

Shabnoor

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

**WRIT PETITION NO.2852 OF 2017
WITH
INTERIM APPLICATION NO.8862 OF 2024**

Kishore Dattatraya Dhankude & Ors. ... Petitioners

V/s.

Dhanalaxmi Park CHS
Society Ltd. Federation ... Respondent

Mr. S. M. Gorwadkar, Sr. Advocate a/w Mr. Niranjan
Mogare i/by Mr. Mankirat Singh Chhabra for
petitioners.

Mr. Rohan P Surve for respondent No.1.

Ms. Dhruti Kapadia, AGP for State – respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 3, 2025

P.C.:

1. The petitioners have instituted the present writ petition challenging the legality, validity, and propriety of the order passed by the competent authority in the exercise of powers under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management, and Transfer) Act, 1963 (“MOFA Act”), whereby deemed conveyance has been conferred in favor of Respondent No.1—a federation comprising 11 cooperative housing societies. The impugned order directs the execution of the conveyance deed in favor of the societies under Section 11 of MOFA, which is being assailed on multiple legal and

factual grounds.

2. The facts relevant for adjudication of the controversy at hand are as follows:

Respondent No.1—federation of 11 cooperative housing societies—filed an application under Section 11 of the MOFA Act before the competent authority seeking deemed conveyance in its favor, asserting rights derived under Section 4 of the Act. It was contended by the petitioners that the subject property forms part of a larger layout, a portion of which is covered under a scheme sanctioned under Section 20 of the Urban Land (Ceiling & Regulation) Act, 1976 (“ULC Act”). It was further submitted that the conditions imposed under the exemption granted under Section 20 of the ULC Act specifically earmarked 500 square meters of the land for a biodiversity project, which, by its very nature, is inalienable and cannot be transferred in favor of the societies.

3. Additionally, it was brought to the attention of the competent authority that, by virtue of a correction deed dated 5 September 1996, an area admeasuring 2000 square meters had been deleted from the scope of the conveyance in favor of the landowner. It was, therefore, contended that such an area could not have been included within the purview of deemed conveyance proceedings. Apart from the aforementioned objections, the petitioners also raised various other contentions regarding the exclusion of certain portions of land from the deemed conveyance, which, according to them, were either subject to third-party rights or earmarked for

specific purposes, thereby rendering them ineligible for transfer.

4. The competent authority, after considering the submissions and based on the certificate issued by the architect, proceeded to pass the impugned order directing deemed conveyance in favor of the 11 cooperative societies, constituting an association of flat purchasers. The total area covered under the order measures 13,650.01 square meters, out of which 10,050.53 square meters comprise constructed buildings, while the remaining proportionate area has been allocated for the beneficial enjoyment of the said buildings. Aggrieved by this order, the petitioners have approached this Court by way of the present petition, primarily assailing the jurisdictional validity of the order and the alleged non-consideration of material objections raised by them.

5. Mr. Gorwadkar, learned Senior Counsel appearing for the petitioners, has invited the Court's attention to the sanctioned plan, contending that a portion of the land described as 'Compound A' forms an integral part of the scheme sanctioned under Section 20 of the ULC Act. According to him, the said portion cannot be included within the ambit of deemed conveyance proceedings as the petitioners remain under a continuing legal obligation to discharge the liabilities imposed under the exemption order. He further submitted that any failure to comply with the conditions stipulated therein could potentially result in coercive action, including the initiation of criminal proceedings against the petitioners.

6. It was further argued that deemed conveyance under MOFA can only be conferred in favor of an association of purchasers concerning areas covered by entitlement created under agreements executed in accordance with Section 4 of the Act. The jurisdiction of the competent authority under Section 11 is, therefore, circumscribed by the statutory framework, and any order extending deemed conveyance beyond such entitlement would be ultra vires and without jurisdiction. The learned Senior Counsel urged that the competent authority has erroneously assumed jurisdiction beyond the statutory mandate by including within the deemed conveyance area portions of land that are legally non-transferable, thereby rendering the impugned order unsustainable in law.

