

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

WRIT PETITION NO. 12627 OF 2024

Jagshi Jethabhai Chheda

.. Petitioner

Versus

District Deputy Registrar of Co-op.
Societies, Mumbai(1) & Ors.

.. Respondents

Mr. Rohan Cama, a/w. *Mr. Yuvaraj Singh and Mr. V. s. Vengurlekar i/b. M/s. Nair Vengurlekar & Co., Advocates for the Petitioner.*

Mr. Y. D. Patil, AGP for Respondent/State.

Mr. Anil Anturkar, Sr. Advocate, a/w. *Minal Chandnani and Mr. Kashish Chellani i/b. Jaiwant Chandnani & Associates for Respondent No.3.*

**CORAM: B. P. COLABAWALLA &
 FIRDOSH P. POONIWALLA, JJ.**

DATE: SEPTEMBER 5, 2024

P. C.

1. The above Writ Petition is filed seeking a Writ of Mandamus to Respondent No.1 to serve a certified copy of the final order passed by Respondent No.1 in Application No.40 of 2021 filed by Respondent No.3-Society seeking a deemed conveyance with respect of the subject land being Plot No.268, Dadar Matunga Estate, Telang Road, Matunga (C.Rply.), Admeasuring 879 sq. yards equivalent to 734.95 sq. meters or thereabouts, in the Registration District and Sub-District of Mumbai City and Mumbai,

Suburban along with a building called 'Meru Heights' containing 27 apartments standing on the subject land. The other relief sought is to restrain Respondent Nos. 1 to 3 from taking any steps towards implementation/enforcement of the order passed by Respondent No.1 in Application No.40 of 2021.

2. It is the grievance of the Petitioners that till date, the order passed by Respondent No.1 in Application No.40 of 2021 has not been served upon the Petitioner. The Petitioner is therefore unable to challenge the same. In the meanwhile, the Petitioner has received a notice dated 21st August 2024 from the Joint Sub-Registrar, Class-2, Mumbai City No.2 informing the Petitioner that if he does not produce, by 28th August 2024, (i) any appropriate stay order from the Court against the order of deemed conveyance passed by the learned District Deputy Registrar, Co-operative Societies, Mumbai City(1); or (ii) any application for refusal to register the said deed of conveyance, the process of registration of the deemed conveyance will be completed.

3. It is the case of the Petitioner that this notice dated 21st August 2024, and which called upon the Petitioner to file their objections by 28th August 2024, was received by the Petitioner only on 30th August 2024. It is in

this light that the Petitioner has written to the Sub-Registrar of Assurances on 30th August 2024 itself informing them of the aforesaid fact and requested them to give 2 weeks time to file their objections to the registration of the deemed conveyance.

4. It now transpires that despite this letter, the deemed conveyance has been registered today, and according to the Petitioner, without giving an opportunity to the Petitioner to file his objections to the registration of the deemed conveyance. Considering these facts, we are of the view that it is imperative that the State file its Affidavit in Reply to the above Writ Petition. More particularly, the State has to inform this Court about when the notice dated 21st August 2024 was served upon the Petitioner with the necessary proof. Additionally, the State will also have to file a Reply stating as to when the impugned order of deemed conveyance was served upon the Petitioner. This reply is necessary because this Court, in several decisions, has taken the view that the provisions of Section 11(5) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, are mandatory, and which *inter alia* require that before the deemed conveyance is registered, the promoter is given a reasonable opportunity of being heard. It is therefore imperative that the State file a Reply bringing on record as to when the notice dated 21st August 2024, and

which according to Respondent No.3 is the notice contemplated under Section 11(5), was served on the Petitioner.

5. The aforesaid reply shall be filed by the State on or before 19th September 2024 and a copy of the same shall be served on the Advocate for the Petitioner as well as on the Advocates for Respondent No.3.

6. We now place the above matter on 24th September 2024 under the same caption.

7. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]