

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.17976 OF 2024

Tarabai Laxman Patil and Ors.

...*Petitioners*

V/s.

Competent Authority and District
Deputy Registrar, Co operative
Societies Thane and Ors.

...*Respondents*

Mr. Kailas Dewal *i/b. Mr. Yash Dewal and Mr. Sham Thakur for the Petitioners.*

Mr. Mayur Khandeparkar *with Mr. Ravi Shrivastav i/b. Mr. Vinayak Patil for Respondent No.2.*

Ms. Vaishali S. Nimbalkar, *AGP for Respondent No.1-State.*

CORAM: SANDEEP V. MARNE, J.

Dated: 8 MAY 2025.

P.C.:

1) Petition challenges order dated 29 August 2024 passed by the District Deputy Registrar, Co-operative Societies, Thane, and Competent Authority granting certificate of unilateral deemed conveyance of land admeasuring 5680.20 sq.mts. out of total land admeasuring 10160 sq.mts. in favour of the second Respondent -Society.

2) I have heard Mr. Dewal, the learned counsel appearing for the Petitioners, Mr. Khandeparkar, the learned

counsel appearing for second Respondent-Society and Ms. Nimbalkar, the learned AGP appearing for Respondent No.1-State.

3) The main ground of objection to the impugned order dated 29 August 2024 on behalf of the Petitioners is that Application No.347 of 2024 was barred by principle of *res-judicata*. It appears that second Respondent has earlier filed Application No.88 of 2018, which was rejected by the Competent Authority by order dated 27 August 2018 by granting leave to file fresh application for deemed conveyance. It is contended by the Petitioners that since earlier application is rejected, the society could not have filed a fresh application for deemed conveyance. Reliance is placed on judgment of the Hon'ble Apex Court in ***M/s. Faime Makers Private Ltd Vs. District Deputy Registrar Co-op Societys (3), Mumbai And Ors***¹. and of this Court in ***M/s. Aakansha Construction Company Vs. The State of Maharashtra and Ors.***²

4) I have gone through the order dated 27 August 2018. Society's first application for deemed conveyance was rejected essentially for three reasons:

- (i) Suit No.201841 of 2012 filed by the Society was pending before the Civil Court and the Society did not produce any evidence of the Suit being decided. In the event of Society's contention that

¹ SLP (Civil) 26654 of 2023 decided on 1 April 2025.

² Writ Petition No.19417 of 2024, decided on 5 May 2025.

said Suit had no nexus with conveyance, no evidence in this regard was produced.

(ii) Area of the total land in 7/12 extract is 10160 sq.mts. and there was no clarity about ownership of the balance land as well as the exact area in possession of the society. Non-production of architect certificate by the society.

(iii) Several documents were not certified.

5) Perusal of the above three reasons for rejection of Society's first application for deemed conveyance by order dated 27 August 2018 shows that there was no 'decision' by the Competent Authority. It never held that the Society is not entitled to deemed conveyance of any portion of land for any particular reason. It rejected the application by observing that Society did not produce the expected documents.

6) So far as the first reason of rejection is concerned, Suit No.201841 of 2012 was to restrain the landowners from dispossessing the society members from possession of the flats. The suit was not for seeking conveyance of land. Same obviously had no nexus with Society's application for deemed conveyance. The Suit is otherwise withdrawn. In my view therefore, mere pendency of that Suit was not a bar for deciding the application for deemed conveyance. The society would have actually demonstrated lack of nexus between the said Suit and

application for deemed conveyance if opportunity was granted to it to do so by raising the query to that effect by the Competent Authority rather than rejecting the application observing that the Society could not produce evidence of absence of such nexus.

7) So far as the second reason about lack of clarity about rights of persons in remainder portion of the land is concerned, the same again is totally irrelevant for the purpose of determining Society's entitlement to deemed conveyance of land admeasuring 5680.20 sq.mts. Who owns balance portion of the land could not have been the concern of the Competent Authority. Society has apparently not produced certificate of Architect, which was subsequently produced in the second application.

8) Last and the third ground was about non-production of certified copy of several documents. The Competent Authority thus refused to decide the society's application for deemed conveyance on the ground of non-certification as true copies of some of the documents. It appears that the society produced certified copies of requisite documents in the remanded proceedings. In the impugned order, the Competent Authority has observed that the second Respondent -Society has produced all the requisite documents as per the Government Resolution dated 12 June 2018.

