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

WRIT PETITION NO.4432 OF 2025

VAIBHAV
RAMESH
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Ranjeet Developers Through The
Proprietor and Owner Shri. Babasaheb
Bhagwan Atkire

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. Vilas B. Tapkir for the petitioner.

Ms. Madhubala Kajle, 'B' Panel advocate for respondent
No.1-State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 3, 2025

P.C.:

1. The challenge in the present writ petition, instituted under Articles 226 and 227 of the Constitution of India, is directed against the order dated 21st November 2024, passed by the Competent Authority (Respondent No.2) in Deemed Conveyance Application No.148 of 2024, whereby the Competent Authority has allowed the said application and directed conveyance of the land bearing Plot No.51 along with open space admeasuring 2928.50 square metres, situated at Survey Nos.40/1/1/2, 40/1/2, and 6/9, as well as Plot No.53 along with internal road admeasuring 6263.77 square metres, thereby comprising a total area of 9192.27 square metres, in favour of Respondent No.3 – a Co-operative

Housing Society.

2. It emerges from the record that the development of the project in question was undertaken by the petitioner herein, on the basis of registered agreements executed with the individual flat purchasers, as contemplated under Section 4 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short, "*MOFA*"). Owing to the failure of the petitioner-developer to form and register a co-operative housing society of the flat purchasers, Respondent No.3-Society came to be registered independently, by invoking the powers under Section 10 of the MOFA, pursuant to the order dated 6th December 2023. Despite the statutory mandate contained in Rule 9 of the Maharashtra Ownership Flats Rules, 1964, requiring execution of the conveyance within a period of four months from the date of registration of the society, the petitioner failed to comply with the said requirement. Consequently, Respondent No.3-Society preferred Deemed Conveyance Application No.148 of 2024 under Section 11(3) of the MOFA, seeking conveyance of the subject property, which culminated in the passing of the impugned order dated 21st November 2024 by the Competent Authority.

3. The petitioner entered appearance before the Competent Authority and opposed the application by filing a detailed written statement. It was contended, inter alia, that the open spaces and internal roads could not be conveyed to the society, as per the petitioner's assertion, those were subject to specific reservations under independent agreements executed with various flat

purchasers, whereby the petitioner allegedly retained a right of access and use over the internal road. Notwithstanding the said objections and the contentions raised by the petitioner, the Competent Authority, by invoking the powers under Section 11 of the MOFA, proceeded to allow the application and directed deemed conveyance of the property as described hereinabove, by passing the impugned order dated 21st November 2024, giving rise to the present writ petition.

4. Mr. Tapkir, learned Advocate appearing for the petitioner, has placed reliance upon the agreement dated 7th November 2005, and submitted that under the said agreement, it has been specifically agreed between the parties that the developer shall retain exclusive ownership and proprietary rights over the internal road, and that the flat purchasers, forming the members of Respondent No.3-Society, shall merely have a right of ingress and egress over the said road, without any claim of ownership or interest therein. He submits that this clause creates an enforceable civil right in favour of the petitioner-developer, which, according to him, has been disregarded by the Competent Authority while passing the impugned order of deemed conveyance.

5. However, this Court is of the considered view that the Competent Authority, acting under the limited jurisdiction conferred by Section 11 of the MOFA, is empowered to adjudicate upon the question as to whether the developer has failed to convey the right, title and interest in the land and building in favour of the society within the prescribed time, and if so, to direct execution of deemed conveyance. The scope of enquiry under Section 11 is not

to adjudicate upon complex questions of title or disputed civil rights, which are matters falling exclusively within the domain of the civil court.

6. The Competent Authority under Section 11 of the MOFA has a limited jurisdiction to direct conveyance where the promoter has failed to execute the same in favour of a registered society. The said authority is not expected to enter into disputed questions of title or contractual interpretation which require detailed evidence and adjudication.

7. In view of the above legal position, this Court is of the opinion that the petitioner is at liberty to ventilate his grievance with respect to the alleged civil rights flowing from Clause 11 of the agreement dated 7th November 2005 by instituting appropriate civil proceedings. It is made clear that the findings and directions issued by the Competent Authority under the impugned order shall not operate as a res judicata or as a legal impediment in any such independent adjudication of the petitioner's civil rights by a competent civil court. The civil court shall consider such claim uninfluenced by the findings of the Competent Authority.

8. Save and except the above grievance, this Court finds that the Competent Authority has exercised jurisdiction in accordance with law and has considered all relevant statutory factors as contemplated under Section 11 of the MOFA. These include: (i) the obligation of the developer to execute a conveyance in favour of the society within the period stipulated by Rule 9 of the MOFA Rules, 1964; (ii) the admitted failure of the petitioner to execute

such conveyance despite passage of the prescribed time; and (iii) the compliance by the society with the requisites of Section 4 of the Act, particularly in relation to execution of agreements by a substantial number of flat purchasers and registration of the society. The Competent Authority has, in the opinion of this Court, acted well within its jurisdiction in granting the deemed conveyance in favour of Respondent No.3-Society. Once a promoter fails to execute a conveyance deed in favour of the society within the stipulated period, the Competent Authority is empowered to direct deemed conveyance, provided the statutory preconditions are fulfilled. The scope of interference in writ jurisdiction is limited to examining jurisdictional errors or violation of principles of natural justice.

9. Learned Counsel for the petitioner has further submitted that certain members of the society have failed to pay their lawful dues, and that such non-payment ought to have been considered while deciding the deemed conveyance application. However, it is well settled that the Competent Authority under Section 11 of the MOFA is not vested with any adjudicatory power in relation to inter se monetary disputes between the developer and the flat purchasers. The statutory function of the Authority is confined to the grant or refusal of deemed conveyance upon satisfaction of the prescribed conditions.

10. The petitioner is therefore at liberty to adopt appropriate legal proceedings, in accordance with law, for recovery of such dues, if so advised. The pendency of any such dispute shall not operate as a bar to the effect and implementation of the deemed

conveyance granted in favour of Respondent No.3-Society.

11. In light of the above discussion, and while keeping the question of enforcement of contractual rights under Clause 11 of the agreement dated 7th November 2005 open for adjudication in civil proceedings, this Court does not find any reason to interfere with the impugned order in exercise of its writ jurisdiction. The writ petition, therefore, does not merit interference and is accordingly disposed of.

12. It is made abundantly clear that it shall be open to the petitioner to institute a civil suit or any other appropriate proceeding before a competent civil court for adjudication and enforcement of rights, if any, conferred under Clause 11 of the agreement dated 7th November 2005, and the same shall be decided independently on its own merits, in accordance with law.

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

(AMIT BORKAR, J.)