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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4636 OF 2019
WITH
INTERIM APPLICATION NO.38 OF 2025

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Urmila Coop. Housing Society Ltd. ... Petitioner
V/s.
M/s. Kamala Construction & Ors. ... Respondents

Mr. Aditya Lele with Mr. Rutuparn Umesh Deo for the
petitioner.

Ms. Dhruti Kapadia, AGP for the State.

Mr. I.S. Yadav for respondent Nos.2.1, & 3.2.

Mr. Aniket Kansubhe and Mr. Ramchandra Yadav i/by
Legal Vizz for respondent No.2.2.4.

Ms. Rima Oke for respondent Nos.2.2.5 (a) & (b), and
5.

Mr. Vansh Bahadur and Mr. Sabhajeet Yadav for
respondent Nos.2,3,3(A)(i), 2.3,3(A)(ii) to 2.3.3.(iv),
2.3.3.(B), 2.3.3(C) & 4.

CORAM : AMIT BORKAR, J.

DATED : APRIL 22, 2025

PC.:

1. By way of the present writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner-Cooperative Housing Society has approached this Court challenging the Judgment and Order dated 6th March 2018 passed by the respondent No.6 Authority. By the said impugned order, the application preferred by the petitioner-Society under Section 11

read with Section 4 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as "the MOFA Act") for grant of unilateral deemed conveyance in respect of the subject property has been rejected.

2. The brief facts giving rise to the filing of the present petition are as follows: That on 21st December 1979, two persons namely, Ramdhar and Fekuram, claiming to be the owners of the land bearing Survey Nos. 40/3 (part) and 40/4 admeasuring approximately 5000 square yards (i.e., 4180 square metres), situated at Sahar Road, Kol Dongri, Andheri (East), Mumbai, executed an agreement in favour of respondent No.1-promoter for development of the said land.

3. In the year 1980, the said owners and the respondent No.1-promoter jointly submitted an application under Section 22 of the Urban Land (Ceiling and Regulation) Act, 1976 for permission to develop the said land as per the conditions which may be imposed by the Competent Authority under the said Act. Permission was accordingly granted by the Urban Land Ceiling Authority by order dated 26th March 1980.

4. It further appears that on 31st March 1980, respondent No.1-promoter published a public notice inviting objections and claims in respect of the land proposed to be sold and developed. Pursuant to the said notice, certain objections were raised by the heirs of Ballu, Kallu and Jaynandan, namely Munna, Hunan, Bhola, Mulai and Lalta. Thereafter, the respondent No.1-promoter

claims to have amicably settled all disputes and called upon the heirs to execute declaration-cum-affidavits. The affidavits and declarations were thereafter executed by some of the heirs and affirmed before the Special Metropolitan Magistrate, Mumbai. It is the case of the petitioner-Society that though some of the objecting heirs, namely Munna, Hunan, Bhola, Mulai and Lalta did not sign the declarations, their claims were independently settled by respondent No.1-promoter.

5. Thereafter, in the year 1982, respondent No.1-promoter submitted building plans in accordance with the conditions imposed by the Urban Land Ceiling Authority. Based on the said compliance, the Planning Authority granted development permission by its order dated 31st March 1982 to carry out construction over the said property. Pursuant to such sanction, respondent No.1-promoter commenced and completed the construction of a building consisting of two wings having a total of six upper floors (G+6). The first wing comprises 44 flats, whereas the second wing comprises 31 flats, along with 23 shops and 7 garages. On completion of the construction work, respondent No.1-promoter applied for occupancy certificate and was granted part occupancy certificate by the Planning Authority on 22nd May 1984.

6. It is further the case of the petitioner-Society that respondent No.1-promoter entered into agreements for sale of flats, shops, and garages with several purchasers in accordance with the provisions of Section 4 of the MOFA Act. Upon receipt of the full consideration amounts, the promoter handed over possession of

the respective premises to the concerned purchasers in terms of the said agreements. Consequently, the purchasers came together and formed a cooperative housing society, which came to be registered on 31st August 1987 under the Maharashtra Cooperative Societies Act, 1960.