9) Considering the above position, in my view, there was no adjudication by the Competent Authority while rejecting the

first application of the Society for deemed conveyance. Application was merely returned with liberty to file requisite documents afresh. In fact, this Court does not appreciate the approach of the Competent Authority in disposing of the earlier application for deemed conveyance only on the ground of failure to file requisite documents by the second Respondent -Society. If Competent Authority needed any clarification or any additional document, it ought to have adjourned the proceedings and directed the society to produce the same. In fact, provisions of Rule 13(1)(c) of the MOFA Rules mandate that in the event of application not being complete, the Competent Authority can send a notice in Form VIII to the Applicant-Society for rectification of defects. Rule 13 provides thus:

13. Scrutiny of applications and notice to the parties, etc.

(1) Registration of applications.

(a) On receipt of an application, the office of the Competent Authority shall endorse on it the date of its receipt and shall as soon as possible, examine it and satisfy itself that the person presenting it has authority to do so and that it conforms with all the provisions of the Act and the Rules made thereunder.

(b) If the Competent Authority is satisfied that the application is complete in all respect, it shall cause the application to be registered, as admitted, in the appropriate register maintained under these Rules.

(c) If the application is not complete, the Competent Authority may send notice in the Form VIII, to the applicant/s to rectify the defects or comply with such requirements, as it may deem fit to conform with all the provisions of the Act, and these Rules, within a period of fifteen days of the receipt of the said notice. The Competent Authority may, for sufficient cause, may give further extension of not more than fifteen days to comply with the requirements.

If the above defect in an application is rectified, the Competent Authority shall cause it to be admitted and register the application in the appropriate register.

10) Therefore proper course of action for Competent Authorities is to grant an opportunity to the Applicant-society to produce the requisite information or documents, rather than rejecting the applications with liberty to file fresh one. Filing of repeated applications for deemed conveyance gives rise to raising of objections of *res-judicata* and seek to defeat the real objective behind enacting Section 11 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management, and Transfer) Act, 1963 (**MOFA**).

11) Be that as it may. Rejection order dated 27 August 2018 did not adjudicate Society's application for deemed conveyance and therefore the same would not constitute *res-judicata* for decision of Application No.347 of 2024. The rejection order granted liberty to the society to file a fresh application with requisite information and documents.

12) Reliance of Mr. Deval on judgment of the Apex Court in ***M/s. Faime Makers Private Ltd***(supra) is misplaced. In case before the Apex Court, the earlier application of the Society was rejected observing that unless legal complications involved in the case were resolved through Civil Court, deemed conveyance could not be granted. It is in the light of those peculiar facts that the Hon'ble Apex Court has held that there was no unconditional liberty granted to the Society to apply for conveyance of the land

afresh and the liberty was only after resolution of legal complications through Civil Court. Fresh application was made by the society without waiting for resolution of legal complications. The Apex Court therefore held that the fresh application to be barred by *res-judicata*.

13) In ***M/s. Aakash Construction Company*** (supra) the Society filed three applications for deemed conveyance. While rejecting the first application, liberty was granted to the society therein to file fresh one. However, while rejecting the second application for deemed conveyance, the Competent Authority did not grant any liberty to file fresh application and expected parties to await decision of suit relating to title pending between persons claiming title in the land. It appears that a Suit was filed by the society seeking deemed conveyance and during pendency of that suit and despite non-grant of liberty to file fresh application, third application for deemed conveyance was filed. Facts in the case of ***M/s. Aakash Construction Company*** (supra) are thus distinguishable, and the judgment would have no application to the fact and circumstances of the present case.

14) In the present case, specific liberty was granted to file a fresh application with requisite information and documents. In my view therefore objection of *res-judicata* sought to be raised by the Petitioners is totally misplaced and deserves outright rejection.

15) Next contention sought to be raised on behalf of the Petitioners is that the lease agreements executed in favour of the

third Respondent-promoter are unregistered. In my view, by way of Supplementary Agreement executed on 14 December 1975, the Petitioners have permitted the third Respondent to cause construction on the land. Having done so and having seen construction of building coming up in front of their eyes, it is now too late in a day for Petitioners to turn around and take benefit of their own wrong by contending that conveyance cannot be granted on account of non-registration of the lease deed. Once the land is subjected to the provisions of the MOFA by causing construction of units, there is a statutory obligation on the part of the promoter and owner to convey their title in respect of the land and this statutory obligation cannot be sought to be avoided by raising technical pleas of non-registration of the lease agreement.

