



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13405 OF 2024

- | | | |
|---|---|------------------------------|
| 1) KEYURI CONSTRUCTIONS PRIVATE LIMITED |] | |
| A company incorporated under |] | |
| the Companies Act, 1956 having |] | |
| registered office at: |] | |
| 216, Tardeo Air Conditioned Market, |] | |
| Tardeo, Mumbai 400034. |] | <u>...Petitioner.</u> |

Versus

- | | | |
|--|---|--|
| 1) THE STATE OF MAHARASHTRA |] | |
| Through the Office of the Government |] | |
| Pleader, Appellate Side, Extension Building, |] | |
| PWD, 1st Floor, High Court, Bombay, |] | |
| Mumbai, 400032. |] | |
| 2) THE COMPETENT AUTHORITY, DISTRICT |] | |
| DEPUTY REGISTRAR, |] | |
| Co-Operative Societies, Mumbai City – 1, |] | |
| having it's address at:- Malhotra House, |] | |
| 6 th Floor, Opposite G.P.O, Fort, |] | |
| Mumbai - 400001. |] | |
| 3) ORBIT PLAZA PREMISES CO-OPERATIVE |] | |
| HOUSING SOCIETY LIMITED |] | |
| having registered office at:- Plot No. |] | |
| 952/954, Orbit Plaza, New Prabhadevi Road, |] | |
| Prabhadevi, Mumbai - 400025. |] | |
| 4) ORBIT FINANCE PRIVATE LIMITED, |] | |
| a company duly incorporated under |] | |
| the Companies Act, 1956, having it's |] | |
| address at:- 403, Dalamal House, |] | |
| Niriman Point, Mumbai - 400021. |] | |
| 5) STANDARD INDUSTRIES LIMITED |] | |
| 59, The Arcade, World Trade Centre, |] | |
| Cuffe Parade, Colaba, Mumbai 400005 |] | |
| Also At:- |] | |
| Mafatlal Bungalow, Altamount Road, |] | |
| Cumbala Hill, Mumbai, Maharashtra - 400026. |] | |
| 6) THE INDIAN BLEACHING DYEING AND |] | |
| PRINTING WORKS LTD. |] | |
| NA AT Post, Deul Galli, Loha, |] | |

- NA, Maharashtra, India, 431708]
 Also at:]
 Plot No. 952/954, Orbit Plaza,]
 New Prabhadevi Road, Prabhadevi,]
 Mumbai - 400025.]
- 7) M/S SOLAR DEVELOPERS]
 Plot No. 952/954, Orbit Plaza,]
 New Prabhadevi, Mumbai - 400025.]
- 8) M/S MAFATLAL GAGALBHAI AND SONS/]
 MAFATLAL STANDARD INDUSTRIES.]
 59, The Arcade, World Trade Centre,]
 Cuffe Parade, Colaba, Mumbai 400005]
 Also At:-]
 Mafatlal Bungalow, Altamount Road,]
 Cumbala Hill, Mumbai, Maharashtra - 400026.]
- 9) THE EXECUTIVE ENGINEER]
 Building Proposal - City I,]
 Municipal Corporation of Greater Mumbai,]
 Municipal New Building, C.S. No. 355-B,]
 Bhagwan Walmiki Chowk,]
 Near hanuman Temple,]
 Vidyalkar Marg, Salt Pen Road,]
 Antop Hill, Wadala (East), Mumbai- 400037.] **...Respondents.**

Mr. Amrut Joshi, Mr. Gaurav Jangle, Mr. Yazad Udwadia and Ms. Nidhi Mistry i/b I. V. Merchant and co., for the Petitioner.
Mr. Mayur Khandeparkar, Mr. Nishant Chotani, Mr. Amit Hailkar and Mr. Yashi Chheda i/b Maniar Srivastava Associates for the Respondent No. 3.
Mr. Parth Turakhia i/b AAK Legal for the Respondent No. 5.
Mr. B. V. Samant, Addl. Govt. Pleader and Ms. S. S. Bhende, AGP for the Respondent-State.

Coram: Sharmila U. Deshmukh, J.

