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

WRIT PETITION NO.772 OF 2025

VAIBHAV
RAMESH
JADHAV

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Krupa Zubin & Anr.

... Petitioners

V/s.

District Dy. Registrar, Cooperative
Societies & Ors.

... Respondents

Mr. Sean Wassoodew with Mr. Rupesh Mandhare and
Ms. Ashna Shah for the petitioners.

Ms. M. S. Bane, AGP for the State-respondent No.1.

Mr. Paritosh Jaiswal with Mr. Rubil Vakil, Mr. Sahil
Gandhi, Ms. Dimple Vora and Ms. Riddhi Shah i/by
Markand Gandhi & Co., for respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : APRIL 1, 2025

ORAL JUDGMENT:

1. By the present Writ Petition, invoked under Article 226 and Article 227 of the Constitution of India, the Petitioners, who are purchasers of premises in a building constructed and developed under the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short, "MOFA Act"), have assailed the legality and validity of the order passed by the Competent Authority under Section 11 of the said Act, whereby a competent authority has directed confirmation of deemed conveyance on

respondent No.3-Society.

2. The facts giving rise to the present writ petition, as set out by the petitioners, are briefly enumerated herein below for the sake of clarity and completeness:

3. It is the case of the petitioners that respondent No.3–Company became the owner of the immovable property bearing C.T.S. Nos. 15, 16 and 16(1), admeasuring in aggregate 780.60 square metres, situated at Sion-Trombay Road, within the revenue limits of Village Deonar, Taluka Kurla, Mumbai, together with the building and superstructures standing thereon. It is submitted that under the Articles of Agreement dated 1st June 1982, respondent No.3–Company conferred development rights in respect of the said property upon M/s. Creative Builders, a proprietary concern engaged in the business of construction and development (hereinafter referred to as "the Developer").

4. Pursuant to the said development agreement, the Developer was authorised and entitled to construct a residential building on the said land and to enter into agreements for sale of individual flats with prospective purchasers. It is further the case of the petitioners that under the terms and conditions of such agreements executed between the Developer and the flat purchasers, a specific stipulation was incorporated requiring the purchasers to become members of respondent No.3–Company. Clause 37 of the said agreement, in particular, obligated each purchaser to execute and sign such applications, forms, declarations, papers, and documents and to do all acts, deeds, and things as may be necessary or

required for the purpose of acquiring membership of respondent No.3–Company.

5. It is submitted that on the strength of the said development agreement, the Developer undertook construction of a building known as "Meghdoot" on the suit property, and upon allotment and occupation of the respective flats, the purchasers were inducted as members of respondent No.3–Company. The petitioners, in particular, purchased shares along with rights in the flat from the predecessor-in-title on 29th December 2006 and, accordingly, claim to be members of respondent No.3–Company by virtue of such purchase.

6. On or about 5th March 2024, certain flat purchasers preferred an application bearing No.6 of 2024 before the office of the District Deputy Registrar, Co-operative Societies, seeking registration of a co-operative housing society under the relevant provisions of the Maharashtra Co-operative Societies Act, 1960. By an order dated 28th March 2024, the said authority, upon consideration of the application and the documents placed on record, was pleased to allow the said application and granted registration to the newly formed society, now arrayed as respondent No.4 herein.

7. Aggrieved by the said decision of the District Deputy Registrar, the petitioners preferred a statutory appeal before respondent No.1, challenging the order of registration of respondent No.4–Society. However, vide order dated 11th March 2025, the said appeal came to be dismissed, thereby affirming the

registration of the said society. Being dissatisfied with the impugned appellate order and the consequential registration of respondent No.4–Society, the petitioners have invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking appropriate reliefs. This Court by order dated 1 April 2025 dismissed the petitioners’ writ petition by holding that the society’s registration under Section 10 of the MOFA is valid.

8. The petitioners, by the present writ petition filed under Article 226 of the Constitution of India, seek to challenge the legality and propriety of the impugned order dated 9th December 2024 passed by the competent authority under the *MOFA Act* whereby unilateral deemed conveyance of land admeasuring 729.30 square metres has been directed in favour of respondent No.3-Society. The impugned order is passed under the provisions of Section 11(3) of MOFA read with Rule 11(5) of the Maharashtra Ownership Flats Rules, 1964.

9. The principal contention advanced on behalf of the petitioners pertains to the alleged invalidity of registration of respondent No.3 as a cooperative housing society. It is contended that respondent No.3 could not have been registered as a society in view of certain stipulations in the agreement executed between the petitioners and the original developer, particularly the clause requiring the purchasers to become members of the company which was originally incorporated by the developer. However, it is pertinent to note that the said issue stood directly raised and adjudicated in Writ Petition No.4272 of 2025, wherein this Court, after considering all relevant aspects, including the scope and

effect of Section 10 of MOFA, held the registration of respondent No.3 as a cooperative housing society to be valid and lawful. In the absence of any stay or reversal of the said order in appeal, the said finding operates as res judicata and binds the parties in the present proceedings.

10. It is further the case of the petitioners that they are purchasers of individual units along with other members who constitute respondent No.3-Society. It was their contention in the earlier round of litigation, i.e., Writ Petition No.4272 of 2025, that in view of the agreement executed with the developer, the purchasers were to become members of the company and therefore could not have proceeded to form a cooperative housing society, particularly in view of the bar under Section 10 of MOFA. This argument, however, stands squarely repelled by the judgment in the said writ petition, wherein this Court has held that once the purchasers of flats constitute themselves into a society in accordance with law, and make an application for registration as a cooperative housing society under the Maharashtra Cooperative Societies Act, 1960, the same cannot be thwarted on the ground of a clause in a private agreement, particularly when such clause militates against the statutory scheme of MOFA which seeks to promote registration of societies and ensure proper conveyance of title to the flat purchasers.

11. Once the registration of respondent No.3 as a cooperative society has attained finality and the same has not been set aside by any superior forum, the foundation of the challenge to the impugned order of deemed conveyance stands eroded. The

petitioners have not raised any other substantive ground challenging the process adopted by respondent No.4-Competent Authority under the MOFA for confirming the deemed conveyance. It is well settled that the object of MOFA, particularly Section 11, is to ensure that title in the land and building is conveyed to the body representing the flat purchasers without unreasonable delay, and that once a competent authority, after due process, confirms the entitlement of the society to such conveyance, there is little scope for interference in writ jurisdiction unless manifest illegality, procedural impropriety, or perversity is demonstrated.

12. In view of the above, this Court finds that the present writ petition is devoid of merit. No case is made out for exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. The petition is accordingly dismissed.

13. There shall be no order as to costs.

(AMIT BORKAR, J.)