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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4161 OF 2025

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Ram Nagar Development Corporation ... Petitioner

V/s.

Shanti Garden Sector-4 Co-Op. Hsg.

Soc. Ltd. & Ors. ... Respondents

Mr. Atul Damale, Senior Advocate with Mr. Jayesh
Joshi for the petitioner.

Ms. D. S. Deshmukh, AGP for respondent Nos.7 to 9
(State).

CORAM : AMIT BORKAR, J.

DATED : MARCH 27, 2025

P.C.:

1. The challenge in the present Writ Petition, preferred at the instance of the petitioner–promoter, is to the legality and propriety of the order dated 10th February 2025 passed by the Competent Authority under the provisions of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as “MOFA”), whereby a certificate under Section 11(5) of MOFA has been issued, granting unilateral deemed conveyance in favour of respondent No.1–Society in respect of the immovable property admeasuring 10,573.77 square metres, more particularly described in the said certificate. The said order is impugned on multiple

grounds as canvassed on behalf of the petitioner.

2. It is not in dispute that the petitioner had executed Agreements for Sale with individual flat purchasers in the year 2005, as contemplated under Section 4 of MOFA. The said agreements, inter alia, contain a stipulation that the conveyance in respect of the subject property shall be executed in favour of the apex body to be formed by a society registered under the provisions of the Maharashtra Cooperative Societies Act, 1960, as mandated under Section 10(1) of MOFA. It is the case of the petitioner that in view of the complexities involved, including pending compliances under other statutes, the conveyance could not be executed. However, on account of the petitioner's failure to convey the property within a reasonable period, respondent No.1– Society preferred an application before the Competent Authority invoking the provisions of Section 11 of MOFA, seeking unilateral deemed conveyance.

3. It is the specific contention of the petitioner that the land forming subject matter of the impugned certificate falls within the ambit of the Urban Land (Ceiling and Regulation) Act, 1976, and that the development was carried out in pursuance of a scheme duly sanctioned under Section 20 of the said Act. As such, any conveyance in relation to the said land would necessarily require prior permission or sanction of the concerned authority under the Urban Land (Ceiling and Regulation) Act, 1976. The petitioner further contended that the entire property forms part of a larger layout admeasuring approximately six hectares, and that in the absence of a sanctioned sub-division, the property, being part of a

single composite layout, could not be unilaterally subdivided. It is submitted that the effect of the impugned order is to virtually subdivide the larger property, which is impermissible in law. It was also urged that the certificate issued by the architect, which forms the foundation of the impugned action, is flawed and suffers from material non-application of mind inasmuch as the architect failed to consider the sanctioned layout plan as well as the title position of the subject land.

4. The Competent Authority, upon considering the rival contentions, proceeded to direct execution of unilateral deemed conveyance in favour of respondent No.1–Society, primarily on the ground that despite the lapse of more than 16 years from the date of registration of the society, the petitioner had not taken any effective steps to convey the land, thereby frustrating the statutory rights of the flat purchasers. Insofar as the objection regarding the necessity of permission from the Charity Commissioner was concerned, the Competent Authority observed that the same could be complied with by respondent No.1-Society and accordingly issued directions to obtain such permissions, including those under the Urban Land (Ceiling and Regulation) Act, 1976. Relying upon the architect's certificate furnished by the society, the Competent Authority issued the impugned certificate under Section 11(5) of MOFA in respect of the land admeasuring 10,573.77 square metres.

5. Mr. Damale, learned Senior Advocate appearing on behalf of the petitioner, has invited the attention of this Court to the Government Resolution dated 22nd June 2018, and submitted that

the Competent Authority, being bound by the directions contained therein, ought to have confined the deemed conveyance to the area comprising the plinth and appurtenant areas, rather than directing conveyance of the entire plot admeasuring 10,573.77 square metres. Learned Senior Advocate submitted that the impugned order, in effect, confers upon respondent No.1–Society ownership of common areas which are otherwise meant for the use and enjoyment of other societies forming part of the same layout. Placing reliance upon the layout plan annexed to the Agreements under Section 4 of MOFA, it is urged that the impugned action results in conveyance of common spaces without legal justification. It is further submitted that the architect's certificate, which formed the basis for issuance of the deemed conveyance, is based on erroneous and incomplete data, and that such a certificate, which ignores the sanctioned layout and title documents, could not have been relied upon by the Competent Authority while passing the impugned order.

