

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 18089 OF 2024.

Pravin Construction Through Developer
Suresh Govind Panchal (Deceased)
Through LR's and Others.

...Petitioners.

Versus

State of Maharashtra and Others.

...Respondents.

*Ms. Simran Raut i/b Ms. Vrushali L. Maindad for the Petitioner.
Ms. M. S. Bane, AGP for Respondent-State.*

Coram : Sharmila U. Deshmukh, J.

Date : December 13, 2024.

P. C. :

1. By this present petition, exception is taken to the order of Competent Authority dated 22nd May, 2024 passed under Section 11 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 [for short, "**MOFA**"] granting a certificate for execution of unilateral deemed conveyance of area admeasuring 981.80 sq. mtrs.
2. Alleging non-compliance of Section 11 of MOFA, the Respondent No.3-Society filed an Application with the Competent Authority seeking execution of deemed conveyance which came to be allowed by the impugned order. Admittedly, petitioners are the developers who have entered into Development Agreement dated 9th June, 2005 for

development of property pursuant to which the Respondent No.3-Society was constructed with a total built-up area of 1007.10 sq. mtrs. Despite the issuance of notice, the Developer did not comply with his statutory obligations leading to filing of Application seeking unilateral deemed conveyance.

3. Learned counsel appearing for the Petitioner would submit that the Competent Authority has not taken into consideration the Certificate issued by the Mahad Nagar Parishad which is at Page 115 of the petition which shows that the area of 73.90 sq. mtrs. is available for further construction. In other words, she submits that the petitioner is claiming entitlement of the Floor Space Index arising out of balance land.

4. It is well-settled by catena of decisions of this Court following the decision of ***Mazda Construction Company v. Sultanabad Darshan CHS Ltd***¹ which was clarified in ***Shree Chintamani Builders v. State of Maharashtra***² that the grant of deemed conveyance does not conclude the issue of right, title and interest of the parties and it is open for the promoters to file a substantial suit claiming their rights in the property. In the present case by pointing out the certificate of the Mahad Nagar Parishad, it is clear that petitioners are claiming rights in the balance FSI arising out of the plot area by considering the constructed area of

1 2012 SCC OnLine Bom 1266

2 (2016) SCC OnLine Bom 9343

Respondent No.3-Society and the FSI potential of entire plot. The Petitioner has not raised any submission that Respondent No.3 has been granted an area beyond their entitlement.

5. The Competent Authority has rightly considered the sanctioned plan and has granted deemed conveyance of area of 981.80 sq. mtrs. The Society has been registered in the year 2011 and the right to obtain conveyance was triggered in the year 2011 itself. The remit of inquiry under Section 11 of MOFA is limited and the Competent Authority steps into the shoes of the Promoter and complies with his obligations. The Competent Authority even otherwise could not have adjudicated the issue of Petitioner's entitlement to unconsumed FSI. The remedy of the Petitioner is to file Civil Suit for seeking relief to the unconsumed FSI.

6. Resultantly, there is no merit in the Petition. Petition is dismissed.

[Sharmila U. Deshmukh, J.]