7. It is a settled position of law that upon formation and registration of a cooperative housing society by the flat purchasers, it becomes the statutory duty of the promoter to execute a proper conveyance of the right, title and interest in the land and building in favour of the society. However, in the present case, respondent No.1-promoter failed to discharge the said obligation. As a result, the petitioner-Society was compelled to initiate Civil Suit No.2810 of 1990 before the City Civil Court at Mumbai seeking specific performance of the promoter's statutory duty to execute the conveyance. The said Suit came to be decreed on 24th December 1992. However, due to internal disputes amongst the members of the petitioner-Society and other administrative difficulties, the decree could not be acted upon or executed.

8. Subsequently, one Dudhnath Kally Yadav (respondent No.2.2.4 herein) instituted Suit No.2219 of 2000 in this Hon'ble Court seeking partition and possession in respect of certain undivided properties, including the land described in the plaint schedule. In the said suit, the suit property was demarcated by blue boundary lines on the annexed plan. According to the petitioner-Society, the area occupied by the Society was excluded from the said blue boundary. In that suit, the plaintiff also moved an application for interim relief seeking appointment of Court

Receiver for the suit property, except for two buildings named "Urmila" and "Shweta", situated within the portion demarcated in blue colour on the plan.

9. This Court, vide order dated 3rd May 2000, passed an interim order appointing the Receiver in respect of the suit property, excluding the portion occupied by the petitioner-Society, Urmila CHS Ltd., and the adjoining Shweta Society. It is material to note that the petitioner-Society was not impleaded as a party to the said partition suit.

10. Thereafter, in an attempt to enforce the earlier decree dated 24th December 1992, the petitioner-Society filed Chamber Summons No.1108 of 2013 in Civil Suit No.2810 of 1990 seeking execution of the decree. However, the said Chamber Summons came to be dismissed on the ground of limitation. Pursuant thereto, the petitioner-Society filed fresh Suit No.1168 of 2016 before the City Civil Court, Mumbai once again seeking the relief of conveyance. However, the said suit was subsequently withdrawn by the petitioner without pressing for any relief.

11. Having exhausted all other remedies, the petitioner-Society finally approached the Competent Authority under the provisions of Section 11 of the MOFA Act by filing Application No.49 of 2017 seeking issuance of unilateral deemed conveyance. It is relevant to mention that the developer M/s. Kamala Constructions submitted a 'No Objection' for grant of deemed conveyance in favour of the petitioner-Society. However, the legal heirs and successors of the original landowners contested the said application by raising

various objections.

12. The Competent Authority, after affording due opportunity of hearing to all parties and upon examining the documents on record, rejected the petitioner's application by order dated 6th March 2018. The primary ground on which the application came to be rejected was that the same was barred by principles of res judicata and that there existed a subsisting interim order passed by this Court appointing a Receiver in respect of the suit property. Being aggrieved by the said rejection order, the petitioner-Society has filed the present writ petition.

13. Learned Advocate appearing on behalf of the petitioner-Society submitted that there is no dispute with regard to the fact that the individual flat purchasers had entered into registered agreements with the promoter under Section 4 of the MOFA Act. He further submitted that there is also no dispute regarding the fact that the petitioner-Society was duly registered on 31st August 1987 under the provisions of the Maharashtra Cooperative Societies Act. In such a situation, as per Rule 9 of the Maharashtra Ownership Flats Rules, 1964, it was incumbent upon the promoter to execute a proper conveyance of the right, title, and interest in the land and building in favour of the registered society within a period of four months from the date of registration of the Society.

14. Learned counsel submitted that the statutory obligation of the promoter and landowners to convey the property in favour of the petitioner-Society was judicially recognised and enforced by the City Civil Court in its judgment and decree dated 24th

December 1992 passed in Suit No.2810 of 1990. It is submitted that the said decree specifically directed the promoter and owners to execute conveyance in favour of Urmila CHS Ltd., as per the agreement entered into with the respective purchasers.

15. He argued that the Competent Authority committed a serious legal error in rejecting the petitioner's application for deemed conveyance on the ground that proceedings in another civil suit were pending. It is submitted that the petitioner-Society was not even a party to the partition suit (Suit No.2219 of 2000), and the area occupied by the Society was in fact specifically excluded from the suit map as demarcated in blue colour. He further relied upon the observations made by this Hon'ble Court in Interim Application No.2035 of 2019, wherein this Court categorically recorded that the status quo order dated 31st May 2000 did not apply to the portion occupied by the petitioner-Society. Consequently, it was argued that the subsequent order dated 25th July 2006 has to be read harmoniously and in continuation of the earlier status quo order, and cannot be interpreted to include the petitioner-Society's land.