6. Having heard learned Senior Counsel for the petitioner and perused the material placed on record, this Court finds that there is no dispute as to the fact that the petitioner–promoter had executed agreements under Section 4 of the MOFA in the year 2005. It is further undisputed that the respondent No.1–Society was registered pursuant to such agreements. Despite such registration, the record clearly reveals that no steps were taken by the petitioner to convey the subject land in favour of the society for a period exceeding sixteen years. This prolonged inaction is in clear breach of Rule 9 of the Maharashtra Ownership Flats

(Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1964, which mandates that the promoter shall execute the conveyance of the land and building in favour of the society or association of flat purchasers within a period of four months from the date of its registration. Such statutory obligation is imperative and cannot be diluted by the passage of time or by raising collateral contentions.

7. Insofar as the clause in the agreement under Section 4 of MOFA is concerned, which envisages execution of conveyance in favour of a federation or apex body to be constituted by individual societies within the layout, this Court finds such contention to be without legal merit. The issue is no longer *res integra*. This Court, in the case of *Veer Tower Co-operative Housing Society Limited v. District Deputy Registrar, Co-operative Societies and Others*, 2025 SCC OnLine Bom 324, has authoritatively held in paragraph 15 as under:

“In light of the foregoing, the respondents' objection—that the petitioner-society must await the completion of redevelopment and the formation of a federation—is devoid of legal merit. The statutory scheme of MOFA, particularly Section 11, is designed to confer an immediate and enforceable right to conveyance upon societies, irrespective of peripheral contractual or developmental contingencies. Equitable principles further dictate that a party cannot benefit from its own delay or default to prejudice the rights of another...”

8. This authoritative pronouncement clarifies that the statutory right to conveyance under MOFA is not dependent upon the formation of a federation or apex body and that the promoter

cannot be permitted to defeat or delay the said right by relying upon such contractual stipulations, particularly when the society has fulfilled its obligations under the agreement. Any contrary interpretation would defeat the very object and purpose of MOFA, which is a welfare legislation enacted to protect the interests of flat purchasers.

9. In view of the above legal position, and considering the admitted fact that more than sixteen years have elapsed since the formation of respondent No.1–Society, the Competent Authority was well within its jurisdiction and justified in issuing a certificate of deemed conveyance under Section 11(5) of MOFA. The prolonged inaction on the part of the promoter clearly justifies invocation of the statutory remedy by the society. The competent authority, having considered the architect's certificate and the supporting documents, cannot be faulted for granting the relief sought, particularly when the promoter failed to execute the conveyance within the stipulated period.

10. With regard to the contention raised by the petitioner that the land conveyed includes certain areas comprising common amenities and facilities that may be available for the benefit of members of other societies within the layout, this Court is of the view that such grievances essentially relate to enforcement of civil rights arising out of contracts or arrangements inter se multiple societies and the promoter. Whether such common areas are to be shared or enjoyed jointly, and whether the impugned deemed conveyance encroaches upon such rights, are matters requiring adjudication on evidence and cannot be effectively addressed in

writ jurisdiction under Article 226 of the Constitution of India. It is, therefore, open to any person aggrieved, including the petitioner and/or other societies within the layout, to institute an appropriate civil suit for determination and enforcement of their respective civil rights arising either under the agreement entered into under Section 4 of MOFA or otherwise under any applicable law.

11. As regards the grievance of the petitioner that the area conveyed pursuant to the impugned certificate exceeds the area that could have been legally conveyed, this issue too has been considered and answered by the Division Bench of this Court in *Zainul Abedin Yusufali Massawala & Ors. v. Competent Authority*, 2016 SCC OnLine Bom 6028. The Court, in paragraph 9 of the said judgment, has held that:

“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... is not to file a writ petition under Article 226 in this court, but to approach competent civil court and establish this right, title and interest...”

12. The legal principle that emerges from the above judgment is that challenges to the extent or quantum of property conveyed under a deemed conveyance certificate involve disputed questions of fact and interpretation of covenants which are amenable to adjudication only before a civil court. Such grievances, therefore,

do not warrant interference under Article 226, particularly when an efficacious alternative remedy is available.

13. In light of the above settled legal position, this Court is of the considered opinion that the appropriate remedy for the petitioner, insofar as its challenge pertains to the alleged excess area conveyed or the inclusion of common areas, is to approach the competent civil court for redressal of such grievances. This view is consistent with the line of decisions of this Court which have consistently held that such disputes fall outside the limited scope of writ jurisdiction under Article 226.

14. Accordingly, keeping all contentions open to be urged by the petitioner or any other aggrieved party in appropriate civil proceedings, the present writ petition stands disposed of. It is clarified that nothing contained in this judgment shall be construed as an expression on the merits of any claim or defence that may be raised in any such civil proceedings. There shall be no order as to costs.

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

(AMIT BORKAR, J.)