

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9158 OF 2024

Dhuri Co-operative Housing
Society Limited
V/s.

... Petitioner

State of Maharashtra and ors.

... Respondents

Mr. Niranjan A. Mogre with *Mr. Siddhesh S. Borkar, Mr. Umang Mehta and Mr. Shivendra Dwivedi, Advocates for the Petitioner.*

Ms. Foram Chauhan with *Priyal Gupte, Advocates for the Respondents No.2 to 8.*

Mr. S. L. Babar, AGP for the State.

CORAM : SANDEEP V. MARNE, J.

Dated : 17 February, 2025.

ORAL JUDGMENT :

1. Rule. Rule is made returnable forthwith. With the consent of the learned counsel for the parties, the petition is taken up for the hearing and disposal.

2. The Petition challenges the order dated 13th March, 2024 passed by the District Deputy Registrar and the Competent Authority rejecting the application preferred by the Petitioner-Society seeking certificate of Unilateral Deemed Conveyance of land admeasuring 662.60 sq. meters as well as the building of the society.

3. I have heard Mr. Mogre, learned counsel appearing for Petitioner-Society and Ms. Chauhan, learned counsel appearing for Respondents No.2 to 8.

4. After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that one of grounds for rejection of the application of deemed conveyance is the mismatch in the area of land of which conveyance is sought by the society and the land indicated in the flat purchase agreement. It appears that in the schedule to the flat purchase agreement executed under Section 4 of the Maharashtra Ownership of Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (MOFA), land admeasuring 690.10 sq. meters formed subject matter thereof and the Developer agreed to convey the entire land admeasuring 690.10 sq. meters in favour of the Petitioner-Society. However, in its application filed under provisions of Section 11 of Act, society claimed conveyance lesser area ad-measuring 662.60 sq. meters. Mr. Mogre would invite my attention to the Certificate of Architect dated 17th January, 2023 which indicates that out of the total land admeasuring 690.10 sq. meters area admeasuring 27.50 forms part of set back area which the reason why Architect has deducted land admesuring 27.50 sq. meters and recommend conveyance of land in respect of 662.60 sq. meters. In my view, the Competent Authority ought to have taken into consideration the Certificate of Architect instead of raising technical objection of mismatch in the area reflected in the agreement as compared to the area sought by the Petitioner-Society.

5. Coming to the next ground of rejection, it appears that presence of Petitioner's structure in the land in addition to the society's building has weighed heavily on the mind of the Competent Authority. It appears that the structure of the original land owners (flour-mill) was not demolished at the time of construction of the society's building. However, it appears that the original land owners are already admitted as members of the Petitioner-Society *qua* the flour-mill admeasuring 200 sq. ft. Thus, the structure of the original land owner no longer falls outside the society's premises and in their capacity as members of the Petitioner-Society, the land owners also would become owner in respect of the land conveyed in favour of the society. As and when redevelopment process is carried out at the plot of land, in their capacity as members of the society, the original land owners would obviously be entitled to alternate premises on the strength of occupation of flour mill ad-measuring 200 sq. ft.

6. What is curious to note is that the land covered by the said flour-mill was never excluded in the flat purchase agreement executed under section 4 of MOFA. Clause 30 of the agreement reads thus :-

“Clause 30 Subject to clause (10) herein above, the Builders shall cause the original Owners to execute a conveyance of Assignment of the said land and the buildings erected therein in favour of the said society, Limited Company or Association or in favour of the Apartment Owners of the said premises as the case may be, within six months, from the formation and registration of the society, Limited Company, or Association as the case may be or at the Builder's option from the date on which the new building intended to be put on the said land is completed and ready for occupation and all the tenements, therein are delivered to the respective buyers thereof, whichever is later, provided that the Builders have been paid

and have received full consideration equivalent to the total of the price payable by all the Flat/Garage Buyers and all other moneys payable to the Builders under the provisions of this Agreement.”

7. In the schedule of agreement, the land subjected to provisions of Section 4 of MOFA was described as under :-

THE SCHEDULE HEREINABOVE REFERRED TO:

ALL THAT piece or parcel of land admeasuring 690.10 sq. meters or thereabouts bearing S. No. 264, Hissa No.1(Part) and S. No. 264, Hissa No.3(Part); and C.T.S.No.859, Tika No.91, together with all the structures standing thereon and situate at Ranchhoddas Road, Dahisar (West) in the registration District and Sub-District of Bombay City and Bombay Suburban and hearing Municipal “R” Ward No.7551(2) and (3) and Street No.286-A, Ranchhoddas Road, and boulder: On or towards the NORTH by properties bearing C.T.S. Nos.860 and 858; on or towards the SOUTH by Ranchhoddas Road; On or towards the EAST by the property bearing C.T.S. No.856 and on or towards the WEST by property bearing C.T.S.No.862.”

8. Thus the entire land admeasuring 690.10 sq. meters was subjected to provisions of MOFA by the Developer. Under clause 30 of the Agreement, the Developer agreed to execute conveyance or assignment in respect of the entire land admeasuring 690.10 sq. meters. In the entire agreement, there is no clause excluding the land covered by the flour-mill from being conveyed to the society under clause 30.

