

VRJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1859 OF 2025

VAIBHAV
RAMESH
JADHAV
Digitally signed by
VAIBHAV RAMESH
JADHAV
Date: 2025.03.11
10:24:43 +0530

Bebibai Krishna Patil & Ors.

... Petitioners

V/s.

District Deputy Registrar, Co-operative
Societies Palghar & Ors.

... Respondents

Mr. Vishwanath Patil with Ms Nidhi Chauhan i/by Mr.
Rajat Bhosale for the petitioners.

Ms. Swati Sagvekar for respondent No.2.

Mr. Deepak Kushwaha for respondent Nos.3 and 4.

Mr. Y. D. Patil, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 10, 2025

P.C.:

1. The petitioners, who assert themselves to be the lawful owners of the immovable property bearing Survey No. 228, Part No. 1/A, admeasuring 0.74.70 hectares, situate at village Mauje Naringi, Virar (East), Taluka Vasai, District Palghar, have instituted the present writ petition challenging the legality and validity of the order passed by the Competent Authority in exercise of powers conferred under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as “the MOFA Act” or “the Act”). The principal grievance of the petitioners revolves

around the alleged non-compliance by the Competent Authority with the statutory mandate under Section 11(3) of the Act, which obligates the Authority to conduct a due and proper inquiry before adjudicating upon an application seeking deemed conveyance. The petitioners specifically contend that the Authority has failed in its statutory duty of verifying the authenticity and veracity of the documents annexed to the said application, which, according to them, were forged and fabricated. In particular, it is the case of the petitioners that the commencement certificate, which formed the substratum for undertaking the construction activities by the developer, was not genuine and was surreptitiously obtained. The petitioners assert that the impugned order suffers from serious legal infirmities, vitiated as it is by a failure to discharge a statutory duty, thereby necessitating its quashment and annulment in the exercise of the extraordinary writ jurisdiction of this Court under Article 226 of the Constitution of India.

2. It is an undisputed position that the petitioners, being the original owners of the subject property, had executed a Development Agreement with the developer, conferring upon the latter development rights in respect of a specified area admeasuring 2,491.67 square metres. However, the grievance of the petitioners is that the developer, in collusion with officials of the City and Industrial Development Corporation (CIDCO), indulged in fraudulent practices by creating and fabricating certain crucial documents, including a commencement certificate purportedly extending to additional areas admeasuring 1,493.31 square metres, 3,612.76 square metres, 108.94 square metres,

1,042 square metres, and 697.30 square metres. It is the categorical assertion of the petitioners that such additional area was never sanctioned or approved by the competent planning authority, thereby rendering the said documents non-est in the eyes of law. Given the seriousness of these allegations, the petitioners contend that it was incumbent upon the Competent Authority, while adjudicating upon the application under Section 11 of the MOFA Act, to undertake a thorough and meticulous scrutiny of the annexures accompanying the application. The failure of the Authority to subject the documents to a rigorous examination, particularly when forgery and fabrication were squarely alleged, has resulted in grave miscarriage of justice and has deprived the petitioners of their legitimate rights in the property. The petitioners, therefore, seek intervention of this Court to correct the grave illegality and procedural impropriety allegedly committed by the Competent Authority.

3. The statutory scheme of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (“MOFA”) is designed to regulate the obligations of promoters and safeguard the rights of flat purchasers. The Act casts a threefold statutory obligation upon the promoter, which is as follows: (i) to execute and register agreements for sale with individual flat purchasers in accordance with Section 4; (ii) to take necessary steps for the formation of a legal entity, such as a cooperative housing society or a company of flat purchasers, as envisaged under Section 10; and (iii) to execute a conveyance of title in favour of the society or association of flat

purchasers within the stipulated period prescribed under Section 11. The regulatory framework governing the statutory conveyance is further supplemented by Rule 8(1) of the Maharashtra Ownership Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Rules, 1964 (“MOFA Rules”), which mandates that the execution of a conveyance deed must take place within four months from the date of formation of the society.

