

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

WRIT PETITION NO. 17099 OF 2024

Bldg. No.5 and 6, Vijay Nagari CHS Ltd.
and Ors.

] ***Petitioners***

: Versus :

Bldg. No.1 and 4, Vijay Nagari CHS Ltd.
and Ors.

] ***Respondents***

Mr. Shailendra Pendse i/by. Mr. C.S. Lamba, Md. Shamsheer Ali, Ms. Snehal Dubey and Mr. Ajinkya Mosamkar, for the Petitioners.

Mr. Akhilesh Dubey a/w. Mr. Vagish Mishra, Mr. Uttam Dubey, Mr. Shubham Sharma, Mr. Varad Dubey, Mr. Abhijit Patil i/by. Jagdish G. Aradwad (Reddy), for the Respondent No.1.

Ms. Snehal Jadhav, AGP for State.

CORAM : SANDEEP V. MARNE, J.

Dated : 24 April 2025.

P.C. :

1) Leave granted to amend the petition for setting up a challenge to the registered deed of conveyance dated 25 October 2024 executed in favour of the First Respondent-Society. Amendment to be carried out forthwith.

2) Seven Co-operative Housing Societies have been formed in respect of buildings constructed on larger plot of land. Those seven Co-operative Housing Societies came together and formed Vijay Nagari Co-

operative Housing Societies Federation Limited. Six out of those seven Co-operative Housing Societies and the Federation are Petitioners in the present petition who are up in arms against the First Respondent-Society (*Building No.1 to 4 of Vijay Nagari CHSL*). The Federation and its six Societies are aggrieved by order dated 23 September 2024 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Thane granting unilateral deemed conveyance in respect of land admeasuring 4748.93 sq.mtrs in addition to proportionate share admeasuring 857.56 sq.mtrs in the recreational ground totalling 5606.5 sq.mtrs which forms part of larger portion of land. It is the grouse of the Federation and its six members that the Federation has already secured conveyance of the entire larger portion of the land admeasuring 28,700 sq.mtrs from the Competent Authority by order dated 4 July 2022. It is contended by the Petitioners that once the Federation has already conveyed the entire larger portion of land, it was impermissible for the First Respondent-Society to once again apply to the Competent Authority to cut a part of such larger portion of land and convey the same to it. In short, it is contended that the Competent Authority could not have entertained the application filed by the First Respondent Society after conveyance of entire larger portion of land in favour of the Federation.

3) It is the contention of the First Respondent-Society that the conveyance dated 4 July 2022 has been obtained in the name of the Federation by making false representation to it. The First Respondent-Society is no longer interested in remaining part of the Federation and wants to have conveyance of its own portion of land so that the First Respondent Society can redevelop its own building without remaining at the mercy of the Federation.

4) While the anxiety expressed on the part of the First Respondent-Society in redeveloping its own building is appreciated, at the same time, the First Respondent-society could not have filed application for conveyance of smaller portion of land in its favour when the entire larger portion of land was already conveyed in favour of the Federation on 4 July 2022. Once deemed conveyance was granted in respect of the entire larger portion of land on 4 July 2022, the Competent Authority ceased to have jurisdiction under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**MOFA Act**) to entertain any further application for deemed conveyance by any constituent member of the Federation. The Competent Authority exercised limited jurisdiction of stepping into the shoes of the Promoter and performing statutory obligation of transferring Promoter's right, title and interest in the land and building in favour of the concerned Society. Once jurisdiction is exercised by the Competent Authority under Section 11 of MOFA by directing conveyance of the entire larger portion of the land in favour of the Federation, no statutory obligation remained in respect of the Promoter which could be further enforced by the Competent Authority by entertaining one more application under Section 11 of the Act. The land owner is now the Federation, who is not a Promoter within the meaning of MOFA. Therefore, the Federation is not under statutory obligation to convey the land in favour of First Respondent-Society. In absence of existence of statutory obligation of a Promoter under Section 11(1) of MOFA, the Competent Authority cannot exercise jurisdiction under Section 11(3) and (4) thereof. In my view therefore, the Competent Authority has committed jurisdictional error in entertaining application filed by the First Respondent-Society under Section 11 of MOFA.

5) If the First Respondent-Society does not wish to be a part of the Federation and is not happy with the conveyance of the larger portion of land in favour of the Federation vide order dated 4 July 2022, it would for the First Respondent-Society to take a call in that regard. However, under no circumstances, the First Respondent-Society could have filed an independent application under Section 11 of the MOFA for conveyance of smaller portion of the land in its favour by seeking to separate from the Federation. Mr. Dubey, the learned counsel appearing for the First Respondent-Society would submit that his client .

6) is desirous of challenging the order dated 4 July 2022 and prays for liberty to do so.

7) Consequently, the order dated 23 September 2024 passed by the District Deputy Registrar, Co-operative Societies, Thane is set aside. The First Respondent-Society would however be at liberty to challenge the order dated 4 July 2022 passed in favour of the Federation. Such challenge shall be decided independently on its own merits without being influenced by any of the observations made in the present order. All rights and contentions of the parties on merits are expressly kept open.

8) Since the order dated 23 September 2024 is being set aside , the consequential actions taken in pursuance thereof including the registered deed of conveyance dated 25 October 2024, as well as the entries in the property card register shall also stand consequently set aside. The Writ Petition is **allowed** in the above terms. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]