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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.818 OF 2025

Gaikwad Asosciates, through it's
partner Sonali Deepak Gaware ... Petitioner

V/s.

The Competent and District Deputy
Registrar, Cooperative Societies & Ors. ... Respondents

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Mr. Nitin P. Deshpande with Ms. Anjali S. Shinde for
the petitioner.

Mr. Bapusaheb Dahiphale, AGP for respondent No.8-
State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 24, 2025

P.C.:

1. Challenge in this writ petition is to the legality and propriety of an order passed by the Competent Authority in exercise of the powers conferred under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as "MOFA"). The order is passed at the instance of the developer and is impugned herein by the petitioner on the ground that the Competent Authority has overstepped the jurisdiction statutorily circumscribed under Section 11, thereby prejudicing the rights of the petitioner.

2. By the impugned order, the Competent Authority has directed execution of unilateral deemed conveyance in favour of respondent No.2–Society. The effect of the order is to transfer the title in respect of the land and building in favour of the society under the legal fiction introduced by the deeming provision of Section 11(3) of MOFA. The objection raised by the petitioner is that the area so conveyed exceeds the entitlement of respondent No.2-Society, and such conferment of excess area is dehors the statutory framework.

3. Mr. Deshpande, learned counsel appearing for the petitioner, has contended that the Competent Authority has, without proper adjudication of title and boundaries, directed conveyance of land admeasuring more than what is legitimately occupied or possessed by the society. He submitted that the dispute is not as to the entitlement to conveyance per se, but rather, the quantum of land sought to be conveyed and whether the land beyond the scope of the registered agreement could be included by invoking the deeming provision under Section 11. According to him, the impugned order travels beyond the statutory limits and is liable to be interfered with in writ jurisdiction.

4. In evaluating the grievance of the petitioner, it is necessary to consider the nature of jurisdiction exercised by the Competent Authority under Section 11 of MOFA. The scope of enquiry under the said provision is primarily administrative and limited to examining whether the society is eligible to receive conveyance and whether the builder has unjustifiably failed or neglected to execute such conveyance. The statute does not contemplate a

roving enquiry akin to a civil trial involving examination of intricate title disputes, boundary demarcations or competing claims based on factual nuances.

5. This principle of limited scrutiny under Section 11 has been judicially articulated and reiterated by this Court in several decisions including *Zainul Yusufali Massawala & Ors. v. Competent Authority*, 2016 SCC OnLine Bom 6028; *Mazda Construction Co. v. Sultanabad Darshan CHS Ltd.*, 2012 SCC OnLine Bom 1266; *Tushar Jivram Chauhan & Anr. v. State of Maharashtra*, (2015) 4 Mh.L.J. 867; and *Veer Tower CHS Ltd. v. District Dy. Registrar*, Writ Petition No.2111 of 2023 decided on 18 February 2025. These decisions lay down in unambiguous terms that questions concerning quantum or extent of land conveyed beyond what is recorded in the approved layout or sale agreement must be agitated before the Civil Court which alone is competent to adjudicate upon disputes of title and boundaries.

6. In the present case, the petitioner has not challenged the competence of the society to claim deemed conveyance but has confined the challenge to the extent of area conveyed. In view of the consistent pronouncements of this Court, I find it appropriate to relegate the petitioner to avail the remedy of filing a civil suit wherein all factual and legal contentions pertaining to the alleged excess area conveyed can be examined on the basis of evidence. The scope of writ jurisdiction under Article 226/227 does not permit this Court to enter into disputed questions of fact that are best left to the Civil Court's domain.

7. In doing so, I find it appropriate to clarify that neither the findings recorded by the Competent Authority in the impugned order nor the observations made in the present judgment shall be construed as conclusive or binding on the Civil Court. All questions raised by the petitioner shall remain open for adjudication on their own merits, and the Civil Court shall decide the same uninfluenced by any observation made herein.

8. With the above liberty reserved, the writ petition stands disposed of. There shall be no order as to costs.

(AMIT BORKAR, J.)