

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

WRIT PETITION NO. 9982 OF 2024

M/s. O. P Enterprises And Anr.	...Petitioners
Versus	
District Dy. Registrar Co-op. Societies, Mumbai (II) And Ors.	...Respondents

....

Mr.Kunal Mehta with Ms.Jyoti Ghag and Ms.Riti Gada i/bDUA Associates for the Petitioners.

Ms.Gauri Jadhav, A.G.P. "A" Panel Counsel with Mr. J.P. Patil, AGP for the Respondent – State.

Mr.Mayur Khandeparkar with Mr.Bishwajeet Mukherjee, Ms.Ami Oza and Hr.Hitesh Rajpurohit i/b H & A Legal for the Respondent No.3.

....

CORAM	:	AVINASH G. GHAROTE, J.
DATE	:	23rd JULY, 2024

P.C.:

1. Heard Mr. Mehta, the learned counsel for the petitioners.

The order dated 10.07.2024, by the Competent Authority under Section 11(3) of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale Management and Transfer) Act, 1963 (MOFA) (page 395), is under challenge in this petition, which is by the developer, on the ground, that the agreement of

sale dated 11.10.2006 between the developer and the purchaser of the flat contains clauses 43 to 46 (page 67), which grant the developer a right of way over an area admeasuring 30 ft. wide North-South, as described therein, which ought to have been taken into consideration by the Competent Authority, while deciding the application under Section 11(3) of MOFA. He submits that the Competent Authority had not granted opportunity to place this on record, for which he relies upon *Tushar Jivram Chauhan & Anr. vs. State of Maharashtra & Ors.*, reported in *2015 SCC OnLine Bombay 3865* para 20 and *Audumder CHS Ltd. vs. District Deputy Registrar & Ors.* reported in *2023 SCC OnLine Bombay 2560*, paragraphs 14, 16 and 17.

2. Mr.Khandeparkar, the learned counsel for the respondent No.3 supports the impugned order relying upon the language of Sections 4 and 11 (3) of MOFA,

3. It is necessary to note that under Section 11(3) of MOFA, it is the obligation of the Competent Authority to ensure that the title, which is agreed to be given to the flat purchasers under the agreement under Section 4 of MOFA is completed. The approach to the Competent Authority under Section 11 (3) of

MOFA is upon the failure on the part of the developer, to perform his obligation in terms of the agreement under Section 4 of MOFA. The jurisdiction of the Competent Authority in the light of language of Section 11(3) of MOFA, is limited to ensuring transfer of title in favour of the Society comprising the prospective flat purchasers in terms of the agreement. While doing so, all that he is required to do, is to ensure that the percentage of undivided interest, in the common areas and facilities as well as the flats, with land appurtenant is conveyed to the Society. That is only the limited extent of jurisdiction which Section 11(3) of MOFA confers upon him.

4. Any claim made by the developer, of any right or way, in the lands in question, cannot form the subject matter of a proceeding under Section 11(3) of MOFA, as the Competent Authority would clearly lack jurisdiction, to decide such a claim.

5. Though it is contended that the agreement under Section 4 of MOFA in favour of prospective flat purchasers, contains, clauses 43 to 46, indicating right of way in the developer, the same is disputed by Mr.Khandeparkar, the learned counsel for the respondent No.3. This dispute regarding the right

of way, is obviously outside the jurisdiction of the Competent Authority under Section 11 (3) of MOFA, and cannot be adjudicated upon by him. I find this view in support by *Mazda Construction Company & Ors. vs. Sultanabad Darshan CHSL & Ors.* reported in *2013(2) ALL MR 278* and *Mohammed Zainul Abdeen vs. The Competent Authority & Ors.*

6. Since the claim for setting aside the impugned order, is based upon failure to grant opportunity to raise the above plea, I do not see any reason to permit the petitioners, to go back to the Competent Authority, on the plea of lack of opportunity, as obviously as recorded above, the plea is without jurisdiction. Though *Tushar Jivram Chauhan & Anr.* (supra) and *Audumbar CHS Ltd.* (supra) have been relied upon, they do not dwell upon a situation, in which a plea without jurisdiction, was claimed and sought to be raised before the Competent Authority In that light of the matter, I do see any reason to interfere in the impugned order. The petition is dismissed.

(AVINASH G. GHAROTE, J.)