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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2695 OF 2025

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Vishrut Enterprises Pvt. Ltd. & Anr. ... Petitioners

V/s.

Maple Carniva Co-operative Housing
Society Ltd. & Ors. ... Respondents

Mr. Mayur Khandeparkar with Suresh M. Sabrad,
Pratik S. Sabrad, Amey Sawant and Neha Parte for the
petitioners.

Mr. Pranil Sonawane with Deepak Hariasra for
respondent No.1(Society).

Ms. M. S. Srivastava, AGP for the State-respondent
No.3.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 27, 2025

PC.:

1. The petitioners, invoking the extraordinary writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, seek to assail the legality and propriety of an order dated 14 January 2025 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"). By the impugned order, unilateral deemed conveyance has been conferred upon respondent No.1-Society in respect of the suit property. The petitioners contend that the

impugned order is vitiated by a failure to appreciate their rights under the development agreement, which envisaged a 50-50% principal-to-principal basis in the distribution of the developed property. The petitioners further allege that the developer, in excess of his authority, entered into agreements with flat purchasers in respect of the very same units that, under the development agreement, stood assigned to the petitioners. Such conduct, it is urged, is not only unauthorized but also fraudulent, warranting the intervention of this Court in exercise of its writ jurisdiction.

2. The suit property in question is Plot No.30, Sector-17, Ulwe, Navi Mumbai. The petitioners assert that the original arrangement with the developer was strictly contingent upon fulfillment of certain conditions, including the timely payment of installments by the flat purchasers. It is the petitioners' case that these conditions, mandated under Section 4 of the MOFA Act, have not been satisfied, thereby negating any obligation to effect conveyance under the Act. The petitioners have instituted a civil suit seeking a declaration of ownership over the units allegedly sold without their consent, and they point out that both the Trial Court and the Appellate Court have passed interim orders protecting their claim during the pendency of the proceedings. In the face of these orders, respondent No.1-Society nonetheless proceeded to file an application under Section 11(3) of the MOFA Act for deemed conveyance, a remedy which the petitioners submit was prematurely invoked and pursued in disregard of the ongoing civil dispute.

3. In addition, reliance has been placed upon a Government Resolution of 2018, prescribing mandatory documents for consideration by the Competent Authority in proceedings for deemed conveyance. The petitioners allege non-compliance with these documentary requirements, thus vitiating the basis on which the unilateral deemed conveyance has been granted. It is further alleged that respondent No.1-Society is attempting to use the impugned order to assert possessory rights over property that they have neither acquired nor are entitled to under the terms of the development agreement.

4. On a prima facie appraisal, the matter involves a contested set of factual and legal assertions—particularly concerning the scope of the promoter's obligations under MOFA and the efficacy of the Society's claim. The Supreme Court has consistently underscored that where substantial civil rights or ownership claims are sub judice in properly instituted civil proceedings, the statutory authorities must exercise their powers with due circumspection, ensuring no prejudice is caused to parties who have asserted their legal rights before a competent forum. These considerations shall guide the further judicial scrutiny of the impugned order and the propriety of the unilateral deemed conveyance granted under Section 11 of the MOFA Act.

5. The Division Bench in *Zainul Abedin Yusufali Massawala & Ors. vs. 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.

6. In the facts of the present case, it is evident that the petitioners have instituted a civil suit for the enforcement of their purported rights under the *agreements* dated 5 April 2010 and 11 September 2013. The pendency of these proceedings underscores that the civil court is already seized of the dispute, and all questions relating to the validity, enforceability, and scope of rights emerging from the said agreements will be duly adjudicated in those proceedings. It is a well-settled principle of law that the conferment of deemed conveyance under Section 11 of the MOFA Act does not by itself extinguish or override existing contractual or proprietary claims, especially when such claims are sub judice before a competent civil forum.

7. In view thereof, this Court clarifies that the conferment of deemed conveyance by the impugned order dated 14 January

2025 shall not affect, abridge, or prejudice the rights of the petitioners, if any, emanating from the *agreements* dated 5 April 2010 and 11 September 2013 or the reliefs sought to be enforced through the pending civil suit. The impugned order, in other words, is without prejudice to the final outcome of the civil proceedings.

8. The petitioners have further contended that the purchasers have defaulted in the repayment of installments owed to the developer. In this regard, it must be borne in mind that the statutory frame of MOFA is concerned with protecting the interests of flat purchasers and ensuring that promoters fulfill their obligations of conveyance. The issue of whether the purchasers have paid or failed to pay their installments to the developer is a matter predominantly inter se between the purchasers and the developer. The petitioners, being owners of the land, may not be entitled to raise a plea predicated solely on alleged defaults in payment by the purchasers to the developer, unless such defaults stand contractually or statutorily attributed to the petitioners' rights under the development agreement. Hence, this contention, on its own, cannot invalidate the conferral of deemed conveyance.

9. As regards the grievance that respondent No.1-Society (or the association of purchasers) is purportedly misusing the certificate of deemed conveyance to claim possession of portions of the property to which they are not entitled, it is crucial to note that under MOFA, the grant of deemed conveyance is essentially the statutory vesting of whatever right, title, or interest the promoter was bound to convey under the development agreement. This

statutory conferment does not, by itself, operate as an adjudication of the question of physical or legal possession of the subject property. Indeed, the Competent Authority, acting under Section 11 of the MOFA Act, does not embark upon a fact-finding mission to ascertain which party is in actual possession or which portion is lawfully occupied. Such issues fall squarely within the domain of civil adjudication.

10. Consequently, the deemed conveyance certificate cannot be construed to confirm or negate the question of physical possession. This Court, therefore, is of the considered view that the petitioners' rights flowing from the *agreements* of 5 April 2010 and 11 September 2013 remain unaffected by the conferment of deemed conveyance upon respondent No.1-Society. Additionally, the certificate and proceedings under Section 11(3) of the MOFA Act are subject to the outcome of the pending civil suit, wherein all parties—including the petitioners, *members of respondent No.1-Society*, and the developer—shall have ample opportunity to litigate and establish their respective claims.

11. Hence, with above clarification, the writ petition stands disposed of. No costs.

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

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 28 February 2025. Corrections are shown in italicize.