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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.774 OF 2025

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Jayesh Balvant Jani

... Petitioner

V/s.

Anuj Co-operative Housing Society Ltd.
& Ors.

... Respondents

Mr. K. H. Holambe Patil with K. K. Holambe Patil and
Vishal G. Shirsat for the petitioner.

Ms. Vishaki Bhatia for respondent No.1.

Ms. M. S. Bane, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 25, 2025

P.C.:

1. The petitioner has invoked the jurisdiction of this Court under Article 226 of the Constitution of India, calling into question an order passed under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (“MOFA Act”).

2. The factual canvas reveals that the petitioner’s predecessor-in-title had executed an Agreement to Sell, dated 2nd April 1980, in favour of respondent No.2 (the developer), for a consideration of ₹6,50,000/-. Disputes arose thereafter, prompting the petitioner’s predecessor to institute a civil suit in the year 1991

against respondent Nos.1 and 2, praying inter alia for a declaration that the said agreement stood terminated. By judgment and decree dated 30th January 2021, the Civil Court partly decreed the suit, directing defendant Nos.1 to 6 to jointly and severally pay an amount of ₹18,19,545/- to the plaintiff. Upon such payment, the plaintiff was enjoined to execute the deed of conveyance/sale deed of the disputed property in favour of defendant Nos.1 to 6 or their nominees within a period of one month.

3. Aggrieved by the judgment and decree dated 30th January 2021, the petitioner preferred First Appeal No.305 of 2021 before this Court. It is urged that the impugned decree, though partly in his favour, insufficiently secures his rights in the event of non-payment of the decreed sum. The pendency of this First Appeal, which squarely brings into question the nature and extent of the property rights flowing from the suit, is a material circumstance impacting the adjudication of the subsequent deemed conveyance application.

4. In the interregnum, respondent No.7, purporting to act on the basis of the agreement executed by respondent No.2-developer under Section 4 of the MOFA Act, presented an application under Section 14 of the said Act seeking a deemed conveyance. The petitioner was admittedly impleaded as a party, though the petitioner asserts that the notice of proceedings was served at an outdated address. The petitioner also alleges that the respondent-housing society was fully aware of his changed address, but deliberately refrained from using the correct address, thereby precluding him from effectively participating in the proceedings.

5. On 9th May 2024, respondent No.3 passed an order granting deemed conveyance in favour of respondent No.1-society. Aggrieved thereby, the petitioner has approached this Court, challenging the legality, validity, and propriety of the said order. The petitioner contends that the order is impermissible both in light of the pending First Appeal, which directly bears on the fate of the suit property, and on account of the alleged violation of principles of natural justice.

6. Learned counsel appearing on behalf of the petitioner has vehemently argued that the very foundation of the impugned proceedings is vitiated due to a failure of proper notice. It was contended that the address mentioned in the application leading to deemed conveyance was the petitioner's old address, which he had vacated as far back as in the year 1980. Drawing the attention of this Court to paragraph 2 of the judgment and decree dated 30 January 2021, learned counsel submitted that respondent No.1-Society was admittedly served in that suit at the petitioner's new address, but chose to remain absent. According to the petitioner, this established that the Society was fully aware of his current address. It was further pointed out that in First Appeal No.305 of 2021, challenging the judgment and decree, the petitioner has consistently disclosed his new address. Moreover, the petitioner had also filed a caveat, duly served upon respondent No.1-Society, wherein the new address was clearly indicated. Despite this knowledge, the application under Section 11 of the MOFA Act was served upon the petitioner only at the old address, resulting in a denial of opportunity to be heard. Such denial, urged learned

counsel, amounts to a breach of the principles of natural justice, thereby rendering the impugned order unsustainable and liable to be quashed.