Reserved on: December 4, 2024.

Pronounced on: December 19, 2024.

Judgment :

- 1. Rule.** With consent, Rule made returnable forthwith and taken up for final disposal.

2. The Petition takes exception to the order cum certificate of Competent Authority dated 28th November, 2018 passed under Section 11 of Maharashtra Ownership of Flats (Regulation of Promotion of Construction of sale, Management and Transfer) Act, 1963 [for short **"MOFA"**] granting certificate for execution of unilateral deemed conveyance in favour of the Respondent No. 3- Society.

3. The only issue arising for consideration is whether the Petitioner who claims to have entered into Joint Venture Agreement with the Respondent No 4 Developer to develop the unconsumed FSI of the larger property on which the Respondent No 3 Society is located was required to be heard in the proceedings under Section 11 of MOFA before the Competent Authority.

4. The undisputed facts of the case are that pursuant to the planning permissions, the Respondent No 4 constructed building comprising of ground plus 6 floors on land area of 3,060 square meters out of larger land of 8783 square meters situated at New Prabhadevi Road, Prabhadevi, Mumbai by consuming FSI of 3,060 square meters out of the permissible FSI of 6,120 square meters leaving unconsumed FSI of about 3060 square meters. In or about the year 2012-13, the Respondent No.3-Society came to be registered and alleging non compliance of statutory obligations by the Respondent No 4, the Respondent No 3 in the year 2019 approached the Competent

Authority seeking certificate for execution of unilateral deemed conveyance impleading the owners and the Developers as party Opponents. The Competent Authority vide order dated 28th November, 2018 issued Certificate for execution of unilateral deemed conveyance for area of 3,060 square meter land and building constructed thereon.

5. The Petitioner's claim is that in respect of the balance unconsumed FSI of 3,060 square meters, which was available on payment of premium, there was a joint venture agreement between the Petitioner and the Respondent No.4 dated 28th July 2009 and for enforcement of said joint venture agreement, the Petitioner had filed Suit No.24 of 2014 initially against the Respondent No. 4 for specific performance of the said joint venture agreement and for damages. In the said civil suit, on 15th January 2014 an ad-interim order came to be passed directing the Respondent No.4 to maintain status quo in respect of the FSI admeasuring 3,060 square meters which ad-interim relief is stated to have been continued from time to time.

6. Heard Mr. Amrut Joshi, learned counsel appearing for the Petitioner, Mr. Mayur Khandeparkar, learned counsel appearing for the Respondent No.3 and Mr. Parth Turakhia, learned counsel appearing for the Respondent No.5.

7. Mr. Joshi would submit that the suit was initially filed by the Petitioner against the Respondent No.4 and subsequently the

Respondent No.3-Society was also impleaded. He submits that though restraining order was passed against the Respondent No.4 as the order affects the Society, the injunction will operate against the Society. He submits that an incorrect statement has been made by the Respondent No.3 in the deemed conveyance application that there is no pending litigation relating to conveyance in any Court. He submits that as the Petitioner is claiming rights in the unconsumed FSI and the grant of deemed conveyance in favour of the Respondent No.3 affects the Petitioner's rights, the Petitioner was required to be impleaded in the Section 11 proceedings. He submits that the promoter alone is not a necessary party which is evident from the fact that Rule 11(2) of the Maharashtra Ownership of Flats (Regulation of Promotion of Construction etc.) Rules, 1964 [for short, "***the Rules of 1964***"] requires notice to be issued to all parties and not only the promoter. He would further submit that Form-VII which is the prescribed form of application uses the word "*promoters/opponents*" and therefore, it is not only the promoter but also all other interested parties who are required to be heard. He draws analogy from the situation where there are various buildings in the same layout who claims certain rights in the property and are required to be impleaded as it is the question of apportionment of area. He submits that similarly in the present case as by virtue of joint venture agreement, the Petitioner claims right in the balance

unconsumed FSI, the Petitioner is required to be heard.

