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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2596 OF 2025

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Momin Zulfikar Kasam

... Petitioner

V/s.

Pooja Coop. Hsg. Soc. Ltd. & Ors.

... Respondents

Mr. Pradeep J. Thorat with Ms. Amisha S. Lolusure
i/by Ms. Aditi S. Naikare for the petitioner.

Mr. J.M. Joshi for respondent No.1.

Mr. Bapusaheb Dahiphale, AGP for State.

Mr. S.P. Nathani, Chairman of respondent No.1, is
present.

Mr. S.V. Shenvi, Treasurer of respondent No1, is
present.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 25, 2025

P.C.:

1. The Petitioner, invoking the supervisory jurisdiction of this Court under Article 227 of the Constitution of India, challenges the legality and propriety of the order dated 9th September 2024 passed by the Competent Authority in purported exercise of powers conferred by Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ("MOFA" or "the Act"). The said order directs the issuance of a unilateral deemed conveyance and the accompanying certificate under Section 11(4) of the Act.

2. The factual matrix, briefly outlined, indicates that the Petitioner claims to be a subsequent owner who purchased the suit property from Respondent No.2, the original developer/promoter. The impugned order, albeit making a passing reference to the Petitioner's rights, suffers from the legal infirmity that the Petitioner was not arrayed as a party in the application filed by Respondent No.1 (Society) for deemed conveyance. A plain reading of the record testifies that, at the material time, the Petitioner had stepped into the shoes of the erstwhile owner/developer, and ought, in law, to have been given an opportunity of hearing.

3. Having regard to Section 2(c) of MOFA, the expression "promoter" includes not only the original builder or developer but also any subsequent owner who assumes the responsibility of development. In this view of the matter, the application for deemed conveyance, which did not implead the Petitioner — the subsequent owner — suffers from a jurisdictional lapse. Consequently, the learned Advocate for Respondent No.1, upon instructions from the Chairman and Secretary of Respondent No.1, has stated before this Court that the matter be remanded to the Competent Authority for affording a proper opportunity of hearing to the Petitioner. Hence, this Court sets aside the impugned order dated 9th September 2024 directing unilateral deemed conveyance, as well as the certificate issued under Section 11(4) of MOFA on the same date.

4. In the backdrop of the submissions made and upon perusal of the record, this Court deems it just and proper to remand the

proceedings to the Competent Authority (Respondent No.3) to be decided afresh on their own merits.

5. Accordingly, the parties shall appear before the Competent Authority on 10th March 2025 at 10.30 a.m., or on such date as the Competent Authority may direct, to resume proceedings.

6. While conducting the proceedings on remand, the Competent Authority shall afford a full and effective opportunity of hearing to all concerned parties, including the Petitioner.

7. This Court clarifies that no observations made herein shall be construed as an opinion on the merits or contentions raised by the parties.

8. Furthermore, learned Advocate for Respondent No.1, submits that leave be granted to implead the present Petitioner as an opponent in the original proceedings after remand. Such leave is hereby granted. The Competent Authority shall permit amendment or such other steps as necessary to implead the Petitioner.

9. In view of the above directions and findings, the impugned order dated 9th September 2024 is quashed and set aside. The writ petition stands disposed of in these terms. No costs.

(AMIT BORKAR, J.)