

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

WRIT PETITION NO.10923 OF 2024

M/s. Rishikesh Builders and Developers & Ors.Petitioners
V/S

State of Maharashtra & Ors.Respondents

Mr. S.R. Nargolkar a/w Mr. Arjun Kadam *for the Petitioners.*

Ms. M.S. Bane, AGP for Respondent Nos.1 to 3/State.

Mr. Malhar Kadam h/f Mr. Dhavan Shah *for Respondent No.4.*

CORAM: SANDEEP V. MARNE, J.
DATE : 11 FEBRUARY 2025.

P.C.:

1. It must be observed at the very outset that filing of this Petition by the Petitioner-Builder is a gross abuse of process of law. Petitioner is a Developer who has caused construction of a building. Initially a condominium of apartment was formed as per the desire of the Petitioners. It appears that the Petitioners voluntarily executed conveyance in respect of the land in favour of the Association of Apartment Owners excluding land admeasuring 301 square meters, which apparently forms part of open space. According to the Petitioners, the land admeasuring 301 square meters was not the open space meant for consumption by the flat purchasers in the building.

2. It appears that the flat purchasers subsequently opted for formation of a Co-operative Society and accordingly Co-operative Society was formed and registered. After registration of the Co-operative Society, the Society filed an application under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**MOFA**) for issuance of certificate of unilateral deemed conveyance in respect of entire land including land admeasuring 301 square meters. Society's application under Section 11 of the Act came to be allowed by the Competent Authority and the Competent Authority directed conveyance of entire land in favour of the Society including the open space of the land admeasuring 301 square meters. Petitioners apparently challenged the order of deemed conveyance in this Court by filing a Writ Petition, which came to be withdrawn by it on 7 October 2019. Petitioners have thereafter filed a Civil Suit before the Court of Civil Judge Senior Division, Solapur challenging conveyance of land in favour of the Society by the Competent Authority. The said suit is pending.

3. When the Society approached the Sub-Registrar of Assurance for registration of Deed of Conveyance consequent to the order of deemed conveyance passed by the Competent Authority, it appears that the stamp duty was adjudicated after taking into consideration the stamp duty paid by individual flat purchasers at the time of execution of agreements for sale with

the Petitioner-Developer. Accordingly the deed of conveyance came to be registered upon payment of stamp duty of Rs.100/-. The objection of the Petitioners is that the Society must be made liable to pay stamp duty of Rs.94,56,600/- while registering conveyance in pursuance of the certificate of unilateral deemed conveyance. On account of this grievance raised by the Petitioners a Reference was apparently made before the Chief Controlling Revenue Authority (**CCRA**), Maharashtra State, Pune in which the Petitioners intervened. The CCRA has held that the proceedings are incapable of being revised under provisions of Section 53A of the Maharashtra Stamp Act, 1958 (**the Stamp Act**) vide order dated 12 February 2024, which is subject matter of challenge in the present Petition.

4. The Petitioner-Developer is apparently opposed to conveyance of any additional land (301 square meters) over and above the one already conveyed in favour of the then Association of Apartment Owners and had accordingly opposed the Application of the Society under section 11 of the MOFA. After the order of deemed conveyance was passed, the Petitioners initially attempted to challenge the same before this Court by filing Writ Petition No.12917 of 2018 which came to be withdrawn by them possibly for the purpose of filing of Regular Civil Suit No. 674 of 2019.

5. This Court is unable to appreciate the anxiety on the part of the Petitioner-Developer to make the Society pay huge amount

of stamp duty of Rs.94,56,600/- only because it is unhappy with the order passed by the Competent Authority granting unilateral deemed conveyance of land admeasuring 301 square meters. It is sought to be contended that once the benefit of Section 4 of the Stamp Act is exhausted while registering the earlier deed of conveyance, the Society is not entitled to seek the benefit of Section 4 of the Stamp Act once again at the time of registration of certificate of unilateral deemed conveyance. I find this submission to be preposterous to say the least. Under Section 11 of the MOFA, it is the duty of the Petitioner-Developer to convey in favour of the Society its right, title and interest in the land and the building. If the Petitioners did not fulfill its obligations under Section 11 of the MOFA and conveyed lesser land in favour of the Society/Association of Apartments by way of the earlier conveyance deed, the Competent Authority was required to step in and correct the folly committed by the Petitioners by ensuring that the entire land is ultimately conveyed in favour of the collective body of the flat purchasers. Merely because the Society was required to knock the doors of the Competent Authority under Section 11 of the MOFA and an order of unilateral deemed conveyance was required to be passed, it would be inconceivable to make the Society liable to pay stamp duty on the entire conveyance merely because Petitioners conveyed only part of the land in favour of the Society. The Petitioners thus want to take benefit of their own wrong by conveying part of the land in favour of the collective body of flat purchasers and after being compelled by the Competent Authority to convey the entire land,

now it contends that the Society must pay stamp duty on the entire conveyance since it has exhausted the benefit of Section 4 of the Stamp Act at the time of execution and registration of the earlier partial conveyance deed.

6. The Petition is clearly aimed at bringing the Society to its knees so as to settle score with it for having shown the audacity of seeking unilateral deemed conveyance of common space land of 301 square meters. This Court would not permit its jurisdiction to be misused by a Developer to settle scores with the Society.

7. I therefore find the present Petition filed by the Petitioner-Developer to be gross abuse of process of law. The Petition is filed clearly with an intention to harass the Society with no possible gain to the Petitioner-Developer. Therefore dismissal of the present Petition would not be without consequences. In fact when the Petition was heard on 10 February 2025, this Court had suggested to the Petitioners that the Petition be withdrawn, failing which costs would be imposed. Accordingly the Petition was listed today for taking instructions. The Petitioners however instructed its counsel to press the Petition on merits. Valuable judicial time is wasted in hearing and deciding this baseless Petition, which is clearly aimed at creating difficulties for the flat purchasers. Genuine litigants suffer whose cases do not reach on account of engagement of valuable judicial time in deciding these

kind of baseless Petitions. In that view of the matter, exemplary costs are required to be imposed on the Petitioners while dismissing the present Petition.

8. The Petition is accordingly dismissed by imposing costs of Rs.1,00,000/- on the Petitioners. Costs to be paid in favour of Respondent No.4-Sudheshna Vihar Flat Owners Association within a period of four weeks.

(SANDEEP V. MARNE, J.)

SUDARSHAN
RAJALINGAM
KATKAM

Digitally signed
by SUDARSHAN
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