IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12627 OF 2024

Jagshi Jethabhai Chheda & Anr. .. Petitioners

Versus

District Deputy Registrar of
Cooperative Societies, Mumbai & Ors. .. Respondents

UTKARSH KAKASAHEB BHALERAO

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Date: 2024.12.10 14:54:13 +0530

Mr.Rohaan Cama a/w Yuvraj Singh, V.S. Vengurlekar i/b M/s.Nair Vengurlekar & Co., Advocates for the Petitioners.

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

Ms.Minal Chandnani a/w Annie Cardoz, Advocates for Respondent No.3 (Meru Heights Co-op Housing Society).

CORAM: B. P. COLABAWALLA &
SOMASEKHAR SUNDARESAN, JJ.
DATE : DECEMBER 03, 2024

ORAL JUDGMENT: (Per B.P. Colabawalla J)

1. Rule. Respondents waive notice. With the consent of the parties, Rule made returnable forthwith and heard finally.

2. The above Writ Petition is filed seeking the following reliefs:-

> *"(A) this Hon'ble Court be pleased to issue a writ of mandamus or in the nature of mandamus or any other appropriate*

writ, order or direction for Respondent No.1 to serve a certified copy of the final order passed by Respondent No.1 in the Application No.40 of 2021 filed by Respondent No.3 society for seeking deemed conveyance with respect to the Subject Land being Plot No.268, Dadar Matunga Estate, Teleng Road, Matunga (C.Rly.), bearing New Survey No.882 (Part) corresponding to Cadastral Survey No.5/10 of Matunga Division admeasuring 789 sq.yards equivalent to 734.95 sq.meters or thereabouts in the Registration District and Sub-District of Mumbai City and Mumbai Suburban and assessed by the Municipal Corporation of Greater Mumbai under Municipal F-Ward No.7374 (1/2/3), Street Nos.11 and 11A alongwith the said Building being a building known as 'Meru Heights' containing 27 apartments standing on the Subject Land;

(B) *this Hon'ble Court be pleased to issue a writ of mandamus or in the nature of mandamus or any other appropriate writ, order or direction for restraining Respondent Nos.1 to 3 from taking any steps towards implementation/enforcement of the order passed by Respondent No.1 in the Application No.40 of 2021 filed by Respondent No.3 society including for registering conveyance in favour of Respondent No.3 society and/or acting in furtherance of the notice/letter dated 21 August 2024 issued by Respondent No.2 [annexed as Exhibit "H" hereto] with respect to the Subject Land being Plot No.268, Dadar Matunga Estate, Telang Road, Matunga (C.Rly.), bearing New Survey No.882 (Part) corresponding to Cadastral Survey No.5/10 of Matunga Division 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 and assessed by the Municipal Corporation of Greater Mumbai under Municipal*

F-Ward No.7374 (1/2/3), Street Nos.11 and 11A alongwith the said Building being a building known as 'Meru Heights' containing 27 apartments standing on the Subject Land, for a period of 16 (sixteen) weeks from such a writ or order being passed;

(B-1) this Hon'ble Court be pleased to issue a writ of mandamus or in the nature of mandamus or any other appropriate writ, order or direction for directing Respondent Nos.1 and 2 for taking necessary steps towards revocation/cancellation of the registration of the deemed conveyance forthwith, which has been done in favour of Respondent No.3 society on 05 September 2024 with respect to the Subject Land being Plot No.268, Dadar Matunga Estate, Telang Road, Matunga (C.Rly.), bearing New Survey No.882 (Part) corresponding to Cadastral Survey No.5/10 of Matunga Division 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 and assessed by the Municipal Corporation of Greater Mumbai under Municipal F-Ward No.7374 (1/2/3), Street Nos.11 and 11A alongwith the said Building being a building known as 'Meru Heights' containing 27 apartments standing on the Subject Land;"

3. As far as prayer clause (A) is concerned Mr. Cama fairly submitted that after the filing of the present petition, the Petitioners have got a certified copy of the final order passed by Respondent No.1 in Application No.40 of 2021. This Application was filed by the 3rd Respondent Society, seeking a deemed conveyance with respect to

subject land being Plot No.268, Dadar Matunga Estate, Telang Road, Matunga (C.Rly.), bearing New Survey No.882 (Part) corresponding to Cadastral Survey No.5/10 of Matunga Division 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 (for short the "**Subject Land**"). As far as prayer clause (B) is concerned, it seeks a direction to restrain Respondent Nos.1 to 3 from taking any steps towards implementation of the order passed by Respondent No.1 in the Application No.40 of 2021 filed by the Respondent No.3 Society. Mr. Cama fairly submitted that as far as prayer clause (B) is concerned, they will now adopt independent proceeding to challenge the order passed in Application No.40 of 2021. Hence prayer clause (B) also would not survive. The same is duly noted.