4. In instances where the promoter fails to comply with the statutory obligation of executing the conveyance, the Competent Authority is empowered under Section 11(4) of the MOFA Act to grant a “deemed conveyance” in favour of the flat purchasers or the legally recognized entity representing them. This statutory intervention serves as a remedial measure to address the widespread malpractices of unscrupulous promoters, who, despite collecting consideration from flat purchasers, fail to fulfill their contractual and legal obligations, thereby perpetually depriving purchasers of their rightful proprietary interest in the land and the constructed premises. The legislative intent underlying the deemed conveyance mechanism is to ensure that bona fide flat purchasers are not left remediless and are conferred with legal title over their purchased flats and the undivided interest in the land.

5. However, it cannot be gainsaid that the Competent Authority’s functions under Section 11 are not unfettered. They are circumscribed by fundamental norms of procedural fairness, which include:

(i) verification of the authenticity of the agreements and consents under Section 7 of MOFA;

- (ii) affording the promoter a reasonable opportunity to contest the application under Rule 9(3) of the MOFA Rules; and
- (iii) ensuring that the society's claim aligns with the sanctioned plan and the registered agreements.

6. The role of the Competent Authority, therefore, is quasi-judicial in nature, being limited to effectuating the promoter's pre-existing obligations under the statute and the agreements executed under Section 4.

7. In *Mazda Construction Company v. Sultanabad Darshan CHS Ltd.* (2012 SCC OnLine Bom 1266), the learned Single Judge provided an instructive exposition of the legislative intent behind the insertion of Sections 5A and 11 of MOFA. It was held that Section 11 clothes the Competent Authority with a quasi-judicial jurisdiction to enforce the promoter's duty to convey the land and building in accordance with the agreements duly registered under Section 4. The Court explained that the Competent Authority effectively acts as a statutory surrogate for a defaulting promoter, ensuring that flat purchasers, who have already paid the agreed consideration and are in possession, are not left remediless. Significantly, the Court stressed that a deemed conveyance under Section 11(1) only transfers the promoter's existing rights—no more, no less—as crystallized in the original agreements. The Competent Authority cannot, through its order, expand or alter proprietary rights that were never contracted or agreed upon. Safeguards embedded in Section 11(3), such as the mandatory verification of registered agreements and compliance with the sanctioned plan, alongside rules of natural justice like notice and

hearing, provide robust checks against any potential overreach.

8. The Division Bench in *Zainul Abedin Yusufali Massawala & Ors. v. Competent Authority*, (2016 SCC OnLine Bom 6028) reaffirmed the limited scope of proceedings under Section 11, emphasizing that the Competent Authority merely enforces the conveyance obligation and is not equipped to decide complex questions of title or ownership. If the promoter contends that the society's application pertains to a "larger property" than what the sanctioned plan or the registered agreements allow, then, under well-established jurisprudence, the remedy lies in a civil suit under Section 9 of the Code of Civil Procedure, 1908, rather than a collateral challenge under Article 226. The Bench underscored that civil courts enjoy plenary jurisdiction to examine ownership issues through a full-fledged trial, free from any presumptive influence of administrative or summary determinations by the Competent Authority. This aligns with the settled principle that administrative or executive orders cannot preclude the courts of plenary jurisdiction from independently inquiring into substantive property rights.

9. Similarly, in *Mehboob Ali Humza & Ors. v. District Sub-Registrar (3), Mumbai/Competent Authority & Ors.* (Writ Petition No. 1170 of 2014, decided on 24th June 2016), the Division Bench faced a situation where the developer argued that a particular triangular parcel of land was wrongly included in the deemed conveyance, contrary to previously agreed consent terms. The Court refused to entertain these title-based objections in a writ petition, emphasizing that adjudication of specific proprietary

rights or demarcation of parcels falls squarely within the civil courts' domain. The Bench held that the summary procedure under MOFA is not a substitute for comprehensive evidentiary analysis, reinforcing the doctrine that an administrative finding by the Competent Authority cannot override substantive property rights that have yet to be formally adjudicated by a competent forum.