7. In repelling the charge of non-service, the learned counsel for respondent No.1-Society averred that the Society was unaware of the alleged change of address. It was submitted that the managing committee of the Society had undergone changes over time, and to compound matters, the records of the Society were purportedly destroyed in a fire incident. Although respondent No.1 had been served in the civil suit, their absence in those proceedings implied no actual knowledge of the new address. In such a factual scenario, service upon the old address, according to the Society, was neither deliberate nor unlawful. Learned counsel further sought to allay apprehensions of legal prejudice by submitting that unilateral deemed conveyance merely transfers such right, title, and interest as already stood vested in the developer. Where the developer's title is itself circumscribed, the consequent deemed conveyance would be proportionately limited, and would not, in any manner, extinguish or dilute the petitioner's rights in the property. In such circumstances, it was submitted that the petitioner's challenge is devoid of substance and is liable to be dismissed.

8. The rival submissions now fall for consideration.

9. The fulcrum of the petitioner's challenge is the alleged breach of the principles of natural justice. It is urged that he was never put to proper notice of the proceedings under Section 11 of

the MOFA Act, having been served at an address he had vacated in 1980. Under ordinary circumstances, this Court might have been inclined to remand the proceedings to the Competent Authority for a fresh inquiry after service of notice at the correct address. However, the subject matter of the inquiry under Section 11 of the MOFA Act is statutorily limited to determining whether the pre-conditions for granting a deemed conveyance—namely, the existence of an agreement under Section 4 of the Act and the developer's failure to effect conveyance—stand fulfilled. The petitioner, on the other hand, questions the very authority of the developer to transfer title, asserting that his rights in the property remain intact.

10. In this context, a Division Bench of this Court in *Zainul Abedin Yusufali Massawala & Ors. vs. Competent Authority*, 2016 SCC OnLine Bom 6028, squarely held that the conferment of deemed conveyance does not operate to transfer rights which the developer never possessed. In other words, a deemed conveyance under the MOFA Act can only pass on such interest as vests in the promoter or developer. If an owner of the property contends that no right, title, or interest was ever transferred to the developer, the deemed conveyance cannot and does not defeat such ownership rights. In the present case, the petitioner has not demonstrated how the impugned order has legally prejudiced his substantive proprietary rights, if at all those rights remain with him.

11. A useful reference in this regard is the pronouncement of the Hon'ble Supreme Court in *State of U.P. vs. Sudhir Kumar Singh*, (2021) 19 SCC 706, wherein the Court underscored the principle

that while breach of natural justice ordinarily vitiates an order, the Court in exercise of its supervisory jurisdiction can deny relief if no real or meaningful prejudice has been caused to the aggrieved party. Popularly termed the 'empty formality' doctrine, it stipulates that an order should not be lightly set aside merely on account of a technical or procedural infraction, if such infraction has no bearing on the substantive rights of the parties. Where the petitioner's legal claims or entitlements remain unaffected by the impugned action, the petitioner fails to demonstrate any prejudice in the legal sense, and the Court may refuse to interfere.

12. Viewed thus, in the limited compass of proceedings under Section 11 of the MOFA Act, the Competent Authority is not empowered to adjudicate questions of title beyond the contractual rights that stand transferred to the developer. Once the Authority is satisfied that the agreement under Section 4 of the MOFA Act has not culminated in a conveyance, it can validly pass an order for deemed conveyance for the benefit of the flat purchasers' association or society. If, as the petitioner contends, the developer never had a valid or subsisting title, the petitioner's ownership remains intact, and he is at liberty to pursue appropriate legal remedies in a civil court to vindicate his superior title. By that very token, no prejudice is caused to him in the statutory proceedings for deemed conveyance.

13. In the totality of circumstances, and for the reasons aforestated, this Court finds no warrant to exercise its extraordinary writ jurisdiction under Article 226 of the Constitution in favour of the petitioner. The writ petition is,

accordingly, dismissed. However, it is clarified that the petitioner remains at liberty to assert and establish his rights in the property in the pending suit, appeal, or any other appropriate legal proceeding. No costs.

14. Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)