9. Ms. Foram Chauhan would submit that clause 30 of the Agreement is subject to clause 10. However, upon considering the covenants of clause 10 of the Agreement, it is seen that the same deals with the date of the possession of the constructed units and with force majeure clause having no

possible relation to conveyance of land. I am therefore of the view that the agreement executed with the flat purchasers contained an obligation for the Promoter to convey entire land admeasuring 690.10 sq. meters. The remit of inquiry before the Competent Authority is limited. Once the Competent Authority notices that the entire land is made subject matter of agreement under Section 4 of the Act, the Competent Authority does not have any choice but to convey the entire land in favour of the society. Merely because a Memorandum of Understanding is subsequently executed between the society, new Developer and original land owners, the same would fall outside the scope of inquiry under Section 11 of the Act. If the original land owners believe that they are entitled to any benefits flowing out of the said Memorandum of Understanding, they will have to adopt appropriate proceedings for grant of such benefits. Mere execution of Memorandum of Understanding with a new Developer would not be a reason for delaying the conveyance under provisions of Section 11 of the Act. Under Section 11 of the Act, the Promoter is under statutory obligation to convey his right, title and interest in the land and building in the accordance with the agreement executed under Section 4 of the Act. Therefore, merely because a Memorandum of Understanding has been executed between the Petitioner-society, new Developer and the original land owners for grant of additional carpet area to Petitioner in the newly constructed building, the same cannot be a reason for not fulfilling the statutory obligations under Section 11 the Act. Even if a condition is imposed in the Memorandum of Understanding that conveyance would be executed by the original land owners only after receipt of additional carpet area of 400 sq.meters as per the Memorandum of Understanding, the same cannot absolve Promoter's original obligation to convey his right, title and interest in the entire land

ad-measuring 690.10 sq. meters in favour of the society. In any case, the Competent Authority cannot adjudicate the rights and obligation flowing through the Memorandum of Understanding executed in November, 2019. The inquiry under provisions of Section 11 of Memorandum of Understanding will have to be necessarily limited to the covenants of the flat purchase agreement executed under Section 4 of the MOFA.

10. As observed above, the original land owners have already become members of the Petitioner-society. Their admission as members has apparently taken place before execution of the Memorandum of Understanding. They have apparently invoked the arbitration clause and have initiated proceedings for pressing their rights flowing out of the said Memorandum of Understanding. The Memorandum of Understanding is executed not just with the Petitioner-Society but also with a new Developer. The rights and obligation between the society, new Developer and the original land owner cannot be adjudicated by the Competent Authority in limited scope of inquiry under Section 11 of the Act.

11. If the flat purchaser agreement contains a covenant for conveyance of the described portion of land, the Competent Authority cannot shy away from exercising the jurisdiction vested in it by ensuring that the promoter's obligation is brought into reality by deeming fiction in the form of certificate of unilateral conveyance. Existence of disputes between parties outside the flat purchase agreement cannot be a reason for Competent Authority not to exercise the jurisdiction under Section 11 of the Act. In the present case, not only the dispute stems out of MOU (which is not the flat purchase agreement) but, the same is executed with third party (new

developer engaged by society for redevelopment of its building). Mere grant of Certificate of unilateral deemed conveyance in society's favour would not, in any manner, come in the way of Respondents No.2 to 8 to claim alleged benefits flowing out of the MOU. The conveyance cannot be granted in terms of the MOU. The statutory obligation of original promoter to transfer right, title and interest in the land and the building under Section 11 of the Act would prevail over contractual obligation created under the MOU. In my view, therefore, Competent Authority has failed to discharge its statutory duties under Section 11 of MOFA by not conveying the land covered by Section 4 of agreement in favour of the Petitioner-Society. The order dated 13th March, 2024 passed by the Competent Authority is thus indefensible and liable to be set aside.

12. The Petition accordingly succeeds. Order dated 13th March, 2024 passed by the Competent Authority is set aside and proceedings are remanded before the Competent Authority for issuing certificate of unilateral deemed conveyance of land admeasuring 662.60 sq. meters as well as the society's building in favour of the Petitioner-Society.

13. Respondents No.2 to 8 shall be at liberty to prosecute the proceedings initiated by them both for the purpose of challenging the area of land conveyed in favour of the Petitioner-Society as well as for pressing their alleged rights flowing out of the Memorandum of Understanding of November, 2019. Such proceedings, if and when filed, shall be decided on their own merits without being influenced by any of the observations made in the present order. The certificate of unilateral deemed conveyance would

thus be subject to the outcome of the proceedings initiated by Respondents No.2 to 8.

14. With the above directions, the petition is allowed. Rule is made absolute. There shall be no order as to costs.

15. After the order is pronounced, Ms. Chauhan would pray for stay to the operation to the order for a period of four weeks. The request is opposed by Mr. Mogre. It a settled position of law that the certificate of unilateral deemed conveyance is not final determinative of their rights and entitlements of the parties and is always subject to civil proceedings that would be filed by the affected parties. The interest of Respondents No.2 to 8 are already protected by the observations made in the order. Respondents No.2 to 8 are also members of Petitioner-Society and order of deemed conveyance also enures to their benefit as they would receive alternate premises in the redeveloped building as member of Petitioner-Society. In my view therefore, there is no warrant for grant of stay of the order. The request for stay is accordingly rejected.

16. Certified copy is expedited.

(SANDEEP V. MARNE, J.)