

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

WRIT PETITION NO. 14280 OF 2024

**Maheshwar Niketan Co-operative
Housing Society Ltd.**
Through its Authorised Representative
Mrs. Mandakini N. Pawar (Chairman)

....Petitioner

: Versus :

**1. Competent Authority/District Deputy
Registrar, Co-operative Society, Thane.**

2. M/s. M.J. Properties Developers Pvt. Ltd.

3. Shri. Anil Kanhaiyalal Nair

4. Shri. Vijay Kanhaiyalal Nair

5. Shri. Kailas Kanhaiyalal Nair

6. Shri. Chhagandas Nair

7. Shri. Vinod Kanhaiyalal Nair

....Respondents

Mr. Rajdeep Khadapkar *i/by. Mr. Vinod Utekar, for the Petitioner.*

Mr. S.D. Rayrikar, *AGP for Respondent No.1-State.*

Mr. Y.S. Jahgirdar, Senior Advocate *i/by. Mr. Saurabh Oka for Respondent No.2.*

Mr. Mahendra Mehta, Partner of Respondent No.2 is present in Court.

CORAM : SANDEEP V. MARNE, J.

Dated : 17 April 2025.

P.C. :

1) The petition challenges order dated 7 December 2020 passed by the Competent Authority and District Deputy Registrar, Co-

operative Societies, Thane (**Competent Authority**) issuing certificate of unilateral deemed conveyance under Section 11 of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**MOFA Act**) to the limited extent of inclusion of condition therein reserving liberty for second Respondent-Developer to construct 9th and 10th floors in the Society's building. The Petitioner-Society has also challenged the Corrigendum dated 4 September 2023 to the extent of recognising the right of the Developer to construct 9th and 10th floor in the building of the Society.

2) I have heard Mr. Khadapkar, the learned counsel appearing for the Petitioner-Society, Mr. Jahgirdar, learned Senior Advocate appearing for Respondent No.2-Developer and Mr. Rayrikar, the learned AGP appearing for Respondent No.1-State.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the Petition suffers from gross delay and laches. Petitioner-Society has filed the present Petition on 6 May 2024 challenging the order passed by the Competent Authority on 7 December 2020. There is thus delay of 3 ½ years in filing the Petition.

4) The order dated 7 December 2020 is actually in favour of the Petitioner-Society as the same issues certificate of unilateral deemed conveyance in its favour in respect of the land admeasuring 2671.20 sq.mtrs and the building constructed thereon. However, the order dated 7 December 2020 contains Condition No.8 as under :

८) प्रतिवादी क्र. ४ मे. एम. जे. प्रॉपर्टॉन डेव्हलपर्स प्रा. लि. यांनी सादर केलेले म्हणणे पहाता व ठाणे म्युनिसिपल कॉर्पोरेशन ठाणे यांचे व्हि.पी. नं. ८८/३०२ (जुना) एस२सी/०१९५/१९ (न्यू)

w टिएमसी/टिडीडी/३३६८/२० दि. ७/२/२०२० रोजीचा मंजूर बांधकाम नकाशा व बांधकाम परवानगी विचारांत घेता प्रतिवादी क्र.४ बिल्डर्स प्रमोटर्स यांना ९ व १० वा मजला बांधण्याचे व त्यासाठी आवश्यक FSI/TDR वापरण्याचे हक्क अबाधित असून ते बांधण्याचा अधिकार त्यांना आहेत. यास्तव संस्थेने बांधकामास आडकाठी आणू नये.

5) The order dated 7 December 2020 is passed on application filed by the Petitioner-Society and it was bound to know about existence of Condition No.8 in the said order. If Petitioner-Society had any grievance with regard to right of Respondent No.2 to construct 9th and 10th floor of the building, it ought to have challenged the order dated 7 December 2020 within a reasonable period. Far from challenging the order dated 7 December 2020, it appears that the Petitioner-Society filed application dated 24 May 2023 for issuance of Corrigendum, in which it did not make any grievance about incorporation of Condition No.8 in the order dated 7 December 2020. The limited Corrigendum which the Petitioner-Society sought in the Certificate of unilateral deemed conveyance was to incorporate names of two individuals Chhagandas Nayar and Vinod Kanhaiyalal Nayar as party Respondents to the order dated 7 December 2020. The Competent Authority proceeded to allow the application filed by the Petitioner-Society and issued Corrigendum dated 4 September 2023 which reads thus :

CORRIGENDUM

In the above mentioned original order issued by this competent authority dated 07/12/2020 in favour of Maheshwar Niketan Co-operative Housing Society Ltd., Tika No 8, [C.T.S.No](#) 161 in the Revenue Village Thane Shahar, Tal.&, Dist. Thane, Maharashtra.

The description of respondent should be read as :-

The respondent No 5) Chhagandas Nayar 6) Vinod Kanhaiyalal Nayar, has been added as party respondent.

6) Even the Corrigendum dated 4 September 2023 contained Condition No.10 as under:

10. As per the para no. 8 of the original order passed by the competent authority, the rights of the Developer with respect to construction on 9th & 10th floor and utilization of FSI/TDR for the purpose are intact and very well in existence, and the Developer is entitled to carry out construction on 9th & 10th floor of the Societies existing building as per the commencement Certificate and the Plan sanctioned by the Thane Municipal Corporation vide V.P. No.88/302(Old) S2C/0195/19(New) TMC/TDD/3368/20 dated 6/2/2020 and the society shall not object for the same. This condition of the original order will be binding on the applicant society.