4. The challenge now only remains in relation to prayer clause (B-1) reproduced above. As can be seen from the said prayer, what is sought is the revocation/cancellation of the registration of the deemed conveyance done on 5th September 2024 in favour of Respondent No.3 in relation to the Subject Land. The short point on which this relief is sought is that before the deemed conveyance could be registered, a notice has to be served on the Petitioners as contemplated under Section

11(5) of the *Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short '**MOFA 1963**")*. According to the Petitioners, no notice as contemplated under 11(5) was ever served upon the Petitioners and no opportunity of hearing was given either. Therefore, the registration of the deemed conveyance runs foul of the mandatory provisions of Section 11(5), was the submission. In support of this argument, Mr. Cama relied upon a decision of two separate learned Single Judges of this Court in the case of ***Kashish Park Reality Pvt Ltd & Anr. V/S State of Maharashtra & Ors. [2020 SCC Online Bom 11644 : (2021) 3 MhLJ 778]*** and ***K. G. Associates & Anr. V/S District Deputy Registrar, Co-operative Societies & Ors. [2023 SCC Online Bom 2132]***.

5. On the other hand, the learned AGP appearing on behalf of Respondent Nos.1 and 2, submitted that on 21st August 2024, a letter was issued to the Petitioners calling upon them to file their objections to the registration or to produce any stay order of any Court from registering the deemed conveyance as per the order dated 14th March 2024. Any such objections were required to be filed by 28th August 2024, and none were received. He submitted that the said letter was

sent under certificate of posting through the postal department. He submitted that admittedly the said notice was received by the Petitioners on 30th August 2024. He submitted that the Petitioners, thereafter, on the same day, filed an Application before Respondent No.2 seeking time, without any proper or plausible reason. It is for this reason that the deemed conveyance document was registered on 5th September 2024. In these circumstances, the learned AGP submitted that the provisions of Section 11(5) have been duly complied with and there is no reason for interfering with the registration of deemed conveyance document. Consequently, he submitted that there is no merit in the Writ Petition and the same ought to be dismissed.

6. The learned advocate appearing on behalf of the Respondent No.3 Society also adopted the arguments canvassed by learned AGP and submitted that the above Writ Petition be dismissed.

7. We have heard the learned counsel for the parties at some length. We have also perused the papers and proceedings in the above Writ Petition. The controversy in the above Writ Petition revolves around Section 11(5) of the MOFA, 1963. For the sake of convenience Section 11(5) of the MOFA, 1963 is reproduced hereunder:-

> ***"11. Promoter to convey title, etc., and execute documents, according to agreement***
> *(1).....*
> *(2).....*
> *(3).....*
> *(4).....*
> *(5) On submission by such society or as the case may be, the Company or the association of apartment owners, to the Sub-Registrar or the concerned appropriate Registration Officer appointed under the Registration Act, 1908, the certificate issued by the Competent Authority alongwith the unilateral instrument of conveyance, the Sub-Registrar or the concerned appropriate registration Officer shall, notwithstanding anything contained in the Registration Act, 1908, issue summons to the promoter to show cause why, such unilateral instrument should not be registered as 'deemed conveyance' and after giving the promoter and the applicants a reasonable opportunity of being heard, may on being satisfied that it was fit case for unilateral conveyance, register that instrument as, 'deemed conveyance'."*
>
> (emphasis supplied)

8. As can be seen from the aforesaid provision, once a Society, like the 3rd Respondent, submits to the Sub-Registrar or the concerned appropriate Registration Officer appointed under the Registration Act, 1908, the certificate issued by the Competent Authority alongwith the unilateral instrument of conveyance, the Sub-Registrar or the concerned appropriate Registration Officer shall, notwithstanding anything

contained in the Registration Act, 1908, issue summons to the promoter (in the present case the Petitioner) asking him to show cause why such unilateral instrument should not be registered as a deemed conveyance. After giving the promoter and the applicants [in the present case the 3rd Respondent Society] a reasonable opportunity of hearing, and on being satisfied that it was a fit case for a unilateral conveyance, the instrument would be registered as a deemed conveyance.

