

Shabnoor

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

WRIT PETITION NO.1361 OF 2025

SHABNOOR
AYUB
PATHAN

Digitally signed by
SHABNOOR AYUB
PATHAN
Date: 2025.02.03
19:25:35 +0530

The Trustees Navare Nidhi

... Petitioner

V/s.

Chairman Ganesh Apartment
Cooperative Housing Society Ltd.
& Ors.

... Respondents

Mr. D. S. Mhaispurkar for petitioner.

Mrs. V. S. Nimbalkar, AGP for State – respondent.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 3, 2025

P.C.:

1. The present petition is directed against 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 deemed conveyance has been granted in favor of the association of purchasers. The petitioner assails the legality, propriety, and correctness of the said order on the ground that it suffers from patent illegality and is vitiated by a jurisdictional error. It is contended that the Competent Authority has failed to consider the nature of the title and the extent of rights vested in the developer, thereby rendering the grant of deemed conveyance unsustainable in law.

2. The petitioner urges that the effect of the impugned order is to confer absolute ownership upon the association of purchasers, which, according to him, is legally impermissible as it exceeds the rights that could have been lawfully transferred by the developer. It is submitted that the developer itself derived limited rights under a lease deed executed by the trust, and therefore, it was beyond the competence of the Competent Authority to convey a greater interest than what was possessed by the developer. Learned counsel for the petitioner has drawn my attention to the observations made by the Competent Authority in the impugned judgment, which, according to him, erroneously proceeds on the premise that one of the trustees has transferred full rights in favor of the developer. It is argued that such an inference is contrary to the documents on record and the settled principles governing transfer of immovable property. The petitioner contends that the impugned order, having been passed in disregard of the actual legal status of the property and the extent of rights held by the developer, is liable to be set aside.

3. 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.

4. 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.

5. 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...."

6. 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.

7. 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.

8. 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.

9. 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.

10. This Court has consistently held that the scope of adjudication 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") is limited to determining whether the statutory right to conveyance, as envisaged under Section 11, has accrued in favor of the purchasers and whether the developer has defaulted in discharging its corresponding obligation. The Competent Authority is required to assess whether the conditions prescribed under Section 11 have been met and whether the statutory obligation of executing conveyance has remained unfulfilled. However, it is well settled that the Competent Authority does not possess the jurisdiction to adjudicate upon intricate questions of title, ownership, or the nature of interest transferred. The effect of conferring deemed conveyance—whether it results in a restricted right or an absolute freehold interest—falls outside the purview of the Competent Authority's summary jurisdiction.

11. It is a trite proposition that title disputes require a full-fledged adjudication on merits and cannot be conclusively determined in a summary proceeding under Section 11 of MOFA. The jurisdiction conferred upon the Competent Authority being summary in nature, no finding recorded in such a proceeding shall operate as *res judicata* before a competent Civil Court. The Civil Court, being the court of plenary jurisdiction, is the only forum competent to conclusively adjudicate title disputes, competing ownership claims, and the extent of rights conferred under a

particular instrument of transfer. In view of the limited scope of interference under Article 226 of the Constitution of India and considering the statutory scheme of MOFA, no case is made out for quashing the impugned order at this stage.

12. However, it is clarified that the petitioner shall be at liberty to institute an appropriate civil suit before the competent forum for the adjudication of all civil rights and proprietary claims available to the petitioner. This shall include, but not be limited to, the contention that the trust had executed only a lease deed in favor of the developer and, therefore, absolute ownership could not have been conferred upon the society. It is further clarified that any observation made by the Competent Authority in the impugned order shall not prejudice the rights of either party in such a suit, and the Civil Court shall independently adjudicate the issues on merits.

13. With the aforesaid clarification, the writ petition is disposed of in the above terms. There shall be no order as to costs.

(AMIT BORKAR, J.)