16. Learned counsel further submitted that this Court, in the said interim application, has expressly clarified that the said order dated 25th July 2006 shall not come in the way of the petitioner-Society pursuing its application for deemed conveyance. In view thereof, the rejection of the petitioner's application on such a ground was wholly unjustified and contrary to law. He further contended that the decree passed by the Civil Court in Suit No.2810 of 1990 was in fact in favour of the petitioner, and hence

the principle of res judicata would not apply so as to bar the application for unilateral deemed conveyance. In the above background, he prayed for setting aside the impugned judgment and order passed by the Competent Authority and for appropriate directions for grant of deemed conveyance in favour of the petitioner-Society.

17. On the other hand, learned Advocate appearing for the contesting respondents opposed the petition and supported the impugned order. He submitted that the petitioner-Society had earlier filed a second civil suit being Suit No.1168 of 2016 seeking similar relief of conveyance. However, the said suit came to be voluntarily withdrawn by the petitioner without pursuing any relief. Therefore, it was submitted that the present application for deemed conveyance is not maintainable and ought to be rejected.

18. He further submitted that the individuals who had executed the development agreement in favour of respondent No.1-promoter were not the exclusive owners of the subject property. It was submitted that the land in question was a joint family property and was held in undivided status, and in the absence of a proper partition, no individual member or a few members of the joint family could have lawfully executed any development agreement binding on all co-owners.

19. According to the learned counsel, the persons who signed the agreement in favour of respondent No.1 had no authority to deal with or alienate the undivided property. Therefore, the said development agreement was invalid and non-binding upon the

present respondents. He submitted that such an agreement cannot confer any lawful title, ownership, or transferable rights upon the promoter, and consequently, no conveyable interest can pass from the promoter to the petitioner-Society.

20. He also emphasized that the dispute raised by the respondents in the partition suit is still pending adjudication before this Hon'ble Court, and unless the said civil suit is finally decided, no decision granting deemed conveyance can be taken by the Competent Authority. Lastly, it was argued that the decree passed in Civil Suit No.2810 of 1990 has now become time-barred and incapable of enforcement. In view of the above circumstances, it was submitted that the Competent Authority has rightly rejected the petitioner's application and that no interference is warranted by this Court under Article 226 of the Constitution.

21. The rival contentions now fall for consideration of this Court.

22. On careful perusal of the material placed on record and after evaluating the respective submissions advanced on behalf of the parties, the following factual position emerges as established:

- i) That the original owners, namely Ramdhar and Fekuram, executed a development agreement in favour of respondent No.1-promoter in respect of land admeasuring 4180 square metres situated at Sahar Road, Kol Dongri, Andheri (East), Mumbai.
- ii) On 31st May 1982, the Planning Authority, i.e., the Municipal Corporation of Greater Mumbai, granted building permission to respondent No.1-promoter to construct a

residential-cum-commercial building comprising two wings of six storeys each. Each wing was to have 44 and 41 flats respectively, along with 23 shops and 7 garages.

iii) Upon completion of construction, part occupancy certificate was issued to respondent No.1-promoter on 22nd May 1984, thereby permitting occupation of completed portions of the building.

iv) That the promoter thereafter entered into registered agreements for sale with various flat, shop, and garage purchasers in accordance with Section 4 of the MOFA Act, and handed over possession to such purchasers.

v) The flat, shop, and garage purchasers thereafter formed a cooperative society under the Maharashtra Cooperative Societies Act, which came to be duly registered on 31st August 1987 under the name Urmila CHS Ltd.

vi) The petitioner-Society, in view of the failure of the promoter to execute the statutory conveyance, filed Civil Suit No.2810 of 1990 before the City Civil Court, Mumbai seeking specific performance of the statutory obligation. The said suit came to be decreed on 24th December 1992 directing the promoter and landowners to execute conveyance in favour of the petitioner-Society.

vii) Subsequently, one of the legal heirs, namely respondent No.2.2.4, initiated Suit No.2219 of 2000 before this Court seeking partition and possession of the alleged undivided joint family property.

viii) In the said partition suit, this Court by interim order dated 31st May 2000 directed status quo to be maintained in respect of the suit property. However, it specifically excluded from its operation the portion demarcated in blue on the plaint map, which included the area occupied by the petitioner-Society.

ix) It is significant to note that the petitioner-Society was not impleaded as a party to the said suit for partition and possession.