8. Drawing support from the decision in the case of ***New Manoday CHS Ltd v. Uday Madhavrao Jagtap***¹ he submits that learned Single Judge of this Court in that case has held that although pendency of a title dispute cannot be a ground for not conveying the land under Section 11 of MOFA by the Competent Authority, the same is true when there is no fetter on grant of such conveyance in the form of injunction granted by Civil Court. He submits that the same view has been taken in the case of ***Om Shakuntal CHS Ltd v. Patel Wood Works & Timber Mart***². He would further submit that in the case of ***Mazda Construction Company v. Sultanabad Darshan CHS Ltd***³ it was held that where there is a dispute as regards the area and there is a suit pending with regard to the entitlement of the parties, then the Competent Authority ought not to undertake the exercise by which it overreaches the jurisdiction, authority and powers of the competent Courts and Tribunals. In support of his submissions, he also relies upon followings decisions :

Marathon Next Gen Realty v. Competent Authority⁴ and
Tushar v. State of Maharashtra⁵.

9. *Per contra* Mr. Khandeparkar, learned counsel appearing for the Respondent No.3 raised a preliminary objection on ground of

1 2024 SCC OnLine Bom 1217.

2 WP No. 2578 of 2020 decided on 18-3-2024.

3 2012 SCC OnLine Bom 1266.

4 2015(5) Mh.L.J. 318.

5 2015(4) Mh.L.J. 867.

maintainability of Petition at the instance of the Petitioner. He would submit that Section 11(4) of MOFA provides for affording of opportunity of hearing to the Promoter and not all interested parties. He submits that Rule 11 of the Rules of 1964, which is a generic Clause, is irrelevant and Rule 13 of the Rules of 1964, which deals with the scrutiny of application for deemed conveyance provides for issuance of notice in Form-X to the Opponent and perusal of Form-X would indicate that the same refers to the promoters. He submits that situation in the case of other buildings in the layout is different as what has been conveyed by the order of deemed conveyance is not the Petitioner's right, which is still an inchoate claim based on an unregistered agreement for which a suit for specific performance is pending. He submits that the conveyance is not sought from the Petitioner but from the promoter, who is Respondent No.4. He would further submit that the injunction will not operate against statutory obligation and the status quo which was granted was against the promoter. He submits that in event the Petitioner succeeds in the said suit, the rights can be enforced against the Respondent No.3 under Section 19(b) of the Specific Relief Act, 1963. He submits that if the contention of the Petitioner is accepted, then, it will be open for the promoter to take aid of an unregistered agreement and in collusion place restraints on the statutory rights of the Co-operative Housing Society to seek

conveyance. He submits that as the deemed conveyance has already been registered, the registered instrument operates as a notice to the public at large and the Petitioner cannot be heard to say that he was not aware. He submits that the decisions relied upon by learned counsel appearing for the Petitioner are concerning the *inter se* dispute between the promoter and the Co-operative Housing Society. He submits that the principles of natural justice cannot be pushed into play without prejudice being demonstrated. In support, he relies upon following decision :

***State of U.P. v. Sudhir Kumar Singh*⁶**

10. In rejoinder, Mr. Joshi would submit that once there is restraint order by the Civil Court, the order of grant of deemed conveyance is in conflict with the status quo order and as the promoter was injuncted, there cannot be conveyance of the right of promoter to the Respondent No.3-Society.

11. I have considered the submissions and perused the records.

12. The Petitioner does not claim to be a Promoter within the meaning of Section 2(c) of MOFA. The statutory scheme of Section 11 of MOFA governs the right of a Co-operative Housing Society to enforce the obligations of promoter through the office of Competent Authority for the purpose of conveyance of the right, title and interest

⁶ 2020 SCC OnLine SC 847.

