

Shabnoor

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

WRIT PETITION NO.9481 OF 2016

**WITH
INTERIM APPLICATION NO.16096 OF 2023**

**WITH
CIVIL APPLICATION NO.1775 OF 2018**

**IN
WRIT PETITION NO.9481 OF 2016**

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Vinayak Moreshwar Donde & Anr ... Petitioners

V/s.

The Competent Officer And
District Deputy Registrar, Cooperative
Societies Thane & Ors ... Respondents

Mr. Ranjit Thorat a/w Mr. Ajit Tamhane, Mr. Rohan
Tamhane, Ms., Gunjan Tamhane, Mr. Yash Juwarkar
i/by Tamhane & Co., for Petitioners/Applicants.

Mr. S. D. Rayrikar, AGP, for State/Respondent Nos.1 &
5.

Mr. A. G. Pandit a/w Chairman of Respondent No.2, for
Respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 12, 2024

PC.:

1. The petitioner (owner) is challenging order passed by
respondent No.2 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') directing deemed conveyance in favour of respondent No.2.

2. The petitioners grievance is to the effect that conferment of such conveyance will affect petitioners rights prejudicially as area around and below the portion of petitioners bungalow will be covered by order of deemed conveyance.

3. I have given anxious consideration to the submissions canvassed across the bar. The parameters in the exercise of power under Section 11 of the MOFA Act by respondent No.4 are now well settled in the scheme of the said Act and Rules. The promoter is under obligation to agree to sell the flats/units in the said building, a promoter shall register it and then form an organization of flat purchasers and after completion of development execute an instrument conveying right, title and interest in the land and building, in accordance with the agreement executed with flat purchasers. The Competent Authority is conferred that power of execution of conveyance, due to refusal and neglect on the part of the promoter's to discharge the obligation to execute conveyance. The Legislature, therefore, intervened to enforce such obligation by empowering the Competent Authority to be satisfied that it is a fit case for issuing such certificate of deemed conveyance in favour of the organization of purchasers. The Competent Authority is required to follow principles of natural justice upon verification of authenticity of documents.

4. The decision of this Court in the case of **Mazda Construction Company And Others Vs. Sultanabad Darshan CHS Ltd. And Others**, reported in (2012) SCC OnLine Bom 1266 makes an elaborate analysis of the provisions contained in the MOFA Act. The Single Judge of this Court has explained the nature of power exercised by the Competent Authority in paragraph 20 of the said judgment as under:

5. “20. To my mind, reading of Sections 10 and 11 together with Section 5A would make it amply clear that what is to be performed by the Competent Authority is a duty and obligation which the promoter is to perform in law. That is to convey the title and execute the documents according to the agreement. If that is the duty which is to be performed by the promoter, but which he fails to perform, then, the Competent Authority steps in to fulfil it. That is a duty towards the flat purchasers and which duty cannot be avoided except at the cost and pains of legal proceedings including a criminal prosecution. In these circumstances and when sections 10 and 11 are read together and harmoniously with the preceding sections including those which contain the particulars of the agreement, then, it becomes absolutely clear that what has to be conveyed even by a deemed conveyance, which is an unilateral act and which enables the flat purchasers to acquire the Promoter's right, title and interest in the land and the building. Therefore, it cannot be said that an unilateral deemed conveyance conveys something more than what belongs to the Promoter. Section 11(1) provides for conveyance of Promoter's right, title and interest in the land and building as is clear from the words “his right, title and interest....” appearing therein....”

6. At this stage, it is necessary to refer to the Division Bench judgment of this Court in the case of **M/s. Shree Chintamani Builders Petitioner Vs. State of Maharashtra & Ors.**, reported in (2016) SCC OnLine Bom 9343 wherein it was observed that an order granting deemed conveyance would not conclude the issue of right, title of the immovable property. It was not as if such an order was passed, the owner/builder had no remedy to question the act of society on the strength of such deemed conveyance. It is open for the developer/owner to bring a substantive suit on the title and point out the issues concerning right, title or interest on the immovable property.

7. Therefore, in the facts of the case, it would be in the interest of justice that the petitioners be permitted to approach the Civil Court by way of suit to seek appropriate relief for ventilation of their grievance. Therefore, by keeping all contentions raised in the present writ petition open, the petitioner is permitted to file civil suit.

8. Since, this Court had granted order of *status quo*, the same is continued for a period of four weeks from today.

9. The writ petition stands disposed of.

10. All pending interim applications stand disposed of as infructuous.

(AMIT BORKAR, J.)