16) It is sought to be contended that the certificate of unilateral deemed conveyance is vague as it does not specify the boundaries of the land to be conveyed in favour of the second Respondent-Society. Relying on the registered deed of conveyance, it is contended that the exact boundaries of the land are not specified. However, both under the lease agreement as well as under the flat purchase agreement, boundaries of the land admeasuring 5680.20 sq.mts are clearly mentioned. In my view therefore, there can be no difficulty in identifying conveyed portion of the land.

17) The next objection raised by the Petitioners is about all owners of the land not being heard. The objection is clearly

misplaced as Petitioners are heard by the Competent Authority. They cannot hold brief on behalf of those, who have not chosen to file petition challenging order of deemed conveyance.

18) The next objection sought to be raised on behalf of the Petitioners is that the third Respondent -Promoter did not secure commencement certificate or occupation certificate for constructing the building. It is contended on behalf of the second Respondent -Society that this objection was never raised by the Petitioners before the Competent Authority. Be that as it may. So far as the objection of non-procurement of occupation certificate is concerned, the issue is well settled on account of judgment of this Court in ***ALJ residency Co-operative Housing Society Ltd. Vs. State of Maharashtra and Ors.***³ in which a view is taken by this Court that non-procurement of occupancy certificate cannot be a bar for exercise of jurisdiction by the Competent Authority under Section 11 of the MOFA. So far as commencement certificate is concerned, the second Respondent - Society has relied upon permission issued by the Grampanchayat in the year 1975. It is contended on behalf of the Petitioners that said permission is not the one in accordance with which construction is caused at the site. In my view, this debatable issue need not be gone into any further, especially in the light of the fact that Petitioners never raised the issue of non-procurement of commencement certificate for opposing deemed conveyance before the Competent Authority.

³ Writ Petition No.406 of 2018, decided on 25 November 2024

19) I have gone through the photographs of the building, which is totally dilapidated and not fit for human residence. The members of the society are awaiting redevelopment of the building. Redevelopment cannot be undertaken unless the rights in the land are conveyed in favour of the Respondent-society. Thus an order for deemed conveyance would assist the members of second Respondent society to construct a new building by demolishing the existing structure. This is the exact objective behind enacting Section 11 of MOFA.

20) This leaves the last ground of objection about the Competent Authority conveying the land on ownership basis when in fact third Respondent-promoter is a mere lessee. There is no doubt to the position that what was executed by the Petitioners in favour of the third Respondent was mere lease of land. The initial lease was executed on 2 November 1975. There was a supplementary lease agreement executed on 14 December 1975, under which Petitioners granted permission in favour of the third Respondent to construct the building and to sell the flats. Thus, the third Respondent, who has caused the construction and who has sold the flats, is a mere lessee for the period of 98 years. Since the promoter is not the owner in respect of the land, it is inconceivable that ownership rights in the land could have been conveyed by the Competent Authority in favour of the second Respondent-Society. Section 11 of the MOFA mandates conveyance of promoter's right, title and interest in the land and the building. This would postulate that what is not owned by the promoter cannot be transferred in favour of the

Society or other purchasers. Since promoter in the present case is not the landowner, Competent Authority could not have directed ownership rights in the land in favour of the second Respondent -Society. To this limited extent, impugned order dated 29 August 2024 deserves to be modified.

21) Petition accordingly succeeds partly and I proceed to pass the following order:

- (i) Order dated 29 August 2024 passed by the Competent Authority as well as the impugned Deed of Conveyance dated 19 November 2024 are set aside.
- (ii) Application No.347 of 2024 is remanded to the Competent Authority for the purpose of issuance of fresh certificate of unilateral deemed conveyance granting only leasehold rights in land admeasuring 5680.20 sq.mts. in favour of the second -Respondent society for remainder of the term of lease.
- (iii) Remanded proceedings shall be decided by the Competent Authority in an expeditious manner, preferably within a period of three months.
- (iv) Parties shall appear before the competent authority on 26 May 2025 and obtain further directions for fixation of date(s) in the remanded proceedings.

- (v) It is clarified that in the remanded proceedings, it shall not be open for any of the parties to raise any contention other than grant of leasehold rights in favour of the second Respondent -Society.

22) With the above directions, the Petition is partly allowed and **disposed of**.

[SANDEEP V. MARNE, J.]