7. At this stage, it is necessary to refer to the Division Bench judgment of this Court in *M/s. Shree Chintamani Builders Vs. State of Maharashtra & Ors.*, reported in *(2016) SCC OnLine Bom 9343*, wherein it was categorically observed that an order granting deemed conveyance under Section 11 of the MOFA Act does not operate as a conclusive determination of right, title, or ownership of the immovable property in favor of the applicant society. The Court emphasized that the deemed conveyance order is an administrative decision to facilitate the statutory obligation of the promoter under MOFA but does not preclude the owner, builder, or developer from asserting any subsisting claims or interests over the property through appropriate legal proceedings. It was held that even after the execution of a deemed conveyance, the original owner or developer retains the right to institute a substantive suit

before a competent civil court challenging the title, extent, or validity of the conveyance and to seek adjudication of all disputes pertaining to the ownership or interest in the immovable property.

8. In *Zainul Abedin Yusufali Massawawala & Ors. Vs. Competent Authority, District Deputy Registrar of Co-operative Housing Societies, Mumbai & Ors.*, reported in *(2016) SCC OnLine Bom 6028*, the Division Bench of this Court examined the scope of deemed conveyance in the context of a housing society claiming an area beyond what was stipulated in the development agreement. The Court clarified that the powers exercised by the Competent Authority under Section 11 of the MOFA Act are limited to enforcing the statutory obligation of the promoter to convey the title in terms of the agreement executed under Section 4 of the Act. The Court reiterated that any claim beyond the agreed-upon extent of the land and building, as stipulated in the development agreement and the agreements executed with the individual purchasers, cannot be adjudicated by the Competent Authority under Section 11 but would require adjudication before a competent civil court.

9. The relevant observations made by the Division Bench in paragraph 9 of the said judgment elucidate this principle as follows:

"9....If while granting the deemed conveyance, the Competent Authority has in any manner, traveled beyond the stipulations in the agreement, and the grievance of the petitioners is that a larger property is allowed to be claimed

by the society contrary to the covenant and recitals of the two agreements, then the remedy of the petitioners even in terms of two decisions of this court in *Tushar Jivram Chauhan v. State of Maharashtra*, (2015) 4 Mah LJ 867 and *Mazda Construction Company v. Sultanabad Darshan CHS Ltd.*, 2012 SCC OnLine Bom 1266, relied upon by Mr. Khandeparkar, is not to file a writ petition under Article 226 in this Court, but to approach a competent civil court and establish their right, title, and interest in relation to the larger property. While establishing and seeking to prove it, the petitioners can also allege that contrary to the Development Agreement and a MOFA Agreement, the society claimed a larger property and relying upon those submissions, the Competent Authority has granted the relief in relation thereto. That is the prejudice caused and which the petitioners can seek redressal thereof by approaching such a court...."

10. The above pronouncements of the Division Bench reinforce the settled legal position that the order of deemed conveyance does not ipso facto create or extinguish title in favor of the society, nor does it preclude a contesting party from asserting its rights through civil proceedings. The remedy available to an aggrieved party is to seek redress before a civil court where a full-fledged adjudication on title, extent of property, and enforceability of the agreement can be undertaken. This principle has been consistently upheld in judicial precedents, recognizing that the role of the Competent Authority under Section 11 of the MOFA Act is limited

to ensuring compliance with the statutory obligation of conveyance but does not extend to conclusively determining proprietary rights over the property.

11. The conspectus of the judgments of this Court can be summarized as follows:

(i) The grant of deemed conveyance under Section 11 of the MOFA Act is a statutory mechanism to enforce the obligation of the promoter to transfer the title of land and building in favor of the society, in accordance with the agreement executed under Section 4 of the Act.

(ii) The Competent Authority does not possess adjudicatory jurisdiction to determine title disputes or competing claims of ownership. Its role is confined to ascertaining whether the promoter has defaulted in executing the conveyance despite the existence of a valid agreement.

(iii) The Competent Authority cannot convey more than what was agreed upon by the promoter in the agreements executed under Section 4 of the MOFA Act.

(iv) The Competent Authority has no power to hold an inquiry into the title of the property nor can it prevent an aggrieved party from instituting a civil suit to challenge the conveyance or establish its entitlement to any portion of the land.

(v) The appropriate remedy for a party disputing the extent of land, validity of the agreement, or the legality of the deemed conveyance is to approach a competent civil court for adjudication

of their rights, title, and interest.

