT BORKAR, J.)