of the promoter to the Co-operative Housing Society in accordance with the agreements executed under Section 4 of MOFA. Section 11(4) of MOFA provides that the Competent Authority after verifying the authenticity of documents and after giving the promoter a reasonable opportunity of being heard, shall issue the certificate on being satisfied that it is a fit case for issuing such certificate. The scheme of Section 11 of MOFA therefore provides for giving an opportunity of hearing to the promoter for the obvious reason that it is the right title and interest of the Promoter which is being conveyed in favour of the Society. It is axiomatic that where other registered Societies, forming part of the same layout, are also entitled to seek enforcement of the Promoter's statutory obligations under MOFA in respect of same layout, the registered Societies are required to be impleaded as party. The defining feature is the accrual of the statutory right under MOFA to the registered societies seeking enforcement of the Promoter's statutory obligations which would make the registered societies a necessary party to the proceedings. The Petitioner who claims to have a contractual right against the Promoter cannot stand on equal footing with the registered Societies which are forming part of the larger layout, given the limited remit of inquiry by the Competent Authority. For this reason, in case of *inter se* disputes between the Owners and Developers arising out the contracts executed between them, the

consistent stand of the Courts is that the remedy lies in filing a substantive suit. All that the Competent Authority does is to enforce that statutory obligation, which the Promoter has failed to comply with and convey the right title and interest of the Promoter to the Society.

13. In the application filed under Section 11 of MOFA, the Society seeks conveyance of right title and interest of the Promoter in accordance with agreement executed under Section 4 of MOFA. Promoter is defined under Section 2(c) of MOFA as person or entity which constructs or causes to be constructed a block or building of flats. Admittedly, the Petitioner is not a Promoter *qua* the Society and therefore the Society cannot seek enforcement of the MOFA obligations from the Petitioner. Sub-Section (4) of Section 11, which is the substantive provision provides for giving the promoter an opportunity of being heard. Whether the Rules of 1964 framed under MOFA provides for issuance of notice to all parties or the prescribed forms under the Rules reflects the parties as Promoters or Opponents are irrelevant. All that is required for person or entity to be impleaded as party to the proceeding under MOFA is either a claim of statutory right or a statutory obligation to discharge. The impleadment of every party who claims an inchoate in the property is not warranted in view of the limited jurisdiction exercised by the Competent Authority. In exercise of its power under Section 11 of MOFA, the Competent

Authority looks into the Section 4 MOFA Agreement, determines the obligation of the Promoter, arrives at a finding that there is non compliance in discharge of the statutory obligation by the Promoter and discharges the Promoter's obligation. The Petitioner, who claims an right in the property by reason of the Joint Venture Agreement does not fit into the statutory scheme of MOFA.

14. The Petitioner claims a right to be heard in view of ad-interim relief of status quo granted in his favor. Coming to the ad-interim relief of status quo in respect of FSI of 3060 square meters granted by the High Court in Notice of Motion (L) No 2504 of 2013 in Suit No 24 of 2014 filed by the Petitioner *inter alia* seeking specific performance of the Joint Venture Agreement and/or damages against the Respondent No 4. Initially, the Respondent No 4 was only arrayed as party Defendant to the suit and the restraining order is against the Respondent No 4. Subsequently, the Respondent No 3 was impleaded as party Defendant, however, the order of status quo was continued from time to time only against the Respondent No 4.

15. The fact that suit seeks specific performance of unregistered joint venture agreement makes it evident that right of the Petitioner is an inchoate right based on the unregistered agreement and has not yet crystallized into an absolute ownership right either in the land or unconsumed FSI. The order of status quo dated 15th January, 2015 on

which heavy reliance is placed by learned counsel for the Petitioner, is an ad-interim order without adjudication on merits of the matter. The order of status quo restrains the voluntary transfer of the specified FSI in favour of third party by the Respondent No 4. The status quo is *qua* the Respondent No.4 and the Society came to be impleaded later on, however, the restraint orders were not extended as far as the Respondent No.3-Society is concerned. By the order of status quo the Respondent No.4 is directed to maintain status quo in respect of FSI of 3,060 square meters claimed by virtue of joint venture agreement executed between the Petitioner and the Respondent No. 4. The petition itself pleads that the building of Respondent No 3 has been constructed by consuming the FSI of 3,060 square meters out of the permissible FSI of 6,120 square meters and it is the balance unconsumed FSI in respect of which the order of status quo has been passed. In other words, what is prevented by the status quo order is the utilisation of balance permissible unconsumed FSI of 3,060 square meters. The grant of unilateral deemed conveyance in favour of the Respondent No.3- Society will not prevent the Petitioner from making necessary application in the civil proceedings for the purpose of seeking restraining orders against the utilisation of unconsumed FSI. The grant of status quo in respect of unconsumed FSI, in my view, would not amount to an absolute restraint on the grant of deemed

conveyance. In event the Petitioner succeeds in the civil suit, the right can be enforced against the Society.

