

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4649 OF 2024**

Seth Cowasji Dhunjishaw Baug Charity Trust ...Petitioner

Versus

District Deputy Registrar And Ors. ...Respondents

....

Mr. Darshit K. Jain i/by Ms. Divya Jain, for the Petitioner.

Mr. Dhawal A. Patil i/by M/s. K. Ashar & Co. for Respondent Nos.5 to 8.

Mr. R. S. Pawar, A.G.P. for the Respondent – State.

....

CORAM : AVINASH G. GHAROTE, J.

DATE : 29th JULY, 2024

P.C.:

1. Heard Mr. Darshit Jain, learned counsel for the petitioner.
2. The petition questions the order dated 10.11.2022 passed by the Competent Authority granting a direction under Section 11(3) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("MOFA Act") for executing a Deed of Assignment of the lease hold rights, which the developer under the Agreement of Development had with the original owner of the land.
3. What is necessary to note is that the petitioner is a trust, who in pursuance to an application under Section 36(1)(b) of the Bombay Public Trusts Act, 1950 had been granted permission to

lease its land, to the developer, who is respondent No.2 by an order dated 17.07.1981 (Page-21) in pursuance to which a registered Lease Deed dated 06.10.2002 came to be executed by the petitioner in favour of the respondent No.2 (Page-23) which was in respect of an area admeasuring **11,910.02** sq. meters (Page-31), which stood demarcated as sub-plot A to sub-plot C and detailed in the Second Schedule Part-I to III. The respondent No.2 thereafter, has constructed multiple buildings upon sub-plot A in respect of which the impugned order dated 10.11.2022 has been passed.

4. Mr. Darshit Jain, learned counsel for the petitioner submits that the Competent Authority could not have directed grant of a Deed of Assignment on the ground that Section 4 Agreement contemplated grant of a sub lease.

5. Mr. Dhawal Patil, learned counsel for the respondent Nos. 5 to 8 while opposing the petition contends, that since a lease has already been executed and registered by the petitioner in favour of the respondent No.2, the petitioner has no cause of action to challenge the impugned order.

6. I am not able to accept the argument of learned counsel for

the petitioner for the reason that section 11(1) of MOFA enjoins upon the promoter to transfer his right title and interest in the concerned property to the society. Admittedly, in the instant matter, there is a Deed of Lease in favour of the respondent No.2 and all that has been directed by the impugned order dated 10.11.2022 is the assignment of the rights, derived by the respondent No.2 under the said Deed of Lease dated 06.12.2002 in favour of the Society. Even otherwise the petitioner having already created a lease in respect of the aforesaid land in favour of the respondent No.2 would be bound by the said lease and cannot raise a grievance contrary thereto, by contending that there are multiple societies in respect of individual towers, who may claim contrary to each other, for the reason that any such claim, between the societies would be a matter interse between them and unless the respondent No.2 transgresses the area for which the lease has been created in his favour, the petitioner would have no cause for the grievance whatsoever. The petition therefore is without any merits and is dismissed. No costs.

(AVINASH G. GHAROTE, J.)

Note: This order is modified by an order dated 02.08.2024. Corrections are shown in bold and italics.