

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

WRIT PETITION NO.18454 OF 2024

Clifford Clement D'Silva
(deceased through legal heirs)
Smt. Gemma Clifford D'Silva and
Ors.

...Petitioners

V/s.

The State of Maharashtra and Ors.

...Respondents

Mr. A.V. Chatuphale *i/b. Mrs. Regina Correia for the Petitioners.*

Mrs. S.A. Prabhune, AGP for Respondent -State.

Mr. Ashutosh Gole for Respondent No.2

CORAM: SANDEEP V. MARNE, J.

Dated: 25 April 2025.

P.C.:

1) Petition challenges order dated 26 March 2024 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Thane, granting certificate of Unilateral Deemed Conveyance of land admeasuring 187.50 sq.mtrs. in favour of Respondent No.2-Society.

2) I have heard Mr. Chatuphale, the learned counsel appearing for the Petitioners, Mr. Gole, the learned counsel appearing for Respondent No.2 -Society and Mrs. Prabhune, the learned AGP for Respondent -State.

3) The Petition is filed at the instance of persons claiming to be the original land owners. It appears that original land owners have executed development agreement dated 19 May 2010 with Respondent No.2. It is the grouse of the original land owners / Petitioners that the developer has failed to fulfill his obligations flowing out of the said Development Agreement dated 19 May 2010. This Court has repeatedly taken a view that non-fulfillment of obligation by a developer towards land owners, which flow out of development agreement cannot be a ground for the Competent Authority not exercising jurisdiction under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**MOFA**).

4) It is then contended that one of the party Respondents to the application was dead and notice on the other land owners was sought to be served on the address of the developer. However, even if the Petitioners were to appear before the Competent Authority and raise the issue of failure to fulfill obligations on the part of the promoter, which flow out of Development Agreement dated 19 May 2010, the same could not have been a ground for the Competent Authority refusing to issue certificate of Unilateral Deemed Conveyance. No prejudice is thus caused to the Petitioners on account of alleged non-grant of opportunity of hearing to them.

5) Reliance is placed on sub-section 5 of Section 11 of the MOFA in support of the contention that notice was not issued to the Petitioners before registration of certificate of Deemed Conveyance. Reliance is also placed on judgment of this Court in ***M/s. K.G. Associates and Anr. V/s. The District Deputy Registrar, Co-operative Societies Pune, and Ors.***¹

6) However, in its recent judgment in ***Arunkumar H. Shah HUF Vs. Avon Arcade Premises Co-operative Society Ltd. and Ors.***² the Hon'ble Supreme Court has held in paragraphs 35 and 37 as under:-

35. The MOFA is a beneficial legislation enacted to protect home buyers, considering the ever-increasing housing shortage in urban areas. The Legislature has noted the increasing malpractices by the developers. The provisions of Section 11 are for the benefit of the flat purchasers. In writ jurisdiction, the Court should not interfere with the order granting deemed conveyance under Section 11 (4), unless the order is manifestly illegal. The writ court should generally be slow in interfering with such orders. The reason is that, notwithstanding the order under Section 11(4), the remedy of aggrieved parties to file a civil suit remains open. In this case, substantial justice has been done by protecting the appellant's rights as a perpetual lessee with a right to develop the Arun plot. Therefore, interference in writ jurisdiction was not warranted.

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37. Our conclusions on the interpretation of sub- sections (4) and (5) of Section 11 of the MOFA are as under:

- i. It is no doubt true that quasi-judicial powers have been conferred on the competent authority while dealing with applications under Section 11(3) of the MOFA. However, proceedings before the competent authority under

¹ Writ Petition No.8203 of 2022, decided on 4 October 2023.

² Civil Appeal No.5377 of 2025 decided on 21 April 2025

Section 11(3) are of a summary nature, as can be seen from the MOFA Rules. Therefore, the competent authority, while passing the final order, must record reasons;

- ii. The competent authority, while following the summary procedure, cannot conclusively and finally decide the question of title. Therefore, notwithstanding the order under sub-section (4) of Section 11, the aggrieved parties can always maintain a civil suit for establishing their rights;
- iii. The provisions of Section 11 are for the benefit of the flat purchasers. In writ jurisdiction, the Court should not interfere with the order granting deemed conveyance unless the same is manifestly illegal. The writ court should generally be slow in interfering with such orders. The reason is that, notwithstanding the order under Section 11(4), the remedy of aggrieved parties to file a civil suit remains open; and
- iv. The registering officer has no power to sit in appeal over the order of the competent authority while exercising the power under Section 11(5). He can refuse registration only on the grounds indicated in paragraph 23 above and not beyond. Thus, the scope of the powers conferred on the registering officer is limited.

7) I am unable to trace any manifest illegality in the order passed by the Competent Authority granting Unilateral Deemed Conveyance. I am therefore not inclined to interfere in the same on technical grounds sought to be raised by the Petitioners. Petition is accordingly rejected.

[SANDEEP V. MARNE, J.]