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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION (ST.) NO.16058 OF 2015

Sri. Laxminarayan Devasthan Trust,
Through Its Trustees: A. Shri.
Ramkumar Hiralal Trust & Anr. ... Petitioners

V/s.

State of Maharashtra,
Through Its Department of Co-
operation, Textiles and Marketing & Ors. ... Respondents

WITH
CIVIL APPLICATION NO.5 OF 2024
IN
WRIT PETITION (ST.) NO.16058 OF 2015

Laxmi Narayan Kunj Sahakari,
Gruhrachna Sanstha Maryadit ... Applicant

In the matter between

Sri. Laxminarayan Devsthan Trust,
Through Its Trustees;
A. Shri. Ramkumar Hiralal Rathi & Anr. ... Petitioners

V/s.

State of Maharashtra,
Through Department of Co-
operation, Textile and Marketing & Ors. ... Respondents

WITH
CIVIL APPLICATION NO.1306 OF 2019
IN
WRIT PETITION (ST.) NO.16058 OF 2015

Sri. Laxminarayan Devasthan Trust,
Through Its Trustees: A. Shri.
Ramkumar Hiralal Trust & Anr. ... Applicants

V/s.

State of Maharashtra,
Through Its Department of Co-
operation, Textiles and Marketing & Ors. ... Respondents

Mr. Nitin P. Deshpande for the petitioners in writ petition.

Ms. Swati Sagavekar for respondent No.3 in writ petition and for the applicants in civil applications.

Ms. Priyanka Chavan, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 2, 2025

P.C.:

1. By this Petition instituted under Article 226 of the Constitution of India, the petitioners have approached this Court seeking to assail the legality, validity, and propriety of the judgment and order dated 18th May 2015 passed by respondent No.2, who is the Competent Authority appointed under the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for the sake of brevity referred to as "MOFA"), in Application No.238 of 2014, preferred by respondent No.3, namely, a co-operative housing society. By the impugned order, the Competent Authority has been pleased to grant deemed conveyance in respect of land admeasuring 2941.80 square metres, being the proportionate share of land, together with constructed area admeasuring 2739.66 square metres, forming part of a larger parcel of land bearing City Survey No.7, situated at Mula Road, Khadki, Pune, having a total area of 6025.40 square metres. It is this order of the Competent Authority which is the subject matter of challenge in the present writ proceedings.

2. The case set up by the petitioners, as averred in the writ petition, is that the development of the said property was undertaken by engaging a developer pursuant to the execution of a Development Agreement with respondent No.4, which agreement was confined only to a limited portion of the land admeasuring 1656.87 square metres. It is the specific case of the petitioners that the said Development Agreement was restricted in its operation and scope solely to the aforesaid extent of land and did not extend to the entirety of the larger parcel. It is further the case of the petitioners that, in respect of the remaining portion of the land admeasuring 3762.99 square metres, they have executed a separate Development Agreement dated 7th April 2014 with another developer, thereby segregating the development rights over the said balance land.

3. Despite the aforesaid factual matrix, respondent No.3 – the co-operative housing society, instituted an application before the Competent Authority under Section 11 of the MOFA, seeking a deemed conveyance in respect of the land admeasuring 2941.80 square metres, being the claimed proportionate share of the land, along with the constructed area admeasuring 2739.66 square metres. It is this application preferred by respondent No.3 which came to be allowed by the Competent Authority vide the impugned judgment and order dated 18th May 2015, thereby granting the relief of deemed conveyance as prayed for. Aggrieved thereby, the petitioners have invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, impugning the said order.

4. Mr. Deshpande, the learned Advocate appearing on behalf of the petitioners, has assailed the impugned order primarily on the ground that the same transgresses the scope of the rights conferred upon respondent No.4 – the original developer, under the Development Agreement dated 31st October 2002. The principal submission canvassed by the learned Advocate is that the said Development Agreement was restricted and limited strictly to a defined portion of land admeasuring 1656.87 square metres only, and did not encompass the entire larger parcel of land. It is further submitted that even the sanctioned building plan, as approved by the competent planning authority, pertained exclusively to the said area of 1656.87 square metres, wherein the ground coverage was limited to an extent of 692.95 square metres. The construction sanctioned thereunder comprised a building structure consisting of a ground floor, stilt, and four upper floors, aggregating to a total built-up area of 2739.56 square metres. Thus, it is contended that both the contractual stipulations as well as the approved plans clearly demarcate the limited nature and extent of the rights granted to respondent No.4.