16. The Petitioner does not claim right title and interest in the entire larger land but his claim is restricted only to the unconsumed FSI of the larger land and that too an inchoate right as the suit is for specific performance of the JVA, which is also unregistered. The order of status quo cannot be construed as an absolute fetter on statutory right of Society to seek deemed conveyance. If the status quo is extended to the Society, the Society will be restricted in utilisation of the specified unconsumed FSI. The right of promoter in the unconsumed FSI is transferred by statutory operation of law. The statutory rights of the Society under MOFA cannot be kept in abeyance till the Petitioner's rights are adjudicated in the civil proceedings particularly when the claim is confined to the unconsumed FSI of the larger land.

17. Considering the limited extent of enquiry to be conducted by the Competent Authority, the issue as regards the entitlement of Petitioner to the unconsumed FSI could not have been adjudicated and decided by the Competent Authority. Although the Petitioner claims that the right, title and interest of the Society in the property stands scaled down by virtue of the joint venture agreement, the Petitioner's right is still an inchoate right and cannot place fetters on the statutory right of the Co-operative Housing Society to obtain the order of

unilateral deemed conveyance. The issue as regards the entitlement of Petitioner will have to be adjudicated in the civil proceedings which are already filed and considering that necessary application can be made in those proceedings seeking restraint orders against the utilisation of unconsumed FSI, in my view, the Petitioner is not a necessary party to the proceedings under Section 11 of MOFA.

18. As rightly pointed out by Mr. Khandeparkar the decisions on which reliance has been placed by Mr. Joshi, arose out of the proceedings where there was *inter se* dispute between the promoter and the Society and it was not a prospective right which was sought to be adjudicated in those proceedings.

19. In the case of ***Mazda Construction*** (supra) the Court has held that considering the dispute as regards the entitlement of parties, the Competent Authority cannot undertake such exercise which would amount to overreaching the jurisdiction of Civil Court. In that case the dispute was between the Promoter and the Society as to areas referred to as garden and access whether forming part of entitlement of the occupants and residents of the building. The facts of the present case are clearly distinguishable as the Petitioner still has to establish its rights in the Civil Court.

20. In the case of ***Marathon Next Gen Realty*** (supra) it was the owner-developer who had challenged the deemed conveyance

application and it is in that context that the Court observed that the Competent Authority will not have jurisdiction, if the related and connected complicated issue between the parties referring to the properties and agreements is also subject matter of civil suits. In present case, it is only a prospective right which is sought to be pressed into service by the Petitioner, which is the distinguishing fact that renders the decision inapplicable.

21. In the case of ***Tushar v. State of Maharashtra*** (supra) the Co-ordinate Bench considered the provisions of Transfer of Property Act, 1882 and held that the person cannot transfer the interest in the property if he does not have the entitlement and right to transfer. It further held that fair opportunity has to be given to all the parties where his rights are involved. The observations were rendered in context of challenge raised by the owners to the order of deemed conveyance as the entire area was conveyed to the Society despite the knowledge of existence of two tenanted buildings prior in time. The order of deemed conveyance was passed without notice to the owners. There is no quarrel with the said proposition, however, the decision does not assist the case of the Petitioner.

22. It is therefore clear that in all these cases there was *inter se* dispute between the promoter and the Society where the ownership rights of the promoter itself were not in dispute whereas in the present

case, the Petitioner is a third party who based his right to challenge the order of deemed conveyance on an unregistered joint venture agreement which is the subject matter of specific performance suit. It therefore cannot be said that the Petitioner had acquired any vested right in the property and was required to be heard during the proceedings instituted under Section 11 of MOFA.

23. In light of the above discussion, there is no merit in the Petition. Consequently, the Petition stands dismissed. Rule is discharged.

[Sharmila U. Deshmukh, J.]