10. The controversy in the present petition centers around the order passed by the Competent Authority under Section 11(4) of the Maharashtra Ownership Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963. The petitioners, who are owners of the subject property, assail this order on the premise that the conferment of deemed conveyance in favour of the association of purchasers was vitiated by irregularities. According to the petitioners, the developer exceeded his lawful authority by securing and relying on certain documents — specifically, forged commencement certificates — which purportedly covered an area beyond the permitted 2,491.67 square metres sanctioned under the Development Agreement.

11. In the considered view of this Court, the conferment of deemed conveyance under Section 11 of the MOFA Act only vests the flat purchasers (or their association) with such right, title, and interest in the property as was vested in or validly assignable by the developer. It does not, by itself, enlarge the developer's right beyond that which the developer lawfully acquired or was legally competent to transfer. Hence, if the developer's authority was limited to 2,491.67 square metres under the Development Agreement, the deemed conveyance cannot operate to validate or

convey any additional areas that were never lawfully included within the scope of the said Development Agreement.

12. In the event the petitioners maintain that the developer committed illegality or fraud, such as forging commencement certificates in collusion with officers of the City and Industrial Development Corporation (CIDCO), the remedy under civil law is always open, whereby the petitioners can institute a substantive civil suit challenging the alleged unauthorized extension or seeking declaration and appropriate injunctive reliefs. Furthermore, in so far as the criminal aspect is concerned, nothing prevents the petitioners from lodging an First Information Report (FIR), a step they submit has already been taken.

13. It is well settled that the findings recorded by the Competent Authority under Section 11 of the MOFA Act do not operate as *res judicata* in respect of issues pertaining to title or other civil rights of the parties. The primary jurisdiction under Section 11 is confined to determining whether the promoter (developer) has defaulted in his statutory duty to convey the property to the flat purchasers or their duly formed entity (such as a cooperative housing society). The entire legislative scheme of Section 11, read with Rule 8 of the Maharashtra Ownership Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Rules, 1964, is directed towards ensuring that bona fide flat purchasers are not left remediless when faced with a promoter's failure to execute the conveyance deed within the stipulated period. Consequently, the powers of the Competent Authority are circumscribed to facilitate the conveyance and not to

adjudicate complex civil disputes regarding title or unauthorized encroachment.

14. Learned Advocate for the petitioners placed reliance on various documents annexed to the petition and an additional affidavit to argue that the construction raised by the developer was illegal and unauthorized. A Co-ordinate Bench of this Court, in Writ Petition No. 406 of 2018 (*ALJ Residency Co-operative Housing Society Ltd. vs. The State of Maharashtra, Mumbai & Ors.*), has elucidated the scope and effect of deemed conveyance, underscoring that:

“The grant of deemed conveyance does not have the effect of regularising the unauthorised structure. All that the Competent Authority does is that it steps in the shoes of the Promoter and conveys right, title and interest of the promoters to the flat purchasers. To put it simply, the Owners stand divested of their rights, which right in land and building then vests in the flat purchasers. The grant of deemed conveyance will not bar the planning authorities from taking action against the illegal structure. The issue as to whether the flat purchasers can be deprived of their statutory right to enforce the MOFA obligations against the Promoters on the ground of illegality of the structure, in my view, has to be answered in the negative. The default of Promoters in obtaining the necessary permissions and approvals cannot impinge the right of the flat purchasers to seek conveyance of the land and structure, even if the structure is unauthorised.”

15. Thus, the legal principle emerging from the said decision is that the mechanism of deemed conveyance, while protecting the flat purchasers' rights under the MOFA Act, neither validates nor

regularizes any unauthorized construction. It follows that the Competent Authority's order under Section 11(4) does not preclude the municipal or planning authorities from exercising their statutory powers under the Maharashtra Regional and Town Planning Act, 1966 ("the MRTP Act") or other relevant statutes. Should the structure be unauthorized, the authorities are legally bound to act in accordance with law, which may include issuing notices, demolishing illegal portions, or taking other permissible steps as warranted by the facts of each case.

