

Shabnoor

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

WRIT PETITION NO.4858 OF 2025

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Romell Real Estate Pvt. Ltd.

... Petitioner

V/s.

District Deputy Registrar,

Cooperative Societies Mumbai & Ors.

... Respondents

Mr. Vineet Naik, Sr. Advocate i/b Mr. Pankaj Waghela
for petitioner.

Smt. S. D. Chipade, AGP for State – respondent.

Mr. Vishal Kanade a/w Mr. Kartik Tiwari, Mr. Shah i/by
Lakshyavedhi Legal for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : APRIL 15, 2025

P.C.:

1. The challenge in the present petition filed under Article 227 of the Constitution of India is directed against the order passed by the Competent Authority in exercise of powers under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (“MOFA”, for short), thereby granting a certificate of deemed conveyance in favour of the purchasers’ association.

2. Mr. Naik, learned Senior Advocate appearing on behalf of the petitioner–promoter, submitted that by the impugned order, the Competent Authority has erroneously granted conveyance of the

entire plot along with what is referred to as “loaded FSI”, which, according to the petitioner, is neither inherent nor part of the original layout plan, but constitutes potential FSI that may be availed in the future subject to certain statutory permissions and conditions. It is submitted that such aspect of loaded FSI was duly disclosed in the sanctioned plan as well as incorporated in the agreement executed with the flat purchasers under Section 4 of the MOFA. It is, therefore, his contention that the Competent Authority has exceeded its jurisdiction by including such prospective or unutilized development potential while granting deemed conveyance in favour of the society.

3. In this regard, it would be apposite to note the settled legal position that the purpose of conferring power under Section 11 of the MOFA upon the Competent Authority is to remedy the inaction or neglect on the part of the promoter in executing the conveyance deed, which is a statutory obligation under Section 11(1) of the Act. The legislative intent behind this provision is to ensure that rights of flat purchasers are not frustrated due to the willful avoidance or delay by the promoter in conveying title to the land and building. The Competent Authority is, therefore, empowered to act in substitution of the promoter and to execute the conveyance unilaterally, upon being satisfied about the factual matrix, and upon due compliance with the principles of natural justice and verification of documents.

4. In the case of *Mazda Construction Company and Others v. Sultanabad Darshan CHS Ltd. and Others*, 2012 SCC OnLine Bom 1266, this Court had occasion to examine the scope and nature of

power exercisable by the Competent Authority under Sections 10 and 11 of the MOFA. In paragraph 20 of the said judgment, it has been observed as under:

“To my mind, reading of Sections 10 and 11 together with Section 5A would make it amply clear that what is to be performed by the Competent Authority is a duty and obligation which the promoter is to perform in law. That is to convey the title and execute the documents according to the agreement... What has to be conveyed even by a deemed conveyance... enables the flat purchasers to acquire the Promoter’s right, title and interest in the land and the building. Therefore, it cannot be said that a unilateral deemed conveyance conveys something more than what belongs to the promoter.”

5. A Division Bench of this Court in *M/s. Shree Chintamani Builders v. State of Maharashtra & Ors.*, 2016 SCC OnLine Bom 9343, further clarified that the certificate of deemed conveyance granted under Section 11 of MOFA does not finally adjudicate upon the absolute title or extinguish the right of the promoter or landowner to agitate the issue of title before the Civil Court. The remedy of filing a civil suit remains open to the promoter, wherein all questions relating to ownership, interest in the property, or quantum of land conveyed can be raised and adjudicated.

6. In a subsequent decision in *Zainul Abedin Yusufali Massawawala and Others v. Competent Authority and Others*, 2016 SCC OnLine Bom 6028, the Division Bench reiterated that in

cases where the promoter alleges that the society has claimed more area than what is contractually stipulated, the Competent Authority is not vested with the jurisdiction to adjudicate disputed questions of title or possession. In such circumstances, the remedy lies before the competent civil court. In paragraph 9 of the judgment, the Court held that:

“If while granting the deemed conveyance, the Competent Authority has in any manner, traveled beyond the stipulations in the agreement... the remedy of the petitioners is not to file a writ petition under Article 226... but to approach competent civil court and establish this right, title and interest...”

7. It is thus well-settled that the Competent Authority is not conferred with the jurisdiction to conduct an adjudication akin to a civil court in matters involving complex questions of title. Any finding recorded by the Competent Authority under Section 11 of the MOFA shall not operate as res judicata in civil proceedings. Therefore, the rights of either party to agitate such disputes before the Civil Court remain unaffected.

8. In the present case, the petitioner's grievance primarily pertains to the aspect of proportionate loaded FSI being included in the conveyance, which is contended to be contrary to the sanctioned layout and the MOFA agreement. It is further contended that the said FSI is not part of the promoter's existing title or interest in the land and, therefore, could not have been subject matter of deemed conveyance. These are contentions

which involve disputed questions of fact and law and can appropriately be adjudicated only in a civil suit. The Competent Authority's order shall not preclude the petitioner from instituting appropriate proceedings before the civil court for ventilation of such grievances.

9. Accordingly, while keeping open all rights and contentions of the petitioner to be agitated in a substantive civil suit, the present petition does not warrant interference under Article 227 of the Constitution of India.

10. Hence, the writ petition stands disposed of with the following directions:

(i) It shall be open for the petitioner to file a substantive civil suit challenging the legality and correctness of the deemed conveyance order and to seek appropriate reliefs in relation to the claim of loaded FSI or other development rights;

(ii) The observations made in the impugned order passed by the Competent Authority, or in this order, shall not be construed as conclusive or binding on the issues of right, title or interest, which may be raised and adjudicated upon by the competent civil court.

(iii) No costs.

(AMIT BORKAR, J.)