9. In the facts of the present case, it is the case of the State that the summons as contemplated under Section 11(5) is the letter dated 21st August 2024. The english translation of this letter is annexed at pages 196 and 197 of the Writ Petition and which translation is not disputed by any of the parties. For the sake of convenience the English translation of the said letter is reproduced hereunder:-

"To,

1. Meru Heights Co-op Housing Soc. Ltd.
Telang Road, Matunga,
Mumbai-400019

2) Shri.Jagshi Jethabhai Chheda and

3) Shri Vijay Jagshi Chheda
549, Meru Tower 'A' C.H.S.,
Jam-e-Jamshedji Road,
Matunga (CR), Mumbai-400019

4) Mrs.Chanchalben Jagshi Chheda

5) Mrs.Rupal Vijay Chheda

Meru Heights Co-op Housing Soc. Ltd
Apartment no.801, 268 Telang Road,
Matunga, Mumbai-400019

6) Brihanmumbai Municipal Corporation

The Estate (Property) Department
Mahanagarpalika Marg, Dhobi Talao,
Fort, Mumbai-400001

Subject: Registration of Deemed Conveyance under Section 11(3) of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963.

Reference-Letter OW No. Mu.Di.Mu/ADJ/M/255/2024/3770/2024 dated 06/08/2024 of Ld.Collector of Stamps, Mumbai along with the Order of District Deputy Registrar, Co-operative Societies, Mumbai City (1) City OW No.DDR-1/MUMBAI/MOFA/MERUHEIGHTS/1351/2024 DATED 08/08/2024 to Meru Heights Co-op Housing Soc. Ltd..

With regard to the above subject matter, vide the above-referred letters, Meru Heights Co-op Housing Soc. has submitted to this office a Deed of Deemed Conveyance with a copy of ADJ on 21/08/2024 as per the Order dated 08/08/2024 of District Deputy Registrar, Co-operative Societies, Mumbai City (1) City bearing No. OW No.DDR-1/Mumbai/Mofa/Meru Heights/1351/2024.

Accordingly, you are informed that if there is any appropriate stay order or express injunction has been obtained from the Court against the order of deemed conveyance passed by the Ld. District Deputy Registrar, Co-operative Societies, Mumbai City (1), or for refusal to register the said deed of deemed conveyance, the same should be submitted to this office by 28/08/2024, otherwise the said process of registration of the Deed will be completed.

Sd/-
(S.H. Dhakane)
Joint Sub-Registrar, Class-2
Mumbai City No.2"

10. As can be seen from the aforesaid letter, this so-called notice, and which is purportedly issued under Section 11(5), only

summarily calls upon the Petitioner to obtain an appropriate stay order or an injunction from the Court against the order of deemed conveyance passed by the learned District Deputy Registrar, Co-operative Societies, Mumbai City (1), or for refusal to register the said deemed conveyance, and which is to be submitted by 28th August 2024. On reading the aforesaid letter we have no hesitation in holding that this is certainly not a summons or notice as contemplated under Section 11(5) of the MOFA, 1963. As mentioned earlier, Section 11(5) clearly contemplates that a notice has to be issued to the promoters and the Applicant (society) to show cause why the unilateral instrument of deemed conveyance should not be registered, and an opportunity of hearing is to be given to the parties before the Registering Authority satisfies itself that it is a fit case for a unilateral conveyance. Only once these parameters are satisfied can the document be registered as a deemed conveyance. In the facts of the present case, we find that this is wholly absent. Firstly, the notice dated 21st August 2024 does not call upon the promoters to show cause as to why the deemed conveyance should not be registered. Secondly, no hearing was ever given to the Petitioners to show such cause. Thirdly, all that the notice informs is that the Petitioners are required to obtain a stay order or injunction from the Court and that too before a stipulated deadline, failing which he would proceed to register the deemed

conveyance document. There is nothing to show any effort to seek reasons to get satisfied, or of getting satisfied on merits, as to why the instrument must be registered. On this ground alone, we find that the deemed conveyance document could not have been registered.

11. There is yet another reason why the registration cannot stand. Even if we were to assume, for the sake of argument, that the letter dated 21st August 2024 is a notice as contemplated under Section 11(5), it is clear that the said notice calls upon the Petitioners to have their say by 28th August 2024. However, from the record it transpires that this notice is received by the Petitioner only on 30th August 2024. On the very same day, the Petitioner addressed a letter to Respondent No.2 asking for two weeks to put in their objections. This request was denied, and the deemed conveyance document was registered on 5th September 2024 by the Registering Authority. This is yet another reason why we hold that the action of registering the deemed conveyance document is contrary to the provisions of Section 11(5) as the same is done without giving any hearing to the Petitioner, and which is mandated by the said provision.