5. Proceeding on the basis of the aforesaid submissions, the principal contention urged on behalf of the petitioners is that the impugned order passed by the Competent Authority, in purported exercise of powers under Section 11 of the MOFA Act, travels beyond the permissible limits and results in the conferment of rights upon respondent No.3 – the society, and by necessary implication upon respondent No.4 – the developer, which are in excess of and inconsistent with the limited rights expressly

conferred upon the said developer by the petitioners, being the original owners of the property, under the Development Agreement dated 31st October 2002. It is the emphatic submission of the petitioners that the exercise of power under Section 11 of the MOFA Act, which is essentially intended to facilitate the execution of a conveyance in favour of flat purchasers to protect their proprietary rights, cannot be expanded to clothe either the society or the developer with rights and interests over portions of the property which were never intended to be conveyed under the contractual arrangement between the petitioners and the original developer. Such an expansive interpretation, it is urged, would amount to re-writing the contract between the parties and conferring benefits upon respondent Nos.3 and 4 which were never envisaged by the original owners, and which is impermissible in law.

6. The controversy at hand is no longer *res integra* and stands squarely covered by the authoritative pronouncement of the Division Bench of this Court in the case of *Zainul Abedin Yusufali Massawala & Ors. v. Competent Authority*, 2016 SCC OnLine Bom 6028. In the said judgment, the Division Bench has reaffirmed the settled legal position that the scope of proceedings under Section 11 of the MOFA is extremely limited. It has been categorically held that the Competent Authority's jurisdiction is confined solely to enforcing the statutory obligation of execution of conveyance by the promoter in favour of flat purchasers, and does not extend to adjudicating complex title disputes. The Division Bench observed that where an owner contends that the claim of a society exceeds

its contractual entitlement — for instance, by including a "larger property" beyond the sanctioned development plan — the appropriate remedy available to such owner lies in instituting a civil suit under Section 9 of the Code of Civil Procedure, 1908. It was emphatically underscored that the Competent Authority's administrative findings do not bind civil courts, which retain their plenary jurisdiction to independently and comprehensively adjudicate upon disputes relating to ownership, title, and proprietary rights. Such an approach ensures that intricate and contentious questions of title are resolved through a proper evidentiary process before civil courts, rather than being summarily decided in proceedings under MOFA.

7. This Court has thereafter consistently followed the dictum laid down in *Zainul Abedin Yusufali Massawala* (supra), as reiterated in subsequent judgments of Co-ordinate Benches of this Court in the cases of *Shimmering Heights CHSL & Ors. v. State of Maharashtra* (Writ Petition No. 3129 of 2016, decided on 6th April 2016), *M/s. P.R. Enterprises & Ors. v. Competent Authority* (Writ Petition No. 11251 of 2016, decided on 23rd July 2018), and *Mehboob Ali Humza & Ors. v. District Sub-Registrar (3), Mumbai/Competent Authority & Ors.* (Writ Petition No. 1170 of 2014, decided on 24th June 2016). In all these cases, it has been uniformly held that grievances raised by owners alleging excess conveyance of land, or rights over a larger area than what was contractually agreed upon, must be adjudicated by way of a civil suit. Having regard to the law laid down in the aforesaid judgments, it is clear that the petitioners' remedy lies in instituting

a substantive civil suit for establishing their proprietary rights and for seeking appropriate reliefs, including challenging any alleged excess area conveyed in favour of respondent No.3-Society.

