

VRJ

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4603 OF 2025

Digitally
signed by
VAIBHAV
RAMESH
JADHAV
Date:
2025.04.23
18:01:00
+0530

Hareshwar Damodar Bhoir

... Petitioner

V/s.

The State of Maharashtra through
Competent Authority & Ors.

... Respondents

Mr. Uday P. Warunjikar i/by Ms. Gargi U. Warunjikar
for the petitioner.

Mr. O. A. Chandurkar, Addl. G. P. with Ms. V. S.
Nimbalkar, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 23, 2025

P.C.:

1. The present writ petition under Article 226 of the Constitution of India assails an 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 (for short "MOFA"), whereby deemed conveyance in respect of land bearing Survey No.45, Hissa No.3, admeasuring 685.41 square metres has been directed in favour of respondent No.2 – the co-operative housing society of flat purchasers.

2. The petitioner before this Court claims to be the original

owner of the subject land and asserts that he had, under a development arrangement, permitted the developer to undertake construction. It is further brought to the notice of this Court that the petitioner has instituted Special Civil Suit No.52 of 2024 seeking, inter alia, a decree of cancellation of the agreement to sell dated 25th February 1988 and restoration of possession, thereby indicating that there exists a serious and subsisting dispute regarding title, authority, and the legitimacy of alienation of rights.

3. In evaluating the sustainability of the impugned order passed under Section 11 of MOFA, it becomes essential to recapitulate the narrow and specific jurisdiction conferred upon the Competent Authority under the said provision. The function entrusted to the Competent Authority is, in its essence, administrative in nature — directed at enforcing the statutory obligation of the promoter or landowner to convey title to the society of flat purchasers in accordance with the sanctioned layout and registered agreements. The jurisdiction does not extend to adjudication of rival claims of ownership or to resolve disputes founded upon competing contractual entitlements.

4. The consistent judicial pronouncements of this Court, including in *Shimmering Heights CHSL & Ors. v. State of Maharashtra* (W.P. No. 3129 of 2016, decided on 6 April 2016), *Zainul Abedin Yusufali Massawala & Ors. v. Competent Authority* (2016 SCC OnLine Bom 6028), *P.R. Enterprises & Ors. v. Competent Authority* (W.P. No. 11251 of 2016, decided on 27 November 2018), and *Mehboob Ali Humza & Ors. v. District Sub-Registrar (3), Mumbai & Ors.* (W.P. No. 3129 of 2016, decided on

24 June 2016), reiterate that in proceedings under Article 226, the High Court does not function as a forum to determine or settle disputes as to civil title, particularly when such disputes are already pending before a Civil Court of competent jurisdiction. In such matters, the constitutional jurisdiction under Article 226 is intended not to supplant the remedies available under ordinary civil law, but to act within the contours of public law remedies, guided by principles of judicial restraint.

5. It is further to be emphasized that the Competent Authority, under Section 11, exercises a statutory duty-bound power and does not undertake adjudication of title akin to a Civil Court under Section 9 of the Civil Procedure Code, 1908. The remedy of civil suit remains untrammelled and is the appropriate forum where evidentiary appreciation and resolution of title or ownership disputes can meaningfully occur.

6. Having regard to the above principles, and to avoid the apparent conflict between the administrative action of the Competent Authority and the pendency of the civil suit instituted by the petitioner, it is clarified that the decision rendered under Section 11 of MOFA shall not preclude the petitioner from pursuing his remedy in the pending suit. Nor shall the order passed by the Competent Authority be treated as determinative of rights inter se the petitioner and the society or its members. The Civil Court shall adjudicate the matter on its own merits uninfluenced by any finding or observation made by the Competent Authority or by this Court in the course of deciding the present writ petition.

7. With the above clarification, the writ petition stands disposed of. No order as to costs.
8. Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)