12. We are in agreement with the view taken by the learned Single Judge in the case of *Kashish Park Reality Pvt Ltd* that the registering authority cannot abdicate the responsibility and duty cast upon him by registering the deemed conveyance in contravention of statutory mandate under Section 11(5) of the MOFA, 1963. The actions of the registering authority by flouting the provisions of Section 11(5) cannot be countenanced as the same would be reducing it to a dead letter. Paragraph 29 and 30 of this decision reads as under:-

> "***29.*** *This provision under section 11(5) is essentially in two parts. The first part mandates (i) issuance of summons to the promoter to show cause why the unilateral instrument should not be registered as deemed conveyance and (ii) giving the promoter and the applicant a reasonable opportunity of being heard. The later part gives discretion to the Sub Registrar to register the unilateral instrument as deemed conveyance on being satisfied that it is a fit case for registration of unilateral conveyance. Thus, issuance of summons to show cause, giving opportunity of hearing and arriving at subjective satisfaction that it is a fit case for registration of unilateral conveyance are the prerequisites of registration of deemed conveyance under sub-section (5) of section 11 of MOFA. This statutory mandate has been provided by the legislature as check against potential abuse of rights conferred on the fat purchasers to have unilateral deemed conveyance executed and registered in their favour.*
>
> ***30.*** *In the instant case, it is not in dispute that respondent No. 8-Sub-Registrar has registered the unilateral instruments as deemed conveyance without issuing summons and without affording an opportunity of hearing to the petitioners, as contemplated under sub-section (5) of section 11 of MOFA. It is thus evident that respondent No. 8 has clearly abdicated the obligations and duty cast on him by registering the deemed conveyance in contravention of statutory mandate under sub-section (5) of section 11 of MOFA. Needless to emphasize that the exercise of powers by a statutory authority cannot be unbridled, unfettered or arbitrary but has to be within the framework and in consonance with the legislative provisions and the object which legislation*

intends to achieve. In the instant case, respondent No. 8 has flouted and set at naught the statutory mandate, thereby reducing it to a dead letter. Such action cannot be countenanced."

13. This decision in *Kashish Park Reality Pvt Ltd (supra)* was thereafter followed by another learned Single Judge of this Court in the case of *K.G. Associates (supra)*. The relevant portion of this decision is reproduced hereunder:-

> ***"66.*** *Having upheld the order dated 17 March 2020, the next issue sought to be raised by the Petitioners is about the registration of Certificate of deemed conveyance. Reliance is placed on sub-section (5) of Section 11 of the MOFA which reads as under:*
>
> > ***11. Promoter to convey title, etc., and execute documents, according to agreement.***
> >
> > *(1)*
> > *(2)*
> > *(3)*
> > *(4)*
> > *(5) On submission by such society or as the case may be, the company or the association of apartment owners, to the Sub-Registrar or the concerned appropriate Registration Officer appointed under the Registration Act, 1908, the certificate issued by the Competent Authority along with the unilateral instrument of conveyance, the Sub-Registrar or the concerned appropriate Registration Officer shall, notwithstanding anything contained in the Registration Act, 1908, issue summons to the promoter to show cause why such unilateral instrument should not be registered as 'deemed conveyance' and after giving the promoter and the applicants a reasonable opportunity of being heard, may, on being satisfied that it was a fit case for unilateral conveyance, register that instrument as 'deemed conveyance'.*
>
> ***67.*** *Thus, under the provisions of sub-section (5) of Section 11, it is mandatory on the part of the Sub-Registrar or the Registration Officer to issue a summons to the Promoter to show cause as to why his unilateral instrument should not be registered as deemed conveyance and to grant a reasonable opportunity of hearing to both the sides. In the present case, admittedly the Sub-Registrar or the Registration Officer failed to issue any show cause notice to the Petitioners, much less any opportunity of hearing was granted to them.*
>
> ***68.*** *In Kashish Park (Realtors) Pvt. Ltd. (supra), this Court has held the provisions of sub-section (5) of Section 11 to be mandatory and has set aside registration of conveyance on account of violation of that*

mandatory provision. This Court held in paras-29 and 30 as under:

