

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 10133 OF 2024

Farida Dawood Shaikh w/o. Dawood
Abdul Rahman Shaikh and Ors.

...Petitioners

V/s.

Seagull Co-operative Housing
Society Limited and Ors.

...Respondents

Mr. Shriram Redij *for the Petitioner.*

Mr. Hamid Mulla, *AGP for Respondent -State.*

CORAM: SANDEEP V. MARNE, J.

Dated: 7 April 2025.

P.C. :

- 1) Petition challenges order dated 13 February 2024 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Mumbai City (4) granting certificate of unilateral deemed conveyance of land admeasuring 401.056 sq.mtr. alongwith building in favour of Respondent No.1-Society.
- 2) I have heard Mr. Redij, the learned counsel appearing for the Petitioners and Mr. Hamid Mulla, learned AGP for Respondent -State.

3) Petitioners claim to be heirs of the original landowner, who had executed development agreement in favour of the Promoter, who has constructed a building and sold flats to the flat purchasers after execution of agreements under Section 4 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management, and Transfer) Act, 1963 (**MOFA**). The Promoter therefore came under statutory obligation under Section 11 of MOFA to convey his right, title and interest in the land and building in favour of the Society.

4) It appears that there are disputes between Petitioners and the Developer arising out of alleged non-fulfillment of obligations flowing out of the development agreement. Pendency of such dispute, in my view, cannot be a reason for the Promoter not to fulfill its statutory obligations under Section 11 of the MOFA. If Petitioners have any disputes with the Developer, they can agitate the same before the Civil Court. Petitioners cannot prevent conveyance of land in favour of collective body of the flat purchasers, when they grant development rights and the building is complete with issuance of occupancy certificate. In my view therefore, there is no warrant for interference in the impugned order dated 13 February 2024.

5) Mr. Redij would strenuously contend that impugned order has been passed against Dawood Abdul Rehman Shaikh, who was dead as on the date of filing of the application. He submits that Society was well aware of his death as he was a

resident of the same building. He would therefore submit that the order passed against a dead person, being a nullity, the impugned order is liable to be set aside. Though in ordinary course, what Mr. Redij contends may have been correct, however once this Court arrives at a conclusion that presence of legal heirs of Dawood Abdul Rehman Shaikh before the Competent Authority would not have made any difference to the proceedings decided by the Competent Authority, this Court would be loath in exercising jurisdiction under Article 227 of the Constitution of India to interfere in the impugned order of deemed conveyance. Petitioners are opposing deemed conveyance only because they have grievance with the promoter/developer about alleged non-fulfillment of obligations arising out of development agreement. Those disputes could not have been decided in limited remit of enquiry under Section 11 of MOFA. Petitioners will have to sue the developer in civil court for that purpose. Mr. Redij would submit that the society is claiming ownership in respect of flats/units allotted/supposed to be allotted to Petitioners. Even that dispute cannot be agitated before enquiry under Section 11 of the MOFA. Petitioners would be at liberty to adopt appropriate proceedings against Society about that grievance.

6) Considering the overall conspectus of the case, I am not inclined to interfere in the impugned order dated 13 February 2024. Writ Petition is accordingly dismissed. Petitioners would be at liberty to institute civil suit against developer in respect of their grievance of non-fulfillment of obligations flowing out of

development agreement and also against the society in respect of their grievance about society claiming ownership in units/flats allotted to them.

[SANDEEP V. MARNE, J.]