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

WRIT PETITION NO.1016 OF 2025

Pandurang Laxman Bhandari Thr. C.A.
Abhay Bhandari and anr ... Petitioners
V/s.
Sai Srushti Chsl and ors ... Respondents

Mr. Niranjan Mogre, for the Petitioners.

Ms. S.S. Bhende, AGP for State-Respondent no.6.

CORAM : AMIT BORKAR, J.

DATED : MARCH 27, 2025

P.C.:

1. Challenge in the present Writ Petition filed under Articles 226 and 227 of the Constitution of India is to the legality and validity of the order dated 10th October 2024, 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 (for short, "MOFA"), whereby deemed conveyance has been directed to be executed in favour of Respondent No.1 Society in respect of Final Plot No. 515, TPS No. III, situate at Linking Road, Borivali, Mumbai, admeasuring 1826.10 square meters.

2. The facts giving rise to the present petition, in brief, are as under:

3. The petitioner claims to be one of the purchasers of premises in the subject building constructed on the suit plot. An agreement for sale, as contemplated under Section 4 of the MOFA, was executed on 10th November, 2000. On the basis of the said agreement, Respondent No.1, being the association of flat purchasers, preferred an application before the Competent Authority under Section 11 of MOFA seeking issuance of deemed conveyance in their favour.

4. In the earlier round of litigation, the Competent Authority, vide its order dated 10th January 2020, partly allowed the said application and directed issuance of deemed conveyance in respect of 1323.98 square meters of the total plot, along with a proportionate undivided share in the reserved garden (R.G.) area to the extent of 257.81 square meters, aggregating to a total of 1581.79 square meters, out of the total area of 1826.10 square meters.

5. Being aggrieved by the partial relief granted, Respondent No.1 Society approached this Court by filing Writ Petition No.5632 of 2022. In the course of the said proceedings, this Court recorded a statement made on behalf of Respondent No.1 Society that the petitioner herein would be admitted as a member of the society, and that the entire process of admission would be completed within a period of four weeks. This Court also recorded that upon the petitioner's enrollment as a member, Respondent No.1 would be at liberty to file a fresh application for deemed conveyance in respect of the entire land admeasuring 1826.10 square meters. Accordingly, the earlier order dated 10th January 2020 came to be

set aside, and liberty was granted to the Society to file a fresh application under Section 11 of the MOFA.

6. Pursuant to the above order, it appears that Respondent No.1 submitted a fresh application before the Competent Authority. The learned counsel for the petitioner has submitted that while the petitioner made an application for membership on 23rd January 2024, the record of the Society reflects that he was shown as a member with effect from 15th January 2024, which, according to the petitioner, indicates manipulation and fabrication of records by the Society. It is therefore contended that any application made on such a fabricated basis ought not to have been entertained or allowed by the Competent Authority.

7. On a careful perusal of the impugned order dated 10th October 2024, it clearly emerges that there is no dispute as to the entitlement of Respondent No.1 Society, being an association of flat purchasers, to seek and obtain conveyance under Section 11 of the MOFA. The statutory right of the flat purchasers under the scheme of MOFA to obtain conveyance of the land and building from the promoter is well recognized. The delay or default on the part of the promoter to execute such conveyance cannot defeat the vested statutory right of the purchasers.

8. Furthermore, in view of the order passed by this Court on 25th October 2023 in the earlier writ petition, a right has clearly accrued in favour of Respondent No.1 Society to seek conveyance in respect of the entire land admeasuring 1826.10 square meters, subject to compliance with the admission of the petitioner as a

member. That right having crystallized pursuant to the judicial order, the Competent Authority was duty-bound to give effect to the same.

9. The grievance now sought to be raised by the petitioner as to the alleged discrepancy in dates regarding his admission as a member is, in my view, not germane to the validity of the order passed by the Competent Authority under Section 11. Such a grievance, which involves disputed questions of fact, particularly as to whether the Society fabricated its records or manipulated the date of admission of the petitioner, cannot be gone into in the present writ petition under Article 226 of the Constitution, in the absence of any cogent material or evidence on record.

10. The remedy of the petitioner, if he is genuinely aggrieved by the alleged act of fabrication or misrepresentation on the part of the Society, lies elsewhere. He is at liberty to institute appropriate proceedings before a competent forum or the Court, as the case may be, for ventilating his grievance and seeking appropriate reliefs in accordance with law.

11. In view of the above discussion, and in the absence of any legal infirmity or jurisdictional error in the order impugned, no case for interference is made out. The petition, being devoid of merits, is liable to be dismissed.

12. Accordingly, the Writ Petition stands dismissed. No order as to costs.

(AMIT BORKAR, J.)