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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13162 OF 2023

Kalyan Gas Services	... Petitioner
V/s.	
The State of Maharashtra	
Through Its Principal Secretary, Ministry	
of Cooperation & Ors.	... Respondents

WITH
INTERIM APPLICATION NO.15852 OF 2024
IN
WRIT PETITION NO.13162 OF 2023

Bharatkumar Mohanlal Suchak	
Since Deceased, Through Legal Heirs	
and Legal Representatives & Ors.	... Applicants

In the matter between

Kalyan Gas Services	... Petitioner
V/s.	
The State of Maharashtra	
Through Its Principal Secretary, Ministry	
of Cooperation & Ors.	... Respondents

WITH
INTERIM APPLICATION NO.15854 OF 2024
IN
WRIT PETITION NO.13162 OF 2023

Ravindrakumar Mohanlal Suchak	... Applicant
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In the matter between

Kalyan Gas Services	... Petitioner
V/s.	
The State of Maharashtra	
Through Its Principal Secretary, Ministry	
of Cooperation & Ors.	... Respondents

Mr. Girish S. Godbole, Senior Advocate i/by Mr. Sumit Kothari for the petitioner.

Mr. Himanshu Kode for the applicant in IA/15852/2024.

Mr. Surendra G. Mittal for the applicant in IA/15854/2024.

Mr. Rahul Kadam for respondent No.2.

Ms. Sulbha Chipade, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 03, 2025

P.C.:

1. The present writ petition raises a substantive challenge to the order passed by the competent authority under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction Sale, Management and Transfer) Act, 1963 (“MOFA Act”), whereby a unilateral deemed conveyance was granted in favour of respondent No.2 – the Society – notwithstanding the pending application for intervention filed by the petitioner.

2. It is contended that the impugned order, by dispensing with the requisite adjudication of the petitioner’s intervening application, manifests a flagrant disregard for the principles of natural justice and fair play. In this regard, the learned petitioner averred that the absence of any procedural mechanism to address his application renders the order inherently arbitrary and susceptible to the infirmity of jurisdictional error. The contention thereby invokes the purview of Article 227 of the Constitution of

India, which empowers the High Court to supervise the exercise of administrative power and to redress the grievances emanating from such lapses.

3. Further, the petitioner submits that there exists an intrinsic contractual nexus between him and the owner-developer, as evidenced by an agreement purporting to confer a lease in his favour, whereby the area in controversy was deliberately and expressly excluded from the ambit of the agreement pursuant to Section 4 of the MOFA Act. The petitioner contends that the subsequent order for deemed conveyance, having been issued without a determination of his rights as emerging from the aforementioned agreement, is beset with a manifest error of jurisdiction. According to the petitioner's submissions, the agreement not only secures a right of tenancy until the execution of an actual registered lease deed but also envisages the conveyance of the ownership of the superstructure erected on the land thus excluded. It is submitted that the recital contained within the said agreement unequivocally provides for the conveyance of the superstructure in his favour, thereby establishing an inherent right which cannot be summarily ousted by an order that disregards the sanctity of the contractual obligations and the equitable expectations thereby generated.

4. Upon a meticulous examination of the impugned order, it is manifest that the competent authority, in exercise of its powers under Section 11 of the MOFA Act, has placed undue reliance upon the recitals contained in the agreement executed between the developer and the members of respondent No.2 – the Society – as

mandated under Section 4 of the Act. The authority, having duly noted that these recitals were held to establish a right of conveyance in favour of the association of members, consequently directed the issuance of a deemed conveyance certificate to the society. It is further observed that the adjudication regarding the quantum and extent of the area in dispute was predicated solely on the architect's certificate tendered by the respondent. In this regard, the established principle articulated in cases such as , wherein the courts have held that a contractual recital, when consistent with statutory objectives, may suffice to justify an order, finds echo. Nonetheless, this singular reliance on the architect's certificate, absent a comprehensive inquiry into all extant evidence, arguably precludes a holistic determination of the petitioner's rights, thereby imperiling the integrity of the adjudicatory process.