7) The Corrigendum dated 4 September 2023 was issued by the Competent Authority as per the application made by the Petitioner-Society in which no grievance was expressed about the right reserved in favour of the 2nd Respondent to construct 9th and 10th floors of the building. Thus, far from challenging Condition No.8 incorporated in the order dated 7 December 2020 within reasonable time, the Petitioner-Society acquiesced in the said condition by filing an application for issuance of Corrigendum on 24 May 2023.

8) Therefore on the twin grounds of delay and laches in challenging incorporation of Condition No.8 in the order dated 7 December 2020, as well as acquiescence on the part of the Petitioner-Society to the said condition while filing an application for issuance of Corrigendum on 24 May 2023, this Court is not inclined to interfere in the order of the Competent Authority dated 7 December 2020.

9) Even if the aspect of delay and laches, as well as acquiescence is to be momentarily ignored, I am unable to trace any patent illegality in the order of the Competent Authority incorporating Condition No.8 in the impugned order dated 7 December 2020. It

appears that Thane Municipal Corporation had initially sanctioned the plans by considering that the plot was located within Gavthan area and accordingly had issued Commencement Certificate dated 5 February 1992 with 2.00 FSI. After the second Respondent-Developer commenced construction of the building in accordance with the Commencement Certificate dated 5 February 1992, the Municipal Corporation changed its opinion about location of the plot and felt that the same is located outside Gavthan area and that therefore the 2nd Respondent-Developer was not entitled to construct building with FSI 2.00 and accordingly issued letter dated 4 October 1993 directing the Developer to stop construction. The letter dated 4 October 1993 was challenged by the Developer by filing Special Civil Suit No.835/1993 before the Court of Civil Judge (S.D.), Thane. During pendency of the said suit, the Developer continued construction of the building and executed Agreements under Section 4 of MOFA with the flat purchasers. The Developer made disclosure to the flat purchasers about pendency of Suit against the Municipal Corporation and specifically reserving the right to put up additional construction on the plot in terms of the original commencement certificate dated 5 February 1992. Even at the time of formation of the Society, the 2nd Respondent-Developer incorporated a specific condition for construction of 9th and 10th floor in the building.

10) The Suit filed by the second respondent-developer came to be decreed on 14 February 2005 by setting aside the Municipal Corporation's letter dated 4 October 1993. It appears that the decree dated 14 February 2005 was challenged by the Municipal Corporation in this Court and the Appeal was later withdrawn. It appears that the Municipal Corporation has now issued a modified Commencement Certificate for putting up additional construction on the building on 7

February 2020. It is thus clear that the flat purchasers were fully aware about construction of flats on 9th and 10th floors of the building and that the construction was held up only on account of pendency of suit/appeal against the Municipal Corporation. In fact upon being queried, Mr. Khadapkar has fairly admitted that RCC work for the 9th and 10th floors of the building was already completed and the overhead tank is constructed above 10th floor. The staircases as well as lift shafts were also constructed for 9th and 10th floors when building got occupied. The issue for consideration is whether the society can be permitted to take benefit of inability of the promoter to complete the planned construction on account of pendency of litigation with the Municipal Corporation? The answer to the issue, to my mind, appears to be in emphatic negative.

11) In my view therefore, the Competent Authority has not committed any patent illegality in reserving the right of the Second Respondent-developer to construct 9th and 10th floor of the building while granting Certificate of unilateral deemed conveyance dated 7 February 2020.

12) Though the impugned order does not suffer from any patent illegality, since the 2nd Respondent-Developer is desirous of constructing additional flats on 9th and 10th floor of the building, the same is likely to cause some inconvenience and damage to the existing building, Mr. Jahgirdar, on taking instructions from partner of Respondent No.2-Developer Mr. Mehta, who is personally present before the Court, makes a statement that the 2nd Respondent-Developer shall carry out following additional works in the building as well as in the compound of the building:

1) Full building, external plaster (Repair where necessary only) and paint.

We shall repair the external plaster of the building wherever necessary and shall re-paint the entire building.

2) 2 New elevators in the same lift shaft.

We offer to provide 2 new elevators in the building, within the same elevator shafts. We shall have them installed at our own cost and expense.

3) Compound development.

Status of the existing compound is such that it is in a very poor state of upkeep and maintenance. We, shall bring the compound in a better state and beautify the same.

4) Bore Well.

We will create a Bore Well where possible to enhance the water supply to the Society at our cost and expense.

5) Water Lines at Terrace Level.

We will install new water lines at the terrace level.

6) Rainwater Harvesting.

We shall update and bring to a good status of upkeep for the Rainwater Harvesting system.

The above statement is recorded and accepted.

13) Therefore, on the three grounds of delay, acquiescence as well as on merits, I am not inclined to interfere in the impugned order of the Competent Authority on 7 December 2020 or the Corrigendum dated 4 September 2023. Recording the statement made on behalf of the 2nd Respondent-Developer, the petition is **disposed of**.

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[SANDEEP V. MARNE, J.]