23. At this juncture, it is necessary to refer to the scope of jurisdiction and power of the Competent Authority under Section 11 of the MOFA Act while dealing with an application for deemed conveyance. The law on this point is no longer *res integra* and has been elaborately dealt with by this Court in the case of *Acme Enterprises v. Registrar*, reported in **2023 SCC OnLine Bom 1102**. In paragraphs 30 and 31 of the said decision, this Court observed as under:

“30. From the above statutory provisions and enunciation, the position which emerges can be summarized as under. The authority to grant deemed conveyance is conditioned and controlled by the primary obligation of the promoter to convey to the organization of flat purchasers right, title and interest in the land and buildings, in accordance with the agreement executed under Section 4. Competent authority cannot convey more than what the promoter had agreed to convey under the agreement executed under Section 4. What competent authority is thus required to consider is, the extent of the obligation incurred by the promoter, whether the obligation to execute the conveyance became enforceable

and whether the promoter committed default in, or otherwise disabled himself from, executing the conveyance.

31. The enquiry is thus of limited nature. The competent authority cannot delve into the aspects of title. Nor the finding of the competent authority precludes a party from agitating the grievance as to the entitlement of the organization of purchasers to have the conveyance, before the Civil Court. The remit of enquiry by the competent authority is, thus, whether the conditions stipulated for enforcement of the obligation to execute the conveyance have been satisfied and, if yes, order an unilateral deemed conveyance.”

24. Applying the aforesaid legal position to the facts of the present case, it is evident that the scope of enquiry before the Competent Authority is limited to three primary questions: (i) whether a legal obligation to execute conveyance arose on part of the promoter; (ii) whether the said obligation became enforceable; and (iii) whether the promoter has defaulted in executing such conveyance. The Competent Authority is not expected to go into the disputed questions of title or ownership or adjudicate upon inter se claims between co-owners of the land. These aspects remain within the domain of the civil courts.

25. Once the registered agreements under Section 4 of the MOFA Act are executed, and the Society is duly registered under the Cooperative Societies Act, the obligation to execute conveyance within the statutory period arises. In the present case, the said obligation was also confirmed and crystallized by virtue of the judgment and decree passed by the Civil Court in 1992. The fact that one of the legal heirs has filed a separate partition suit, in

which the petitioner-Society is not a party and which excludes the Society's portion, cannot defeat the right of the flat purchasers to seek conveyance in accordance with law. The Competent Authority, therefore, ought to have confined its consideration to the limited enquiry contemplated by the statute, without delving into complex issues of title pending before the civil court.

26. In light of the limited nature of inquiry that the Competent Authority is required to conduct while deciding an application for deemed conveyance under Section 11 of the MOFA Act, it is pertinent to note that in the present case, there is no dispute regarding the fact that respondent No.1-promoter has executed registered agreements under Section 4 of the MOFA Act in favour of individual purchasers of flats, shops, and garages. It is further an admitted position that upon receipt of the entire consideration, the respective purchasers were put in possession of their units. These purchasers thereafter formed a cooperative housing society, which was duly registered on 31st August 1987.

27. Consequently, as per Rule 9 of the Maharashtra Ownership Flats Rules, 1964, the statutory obligation of the promoter to execute a conveyance deed in favour of the registered society arose, and such obligation was required to be fulfilled within four months from the date of registration of the Society, unless there existed any agreement to the contrary. This statutory duty was also recognised and enforced by the Civil Court in Civil Suit No.2810 of 1990, wherein by judgment and decree dated 24th December 1992, the Court directed the promoter to execute a proper conveyance in favour of the society.

28. It is also relevant that during the present proceedings, the developer i.e. respondent No.1 has furnished a *No Objection* to the Competent Authority for grant of deemed conveyance in favour of the petitioner-Society. Hence, the necessary preconditions for issuance of a deemed conveyance under the MOFA Act stood satisfied.

