

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6472 OF 2024
WITH
INTERIM APPLICATION NO.8393 OF 2024

Louis Nicholas Fernandes

...Petitioner /
...Applicant

Versus

Continental Towers Cooperative
Housing Society Limited And Ors.

...Respondents

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Mr.Denzil D'mello for the Petitioner / Applicant.

Mr.Mayur Khandeparkar with Mr.Kiran Saha i/b One Point Legal
Solutions for Respondent No.1.

Smt.VR. Raje, A.G.P for the Respondent No.5 – State.

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CORAM : AVINASH G. GHAROTE, J.
DATE : 2nd JULY 2024

P.C.:

1. Heard Mr.D'mello, the learned counsel for the
petitioner.

2. The petition seeks question that part of the order
dated 8.2.2024 passed by the Competent Authority under Section
11 (3)of The Maharashtra Ownership Flats Act (MOFA), by which

the application of the petitioner for impleadment has been rejected ((page 605). It is the case of the petitioner that by virtue of the decree dated 7.8.2006 passed by City Civil Court in S.C. Suit No.3227 of 1997, the petitioner has been declared entitled to half share of the property in respect of a portion, of which deemed conveyance has been directed. He therefore, submits that the petitioner is necessary party to the proceedings under Section 11 of MOFA and the impugned order therefore, is liable to be quashed and set aside.

3. Mr.khandeparkar, learned counsel appears for respondent no.1, learned AGP appears for respondent no.5, and while supporting the impugned order, contend that the proceedings before the Competent Authority under Section 11 (3) of MOFA cannot be converted into the dispute between the land owners, considering which the impugned order is correct.

4. Section 11 (3) of MOFA confers a limited jurisdiction upon the Competent Authority to direct a deemed conveyance in case a promoter fails to fulfill the obligation in terms of the agreement under Section 4 and the sanctioned lay out plan, within the time frame, as indicated in Rule 9 of Rules framed

thereunder. This would clearly indicate the limits of the jurisdiction of the Competent Authority. The petitioner claims to have a right in the land in question on the basis of the judgment and decree passed by City Civil Court dated 7.8.2006, against which First Appeal No.3092 of 2006 is presently pending. It would therefore be apparent that a dispute *vis-a-vis* the property in question between the co-owners is sought to be agitated under the plea of impleadment which is impermissible under Section 11 (3) of the of MOFA.

5. I therefore, do not find any merit in the petition, the same is dismissed. The Interim Applications are accordingly disposed of.

(AVINASH G. GHAROTE, J.)