

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

WRIT PETITION NO. 3684 OF 2024

Gabriel Apartment Co Op Hsg Ltd

...Petitioner

Versus

District Deputy Registrar Cooperative Societies

...Respondents

....

Mr. S. Shamim, i/b S. Shamim & Co, for the Petitioner.

Ms. V. R. Raje, A.G.P. for the Respondent – State.

....

CORAM : AVINASH G. GHAROTE, J.

DATE : 24th JULY, 2024

P.C.:

1. Heard. Mr. S. Shamim, learned counsel for the petitioner. The petition questions the order dated 22.05.2023 (page 50) whereby the application filed by the petitioner under Section 11(3) of the Maharashtra Ownership Flats (Regulation of the Promotion of construction, sale, management and transfer) Act, 1963 (“MOFA”) has been rejected (page 50), by holding that since there was a dispute regarding the title of the property in question,

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the same could not entertained, however liberty has been granted, to file fresh application.

2. Mr. S. Shamim, learned counsel for the petitioner, submits that there is no dispute regarding the title to the property and therefore the rejection of the application under Section 11(3) of MOFA, was not sustainable in law.

3. It is not in dispute that in Civil Suit No. 856 of 1988, a Court Receiver was appointed in respect of the suit properties, which includes the property in respect of which Deemed Conveyance is being claimed under Section 11 (3) of MOFA. The learned counsel for the petitioner submits, that he has filed an application in the said suit for discharge of the Court Receiver, which would indicate that the custody of the said property is with Court Receiver, and continues as of date. In that light of the matter, there cannot be any Deemed Conveyance, till such time, that the property is released from the custody of the Court Receiver and clear title found to the same.

4. In that view of the matter, I do not see any reason to interfere in the impugned order passed by the Competent Authority, as liberty has already been granted to the petitioner, to

file an application afresh, once the cloud upon the title, is taken away.

5. The petition is dismissed. No costs.

(AVINASH G. GHAROTE, J.)