> *29. This provision under section 11(5) is essentially in two parts. The first part mandates (i) issuance of summons to the promoter to show cause why the unilateral instrument should not be registered as deemed conveyance and (ii) giving the promoter and the applicant a reasonable opportunity of being heard. The later part gives discretion to the Sub Registrar to register the unilateral instrument as deemed conveyance on being satisfied that it is a fit case for registration of unilateral conveyance. Thus, issuance of summons to show cause, giving opportunity of hearing and arriving at subjective satisfaction that it is a fit case for registration of unilateral conveyance are the prerequisites of registration of deemed conveyance under sub-section (5) of section 11 of MOFA. This statutory mandate has been provided by the legislature as check against potential abuse of rights conferred on the fat purchasers to have unilateral deemed conveyance executed and registered in their favour.*
>
> *30. In the instant case, it is not in dispute that respondent No. 8-Sub-Registrar has registered the unilateral instruments as deemed conveyance without issuing summons and without affording an opportunity of hearing to the petitioners, as contemplated under sub-section (5) of section 11 of MOFA. It is thus evident that respondent No. 8 has clearly abdicated the obligations and duty cast on him by registering the deemed conveyance in contravention of statutory mandate under sub-section (5) of section 11 of MOFA. Needless to emphasize that the exercise of powers by a statutory authority cannot be unbridled, unfettered or arbitrary but has to be within the framework and in consonance with the legislative provisions and the object which legislation intends to achieve. In the instant case, respondent No. 8 has flouted and set at naught the statutory mandate, thereby reducing it to a dead letter. Such action cannot be countenanced.*

69. *Beyond contending that the error was on the part of the Registration Officer and that the error would amount to a mere irregularity, the Respondent No. 2 has failed to justify as to how breach of mandatory provisions under sub-section (5) of Section 11 of MOFA can be countenanced. It is Petitioner's case that, the registration was hurriedly done by purchasing the stamp duty on the evening of 23 July 2020 after receipt of notice of hearing of the present petition and the registration was effected in a hasty manner on 24 July 2020 before the petition could be taken up for hearing. I find considerable force in this submission of the Petitioners. The issuance of show-cause notice and grant of opportunity of hearing to the Promoter under sub-section (5) of Section 11 is a mandatory requirement. The provision is made to ensure that a party in whose favour order of deemed conveyance is passed, does not get an instrument registered contrary to or in excess of what is granted under the order. The Promoter is given an opportunity to raise objections to the instrument, which is sought to be registered, if the same is drafted contrary to the order of deemed conveyance passed by the Competent authority. This is actually what has happened in the present case where there appears to be some manipulation in the contents of para-5 under the heading "Observations" of order dated 17 March 2020. As directed by this Court by its order dated 17 December 2020, though the Competent Authority has failed to file an Affidavit, certified copy of the order dated 17 March 2020 is placed on record and para-5 under the heading "Observations" therein matches with the copy of the order produced by the Petitioners at Exhibit-K to the petition. The said para-5 reads thus:*

मा.जिल्हाधिकारी कार्यालयाकडील सुधारीत रेखांकन व बांधकाम परवानगी मिळणेबाबतच्या -आदेशानुसार रस्ते, सुविधा जागा व खुली जागा यांची देखभाल अर्जदार यांनी करावयास हवी अथवा ते देखभाल करण्यासाठी सुयोग्य प्राधिकरणाच्या ताब्यात दयावेत. या जागा व रस्ते सर्व जनतेच्या वापरासाठी खुले असतील तसेच रस्ते शेजारच्या जमिन मालकास वापरण्यास खुले ठेवले पाहीजेत. तसेच रस्त्याच्या मोबदल्याबाबतच्या अटि व शर्ती अर्जदार संस्थेचे सभासद व जाबदेणार यांचेमधील करारनाम्यानुसार राहतील.

14. In view of the foregoing discussion, we find that the registration of the deemed conveyance in respect of the Subject Land was contrary to the provisions of Section 11(5) and therefore has to be set aside. The above Writ Petition is accordingly allowed in terms of prayer clause (B-1) reproduced above. Rule is made absolute in the aforesaid terms and the Writ Petition is also disposed of in terms of thereof. However, there shall be no order as to costs.

15. The Registering Authority shall ensure that the cancellation of the aforesaid registration is reflected in their records as expeditiously as possible, and in any event within a period of 1 week from the date on which this judgement is uploaded on this Court's website.

16. It is made clear that the Petitioners are free to adopt appropriate proceedings for challenging the deemed conveyance order dated 14th March 2024 passed by the Competent Authority under the provisions of MOFA, 1963.

17. It is needless to clarify that the Registering Authority, if approached again by the 3rd Respondent Society to register the deemed conveyance, can undertake the process of registration, but by strictly complying with the provisions of Section 11(5) of MOFA, 1963.

18. 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.

[SOMASEKHAR SUNDARESAN,J.] **[B. P. COLABAWALLA, J.]**