5. The learned Senior Advocate for the petitioner has argued that the exercise of power by the competent authority under Section 11 of the MOFA Act, without affording the petitioner an opportunity of being heard, vitiates the entire inquiry mandated under the said section. It is well established that in proceedings under Section 11, the principles of natural justice demand that the promoter, and by extension the owner who has transferred the development rights (given that the owner's role falls within the ambit of Section 2(c) of the MOFA Act), must be granted a fair opportunity to be heard before any final order is passed. Accordingly, it stands to reason that the failure to invite the participation of the owner—whose rights and obligations are

inextricably linked with those of the promoter—renders the impugned adjudication fundamentally flawed and susceptible to reversal on grounds of procedural impropriety.

6. The petitioner, by his submissions, contends that he is a person who purports to have been conferred certain rights by the developer and owner in relation to the area presently subject to adjudication under Section 11 of the MOFA Act. It is averred that the rights in issue emanate from an agreement, the tenor of which promises the execution of a lease deed in his favour. However, it is well settled in law that such rights, until the execution of the lease deed, are but intermediate in nature and do not crystallise into proprietary rights. The courts have repeatedly held that an agreement yielding only a promise to execute further documents cannot be equated with a title that is fully enforceable at law.

7. Moreover, the inquiry under Section 11 of the MOFA Act is primarily concerned with determining whether the conditions precedent for the enforceability of the obligations of both parties have been met. The subject matter of this inquiry is not to adjudicate upon rights that are nascent or contingent, but rather to ascertain whether the respective obligations have matured into enforceable liabilities. The petitioner's claim, being an intermediate right derived from a contractual promise, does not meet the threshold required for adjudication under Section 11. Only those rights that have attained a degree of certainty and maturity can be properly examined under the ambit of statutory adjudication.

8. In furtherance of the foregoing reasoning, it is evident that the appropriate remedy for the petitioner, whose rights have not yet matured into an enforceable title, lies in approaching the Civil Court to seek specific performance of the contractual obligations emanating from the agreement with the developer and owner. The remedial mechanism in the civil forum is well suited to enforce such intermediary rights through a civil suit. Consequently, the exercise of the powers under Section 11 by the competent authority, culminating in the issuance of the deemed conveyance certificate in favour of respondent No.2 – the Society – stands on solid legal ground and is not vitiated by the petitioner's unripe claim.

9. In my considered opinion, having given due regard to the established principles and relevant judicial precedents, the rights created in favour of the petitioner, being merely preliminary and non-mature, do not constitute a bar to the issuance of the certificate under Section 11 of the MOFA Act to the Society.

10. It is hereby clarified that the petitioner retains the unfettered right to enforce those rights purportedly conferred upon him by the developer and owner pursuant to the agreement that formed the basis of his application before the competent authority. In other words, while the adjudicatory process under Section 11 of the MOFA Act is confined to the maturation of rights and obligations already enforceable by law, the intermediate rights arising from his contractual agreement remain a separate cause of action. Such contractual rights, until crystallized into a proprietary title, must be pursued through the civil jurisdiction, thereby ensuring that the

statutory adjudication remains unaffected by extraneous claims pending in a parallel forum.

11. In view of the foregoing clarifications, the present writ petition is hereby disposed of. The determinations herein confirm that the statutory framework under Section 11 of the MOFA Act does not extend to the enforcement of nascent rights that are yet to acquire the requisite enforceability.

12. Further, in light of the disposal of the writ petition, all pending interim applications are rendered moot and stand disposed of.

13. It is additionally made clear that the time expended in prosecuting the application up to the disposal of the present writ petition shall be deemed bona fide proceedings under Section 14 of the Limitation Act, 1963.

(AMIT BORKAR, J.)