16. From a perusal of the above observations, it becomes evident that the rights of the original owner, whether to raise objections concerning unauthorized construction or to assert title-based disputes, remain unaffected by the grant of deemed conveyance. The owner, at any stage, can notify the planning authority regarding the alleged illegal or unauthorized structures, upon which the authority is statutorily mandated to take appropriate action under the MRTP Act. As for any overlap with civil rights, it has been consistently held that the deemed conveyance under Section 11 does not enlarge the developer's own rights nor does it prejudice an owner's lawful claims which were never granted to the developer in the first instance. Consequently, the owner is at liberty to file a substantive suit before the civil court to ventilate any grievance pertaining to property rights, including but not limited to excess area that was allegedly not part of the original Development Agreement.

17. The principal argument advanced by the petitioners is that the Competent Authority, while exercising jurisdiction under

Section 11(3) of the MOFA Act, failed to perform the statutory duty of scrutinizing the documents annexed with the application. They emphasize that such scrutiny is mandatory, especially where allegations of fraud or forgery are raised, as it directly concerns whether the obligation cast upon the developer to convey the property has become enforceable or otherwise.

18. In this regard, it is indeed incumbent upon the Competent Authority to examine whether the basic conditions for invoking Section 11 have been satisfied — namely, whether the developer has defaulted in discharging its statutory duty to execute the conveyance deed in favour of the association of flat purchasers and whether the timeline prescribed under the Act and Rules has already lapsed. However, the scope of this inquiry is not intended to substitute or replicate a comprehensive trial of complex title or boundary disputes, which inherently lie in the domain of the civil courts.

19. The Co-ordinate Bench of this Court, in *ACME Enterprises and Ors. vs. Deputy Registrar, Co-operative Societies (2), Eastern Suburb and Ors.*, reported in 2023 (4) AIR Bom. R 817, has further buttressed this view. It has been emphasized that the Competent Authority's function is limited to ensuring that the statutory obligation under Section 11 is effectuated. Matters involving intricate civil rights or allegations of fraud going to the root of title must be resolved in a duly constituted civil proceeding.

20. Therefore, while the Competent Authority must examine the authenticity of the documents to the extent necessary to determine

if the conveyance is legally enforceable, it is not expected to deliver a conclusive finding on all contested questions of fact or law concerning ownership or validity of construction. Any party alleging a substantive civil injury retains the liberty to approach the civil court, which alone can comprehensively adjudicate upon issues of title, fraudulent documentation, and consequent prayers such as cancellation of instruments, injunctions, or declarations.

21. In the backdrop of the aforesaid discussion, this Court is of the considered opinion that:

Firstly, the rights conferred under a deemed conveyance are co-extensive with the rights actually held by the developer. Any excess or unauthorized extension of area claimed by the developer is *ex facie* not validated by the grant of deemed conveyance.

Secondly, if the petitioners assert that the developer committed fraud or relied upon forged and fabricated documents, they have the right to pursue both civil and criminal remedies. The filing of a civil suit is the appropriate recourse for the adjudication of complex issues of title, unauthorized occupation, and fraudulent collusion.

Thirdly, the grant of deemed conveyance does not regularize unauthorized construction, nor does it absolve planning authorities of their duty under the MRTP Act. These authorities remain free to initiate or continue enforcement actions against illegal structures, if any.

Fourthly, the findings recorded by the Competent Authority

under Section 11 do not operate as *res judicata* on questions of title or other civil disputes. The scope of Section 11 is to ensure compliance with statutory obligations under the MOFA Act and not to adjudicate multifaceted civil claims regarding ownership or boundaries.

22. In light of the foregoing, the present writ petition stands disposed of with the clarification that nothing contained in the impugned order shall prejudice the rights of the petitioners to approach the competent civil court or any other forum for the ventilation of their legitimate grievances, including but not limited to challenging the alleged unauthorized construction and forging of documents. No order as to costs.

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

(AMIT BORKAR, J.)