29. The principal reason that weighed with the Competent Authority in rejecting the petitioner's application appears to be the interim order of *status quo* granted by this Court in Suit No.2219 of 2000. However, a careful reading of the subsequent clarification made by a Coordinate Bench of this Court in Interim Application No.2035 of 2019 clearly reveals that the *status quo* order dated 3rd May 2000 specifically excluded the blue-coloured portion of the plaint map, which is the area in possession of the petitioner-Society. Accordingly, it was clarified that the subsequent order dated 25th July 2006 must be read in the same context, and that the *status quo* order would not apply to the land occupied by the petitioner-Society.

30. Therefore, it has been categorically held by the Coordinate Bench that the interim orders passed in the partition suit shall not come in the way of the petitioner-Society in pursuing its legal remedies under the MOFA Act. In that view of the matter, the foundation on which the Competent Authority rejected the petitioner's application ceases to survive, and the petitioner becomes entitled to an order of unilateral deemed conveyance in accordance with law.

31. The consistent judicial refrain, as articulated in *Shimmering Heights CHSL & Ors. v. State of Maharashtra* (Writ Petition No.3129 of 2016, decided on 6th April 2016), *Zainul Abedin Yusufali Massawala & Ors. v. Competent Authority* (reported in (2016) SCC OnLine Bom. 6028), *P.R. Enterprises & Ors. v. the Competent Authority* (Writ Petition No.11251 of 2016, decided on 27th November 2018), and *Mehboob Ali Humza & Ors. v. District Sub-Registrar (3), Mumbai & Ors.* (Writ Petition No.3129 of 2016, decided on 24th June 2016), is that writ proceedings under Article 226 of the Constitution of India are inherently ill-suited for resolving disputes involving competing claims to title, ownership, or proprietary development rights. The jurisdiction of the Competent Authority under Section 11 of the MOFA Act is narrowly circumscribed to operationalizing and effectuating the statutory and contractual duty to execute conveyance in favor of flat purchasers or their legal entity in accordance with the sanctioned plan and the terms recorded in the registered agreements.

32. The Competent Authority is not empowered to adjudicate intricate questions of title, ownership disputes, or competing development rights that require examination of complex evidence or third-party rights. These disputes necessarily fall within the exclusive domain of the civil courts, where full-fledged trial, examination, and cross-examination of evidence can take place. Therefore, any grievance raised by the petitioners alleging that the Respondent-society's claim exceeds its lawful entitlement must be agitated by way of a substantive civil suit. The existence of such

competing claims does not, by itself, oust the society's right to seek deemed conveyance under Section 11 of the MOFA Act before the Competent Authority.

33. In *Acme Enterprises* (supra), a Coordinate Bench of this Court has reiterated that the scope of inquiry before the Competent Authority is limited to determining whether the promoter had incurred a legal obligation to convey, whether the said obligation became enforceable, and whether the promoter defaulted in performing the same. Once these conditions are fulfilled, as they are in the present case, the Competent Authority is bound to direct execution of unilateral deemed conveyance.

34. In the present case, there is no dispute regarding the execution of agreements under Section 4 of the MOFA Act, nor about the registration of the petitioner-Society. Additionally, the statutory obligation has been crystallized by the decree passed by the Civil Court in 1992 directing execution of conveyance. Therefore, the Competent Authority, in this Court's considered view, erred in law in rejecting the petitioner's request for deemed conveyance.

35. However, it is clarified that the rights of the contesting respondents or co-owners to assert their civil claims, including claims relating to ownership, title, or partition of the suit property, are expressly kept open. Such claims may be independently agitated before a Civil Court in accordance with law. The observations made by this Court in the present judgment shall not in any manner affect or influence the Civil Court while

adjudicating upon such claims on merits.

36. In view of the aforesaid discussion and for the reasons stated hereinabove, the writ petition deserves to succeed and is accordingly allowed.

37. Rule is made absolute in terms of prayer clauses (a) and (b). There shall be no order as to costs.

38. It is, however, made explicitly clear that the respondents shall be at liberty to initiate or pursue appropriate civil proceedings for enforcement of their rights, if any, in relation to the property, and the observations made in the present order shall not be construed as any expression on the merits of their claims.

39. In view of disposal of the writ petition, all pending interlocutory applications, if any, stand disposed of accordingly.

40. At this stage, learned Advocate for the respondents prayed for stay of this order. However, considering the reasons assigned, request for stay is rejected.

(AMIT BORKAR, J.)