8. As reiterated in *Shimmering Heights CHSL* (supra), the jurisdiction of the Competent Authority under Section 11 of MOFA is strictly confined to enforcing the statutory and contractual obligation of the promoter to execute a conveyance in accordance with the sanctioned building plan and the terms of the registered agreements. It has been clearly delineated that the Competent Authority is not empowered to adjudicate disputes relating to title, apportionment of land rights, or the proprietary claims inter se between the developer, owners, and society. Such disputes are squarely within the domain of civil courts under Section 9 of the CPC, where a petitioner can seek declaratory and consequential reliefs, implead the necessary parties, and adduce evidence in support of their claims. This clear dichotomy between the administrative enforcement under MOFA and the judicial adjudication before civil courts preserves the rule of law and the hierarchy of remedies, ensuring that complex and contentious title disputes are subjected to thorough evidentiary scrutiny.

9. This judicial approach finds further resonance in the judgment of *M/s. P.R. Enterprises & Ors. v. Competent Authority* (Writ Petition No. 11251 of 2016, decided on 23rd July 2018), wherein a Co-ordinate Bench of this Court dismissed the challenge raised by a promoter to the grant of deemed conveyance. In that case, it was contended that the society's claim involved separate phases of development and separate societies. The Court held that

such disputes, which involve complicated questions of phase-wise development rights and overlapping claims, necessarily require adjudication in civil forums. It was emphasized that the Competent Authority's jurisdiction is circumscribed within the four corners of the sanctioned building plan and the registered agreements, and any grievance alleging excess conveyance or overreach by the society must be ventilated by instituting a civil suit. This precedent further fortifies the conclusion that the petitioners, if aggrieved by the extent of deemed conveyance granted to respondent No.3-Society, must avail the remedy of a civil suit and not seek to collaterally challenge the administrative order passed by the Competent Authority under MOFA.

10. In *Mehboob Ali Humza & Ors. v. District Sub-Registrar (3), Mumbai/Competent Authority & Ors.* (Writ Petition No. 1170 of 2014, decided on 24th June 2016), the Division Bench of this Court confronted a situation where the developer challenged the grant of deemed conveyance, alleging that a triangular portion of land was erroneously included, contrary to the consent terms executed with the society. The Court categorically rejected the developer's challenge, holding that disputes relating to ownership, possession, or specific portions of land — such as the triangular parcel in that case — fall outside the statutory mandate of the Competent Authority under Section 11 of MOFA. It was reiterated that if a developer or owner asserts proprietary rights over any portion of the property, the appropriate remedy lies in instituting a civil suit under Section 9 of the CPC to establish title through cogent evidence, including documentary material and expert

testimony if necessary. The Court emphasized that administrative orders passed under MOFA cannot override substantive proprietary rights, which must be adjudicated exclusively through civil courts possessing plenary jurisdiction. This approach is consistent with the doctrine of election of remedies and ensures that parties aggrieved by the scope of deemed conveyance must seek appropriate redress in competent civil forums.

11. The consistent judicial refrain, as articulated in *Zainul Abedin Yusufali Massawala*, *Shimmering Heights CHSL*, and *Mehboob Ali Humza* (supra), makes it abundantly clear that writ proceedings under Article 226 of the Constitution of India are inherently ill-suited for resolving intricate controversies involving competing claims of title, ownership, or development rights. Such disputes demand a comprehensive and detailed examination of evidence — including but not limited to registered agreements, title documents, municipal records, and sanctioned plans — which falls squarely within the domain of civil courts. The order passed by the Competent Authority, being confined to enforcing the promoter's statutory obligation under Section 11 of MOFA, merely operationalizes the duty to execute a conveyance in accordance with the sanctioned plan. Consequently, the petitioners' grievances regarding the alleged excess conveyance must necessarily be ventilated before a competent civil court in properly instituted proceedings, where the parties can adduce evidence and obtain declaratory and consequential reliefs.

12. In view of the foregoing discussion, the following order is passed:

ORDER:

(a) The writ petition stands disposed of.

(b) Liberty is reserved to the petitioners to institute an appropriate civil suit for agitating their claims in respect of the alleged excess area granted in favour of respondent No.3-Society.

(c) In the event such a civil suit is instituted, it shall be adjudicated by the competent civil court on its own merits and in accordance with law, uninfluenced by any of the observations made in the present judgment, which are confined solely to the legality and propriety of the impugned order passed by the Competent Authority under the provisions of the MOFA.

13. No order as to costs.

14. All pending interlocutory applications stand disposed of.

(AMIT BORKAR, J.)