IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 15858 OF 2024

Vile Parle Model Co-operative Housing Society Ltd. ..Petitioner

Versus

District Deputy Registrar of Co-operative Societies, Mumbai City (3) & Ors. ...Respondents

Mr. Nirav Shah a/w Ms. Niharika Singh i/b Little & Co., for petitioner.
Ms. P. J. Gavhane, AGP for the Respondent No. 1 – State.
Mr. Simil Purohit, Senior Advocate, a/w Devang Shah, Aditya Kanchan i/b. Lakshyavedhi Legal, for Respondent No. 2.

CORAM: N. J. JAMADAR, J.
DATE : 24th DECEMBER 2025

ORDER:

1. Heard the learned Counsel for the parties.

2. The challenge in this petition is to a judgment and order dated 30th November, 2023 passed by the District Deputy Registrar, Co-operative Societies and the Competent Authority in Application No. 80/2023 whereby the application preferred by the Respondent No. 2 – Society for grant of certificate of unilateral deemed conveyance under the provisions of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ('the MOFA, 1963), came to be allowed, thereby declaring that the

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Respondent No. 2 Society was entitled to unilateral Deemed Lease Assignment of land admeasuring 693.98 sq. mtrs., out of 1979.70 sq.mtrs. of CTS No. 16/A, Survey No. 287, Plot No. D-1, in the Revenue village – Vile Parle (West).

3. The petitioner claimed to be a successor in interest of Model Town Co-operative Housing Society Ltd. which was trifurcated into three societies, pursuant to an order 18th September, 1982 passed by the District Deputy Registrar, Co-operative Societies. The petitioner claimed that, before its trifurcation, the predecessor in interest of the petitioner i.e. The Model Town Co-operative Housing Society Ltd, had granted lease hold rights in favour of Raj Rani Ramesh Chander Sethi, the predecessor in title of Respondent No. 3, subject to the terms and conditions incorporated in the indenture of lease dated 10th February, 1975. The lessee had constructed building consisting of ground plus three upper floors and sold various flats in the said building to the flat purchasers, who formed the Respondent No. 2 - Society.

4. The petitioner asserts, Mr. Ramesh Chander Pishorilal Sethi, the predecessor in title of the Respondent No. 3, had committed breach of the conditions of the lease agreement and

therefore, the Competent Authority was not justified in granting the certificate of unilateral deemed conveyance. Laying emphasis on the Indenture Lease dated 10th February, 1975, Mr. Shah would urge that, there was an express prohibition against construction of the building without prior permission of the Respondent No. 2 – Society and creation of third party rights in respect thereof. Therefore, the impugned order warrants interference.

5. Reliance was sought to be placed on an order passed by the learned Single Judge of this Court in WP No. 16141/2024 dated 05th May, 2025 whereby this Court has granted ad-interim relief, in another petition filed by the instant petitioner.

6. In contrast to this, Mr. Purohit, the learned Senior Advocate for Respondent No. 2, submitted that, the material distinction in the case at hand and the facts in WP No. 16141/2024 is that, in that case, the Competent Authority had granted conveyance of title. However, in the instant case, by the certificate in question, only lease-hold rights have been directed to be assigned.

7. I find substance in the submission of Mr. Purohit. In the case of Vile Parle Model Co-operative Housing Society Ltd. (WP No. 16141/2024), the Competent Authority had conveyed title in favour of the Respondent No. 2 – Society, on ownership basis. That is not the case at hand. Under the provisions of Section 11 of the MOFA, 1963, the obligation of the promoter is to complete his title and convey his rights and interest in the land and building. If the promoter had the lease-hold rights, the obligation was to convey the lease-hold rights in the land and building to the Co-operative society or a company or to an association of flat purchasers. In the case at hand, the Competent Authority has rightly issued a certificate of unilateral deemed lease agreement in favour of the Respondent No. 2 Society. Therefore, no fault can be found with the impugned order, on that count.

8. On the merits of the matter, incontrovertibly, erstwhile Model Town Co-operative Housing Society Ltd. was trifurcated on as is where is basis, into the three societies. The Respondent No. 3 - promoter has erected the building and sold the apartments therein to various persons. Whether, the Respondent No. 3 promoter had the requisite title to execute the

agreement for sale of the units in the said building would be a matter of merit to be adjudicated by the Civil Court. It is trite, the Competent Authority is neither competent nor equipped to deal with the question of title over the subject property. If a party is aggrieved by the order passed by the Competent Authority, it is not precluded from instituting a suit based on title.

9. A profitable reference, in this context, can be made to the judgment of the Supreme Court in the case of **Arunkumar H. Shah HUF Vs Avon Arcade Premises Co-op. Society Ltd**[1]**,** wherein the Supreme Court expounded the nature and import of the proceeding before the Competent Authority, as under:

> ***"37.*** *Our conclusions on the interpretation of sub-sections (4) and (5) of Section 11 of the MOFA are as under:*
>
> *.....*
>
> ***ii.*** *The competent authority, while following the summary procedure, cannot conclusively and finally decide the question of title. Therefore, notwithstanding the order under sub-section (4) of Section 11, the aggrieved parties can always maintain a civil suit for establishing their rights;*
>
> ***iii****. The provisions of Section 11 are for the benefit of the flat purchasers. In writ jurisdiction, the Court should not interfere with the order granting deemed*

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1 2025 SCC OnLine SC 828

> *conveyance unless the same is manifestly illegal. The writ court should generally be show in interfering with such orders. The reason is that, notwithstanding the order under Section 11(4), the remedy of aggrieved parties to file a civil suit remains open; and .....*

10. Moreover, the Court finds that, the predecessor in title of Respondent No. 3 had executed the agreements for sale in favour of the flat purchasers, prior to 40 years. A clear breach of the statutory mandate contained in the Maharashtra Ownership Flats Act, 1963 was made out.

11. For the foregoing reasons, this Court, in exercise of supervisory jurisdiction, does not find any manifest illegality in the impugned order. Hence, the following order:-

:: O R D E R ::

(i) The Writ Petition stands dismissed.

(ii) It is, however, clarified that, the petitioner shall have the liberty to institute a suit before the Civil Court, if the remedy is available in law.

No costs.

[N. J. JAMADAR, J.]