12. In light of the settled legal position, it is evident that the impugned order granting deemed conveyance is subject to challenge in appropriate legal proceedings, and the rights of the parties, including the petitioners and the respondent society, remain open to adjudication in accordance with law.

13. Moreover, it is a well-settled principle of law that any adjudication made in summary proceedings, particularly in relation to right, title, and interest, does not bind a Civil Court while adjudicating substantive issues concerning ownership, title, or other proprietary claims. Summary proceedings under Section 11 of the MOFA Act are confined to the limited scope of determining whether the statutory obligation of the promoter to execute the conveyance deed has become enforceable and whether the promoter has defaulted in fulfilling such an obligation. The Competent Authority under Section 11 is neither vested with the jurisdiction to conclusively determine title disputes nor empowered to adjudicate upon competing proprietary claims over the subject property. Therefore, in my considered opinion, the scope of inquiry by the Competent Authority is circumscribed by the parameters of Section 4 of the MOFA Act, and the authority is required only to ascertain whether the terms stipulated under the agreement executed in accordance with Section 4 have matured into an enforceable obligation and whether the promoter has either defaulted or otherwise incapacitated himself from executing the conveyance in favor of the society. Any dispute beyond this limited scope necessarily falls within the domain of the Civil Court.

14. The contentions raised on behalf of the petitioners regarding the alleged excess area included in the deemed conveyance, beyond the area agreed upon in the executed agreements, have been squarely addressed by the Division Bench of this Court in *Zainul Abedin Yusufali Massawala (supra)*. In the said decision, the Court clarified that if, while granting deemed conveyance, the Competent Authority has, in any manner, traveled beyond the stipulations in the agreement, and if the grievance of the petitioners is that a larger portion of the property has been allowed to be claimed by the society contrary to the covenants and recitals of the agreements, then the appropriate remedy available to the petitioners is to approach the competent Civil Court and seek adjudication of their right, title, and interest in relation to the disputed property. It was further clarified that in such proceedings, the petitioners are entitled to contend that the society has erroneously claimed a larger property than what was agreed upon under the Development Agreement and the MOFA Agreement and that the Competent Authority has acted beyond its jurisdiction in granting deemed conveyance over such excess area.

15. In view of the authoritative pronouncement of the Division Bench of this Court, which has been consistently followed in various judgments, the settled legal position remains that where the claim of deemed conveyance involves a larger area than what was originally agreed upon, the affected party must approach the competent Civil Court to establish its civil rights. This includes, inter alia, contentions regarding any alleged breach of the scheme under Section 20 of the Urban Land (Ceiling & Regulation) Act,

1976, and the inclusion of an excess area beyond the entitlement granted under Section 11 of the MOFA Act. The said contentions are expressly kept open to be agitated in appropriate civil proceedings, and the present judgment shall not be construed as precluding the petitioners from asserting their proprietary claims before a court of competent jurisdiction.

16. For the reasons elaborated above, this Court finds no grounds to exercise its extraordinary writ jurisdiction under Article 226 of the Constitution of India, particularly when an efficacious alternative remedy exists in the form of a civil suit. The petitioners have the right to approach the competent Civil Court for a full-fledged adjudication of their claims, including issues concerning title, extent of property, and enforceability of the agreements. The present writ petition is accordingly disposed of, with a clarificatory direction that the dismissal of the petition shall not prejudice the petitioners' right to pursue appropriate civil remedies, including any challenge to the deemed conveyance on grounds permissible in law. In the interest of justice, there shall be no order as to costs, and the parties shall bear their respective costs.

17. Since this Court has not adjudicated upon the validity of the actual registered document executed in favor of the association of purchasers, it is clarified that it shall remain open for the petitioners to adopt appropriate legal proceedings to challenge the said registered document before the competent Civil Court. Any observations made in this judgment shall not be construed as an expression of opinion on the merits of the petitioners' claims concerning the registered document, and all such issues are

expressly left open for adjudication in appropriate proceedings.

18. In view of the disposal of the present writ petition, nothing further remains to be adjudicated in the interim application. Consequently, the interim application also stands disposed of.

(AMIT BORKAR, J.)