

Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6019 OF 2025

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Him Sun Builders Pvt. Ltd. ... Petitioner

V/s.

Deputy District Registrar – II & Anr. ... Respondents

Mr. Aditya Lele a/w Rutupari Deo & Ms. Aishwarya
Gaikwad, for petitioner.

Mr. Bapusaheb B. Dahiphale, AGP for State -respondent
No.1.

Ms. Mahek Bookwala with Amisha S. Shah with Khushi
Savani, Shreem Law Chambers for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : MAY 5, 2025

P.C.:

1. The present writ petition is filed under Articles 226 and 227 of the Constitution of India. The petitioner challenges the legality and correctness of the order 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 (for short, “MOFA”). By the said order, the Competent Authority has granted *deemed conveyance* in favour of the co-operative housing society formed by the flat purchasers. The deemed conveyance pertains to the land admeasuring 736.2

square meters, being Final Plot No.117 B, TPS VI, Vile Parle (West), Survey No.180, Hissa No.2 (Part), CTS No.1166, 1166/1 to 4, situated at Village – Vile Parle (West), Taluka Andheri, Mumbai Suburban District.

2. The facts relevant to adjudicate the controversy are as under: The petitioner is the *promoter* (Owner) as defined under Section 2(c) of the MOFA. The promoter had entered into agreements for sale under Section 4 of the MOFA with the individual flat purchasers on 6th June 1982. Upon completion of construction and delivery of possession to the flat purchasers, a co-operative housing society was formed in the year 1982 under the provisions of the Maharashtra Co-operative Societies Act, 1960 (for short, “the said Act”). As per the mandate of Rule 9 of the MOFA Rules, the promoter is legally bound to execute the conveyance of title in favour of the society within four months from the date of its registration, unless there is a contract to the contrary. In the present case, there is no material on record to suggest existence of any such contract excluding or modifying the obligation of the promoter. Therefore, the statutory duty to convey the property stood crystallized in favour of the society since the year 1982 itself. However, the promoter failed to fulfil this legal obligation within the time prescribed. In view of the continued default on the part of the promoter, the society initiated proceedings under Section 11 of the MOFA by filing Application No.143 of 2019 before the Competent Authority, seeking grant of deemed conveyance in respect of the subject property.

3. The Owner opposed the said application by contending that a portion of the property sought to be conveyed was still in possession of the promoter and not part of the area agreed to be transferred to the society. It was specifically contended that two floors of the building were in occupation of tenants who were in possession under the promoter and that such areas could not form part of the conveyance in favour of the society. Based on this contention, the Competent Authority initially passed an order on 17th August 2020, which was later modified by a further order dated 8th December 2020.

4. Aggrieved by the said orders, the society preferred Revision Application No.2033 of 2021 before this Court. This Court, by its judgment dated 11th September 2024, was pleased to quash and set aside the said orders passed by the Competent Authority and directed that the Competent Authority shall reconsider the matter afresh by following the guidelines laid down in the Government Resolution dated 22nd June 2018. In compliance with the directions of this Court, the Competent Authority granted an opportunity of hearing to both sides and after considering the material placed on record, passed the impugned order granting deemed conveyance in favour of the society, which is now under challenge in the present writ petition.

5. The learned Advocate appearing for the petitioner has drawn attention of this Court to the judgment delivered in the earlier round of litigation between the same parties. He particularly relied upon the observations made in paragraph 15 of the said judgment.

He submitted that in the earlier round, this Court had quashed the order passed by the Competent Authority on the specific ground that it had failed to take into consideration the structure which was in possession of the promoter. According to him, this structure is required to be excluded from the grant of deemed conveyance, in view of the policy guidelines issued by the State Government vide Government Resolution dated 22nd June 2018. He argued that, despite such clear findings recorded by this Court in the earlier judgment, the Competent Authority in the fresh round has once again committed the same error by granting deemed conveyance in respect of an area which is in excess of what the society is entitled to under Section 4 of the MOFA.

6. In support of this submission, he placed reliance on the judgment of this Court in the case of *Tushar Jivram Chauhan & Anr. vs. State of Maharashtra & Ors.*, reported in 2015(4) Mh.L.J. 867. He submitted that the Coordinate Bench, in a similar factual scenario, had set aside the order of the Competent Authority which had failed to properly apply the Government Resolution dated 22nd June 2018. Therefore, relying upon the same reasoning, he submitted that the impugned order passed by the Competent Authority also deserves to be set aside as it suffers from the same legal infirmity.

7. On the other hand, the learned Advocate appearing for the respondent – co-operative housing society of purchasers submitted that the Competent Authority has passed the impugned order after considering all relevant aspects of the matter, including the applicability of the Government Resolution dated 22nd June 2018.

She pointed out that the Competent Authority has recorded a specific finding that the new structure constructed on the subject plot consists of five floors. Out of these five floors, two floors are in possession of the tenants claiming under the promoter, whereas the remaining three floors are in possession of the members of the respondent society.

8. She submitted that the Government Resolution dated 22nd June 2018 contemplates exclusion only of *distinct* structures which are exclusively in possession of the promoter or his tenants. However, in the present case, there is no such separate or exclusive building. Instead, it is one single structure, part of which is in possession of the society members and part in possession of tenants. In such a situation, the Competent Authority had no option but to treat the entire structure as one composite unit. Since three out of five floors are already in possession of the purchasers, the Competent Authority rightly held that the entire land below such structure had to be conveyed to the society, and could not be bifurcated artificially. She therefore submitted that the order of the Competent Authority is in conformity with the law as well as factual findings, and does not warrant any interference.

9. The rival submissions now fall for consideration of this Court.

10. At the outset, it is necessary to understand the scheme and object of the Maharashtra Ownership Flats Act, 1963 (MOFA). The legislative intent behind Section 11 of MOFA is to ensure that promoters transfer ownership and interest in the land and building

to the association of flat purchasers at the earliest possible stage. Rule 9 of the MOFA Rules further clarifies and reinforces this obligation by laying down a mandatory timeline—requiring the promoter to execute the conveyance in favour of the co-operative housing society within four months from the date of its registration, unless there exists a specific agreement to the contrary. In the present case, it is not the case of the promoter that there is any such contrary agreement. Therefore, it was the legal duty of the promoter to convey the property to the society within four months from the date of its registration, i.e., in the year 1991 itself. However, for nearly 28 years, no steps were taken by the promoter to discharge this statutory obligation. It was only in 2019, after prolonged inaction on the part of the promoter, that the society was compelled to initiate proceedings under Section 11 of MOFA seeking deemed conveyance.

11. In response to the application filed by the society, the promoter opposed the grant of deemed conveyance on the ground that two floors out of a five-floor building standing on the plot were in occupation of tenants, and hence, according to him, the entire plot could not be conveyed to the society. However, this argument has been correctly examined and rejected by the Competent Authority. Upon verification of the factual position, the Competent Authority has recorded a clear finding that the structure standing on the subject plot is not a distinct or independent structure exclusively in possession of the promoter. Rather, it is one *composite building*, consisting of five floors—out of which three floors are occupied by the members of the

respondent society, and only ground plus two floors are in possession of tenants claiming under the promoter.

12. This finding of fact is important because it shows that there is no basis to exclude the structure or part of the land from the scope of deemed conveyance. Once it is admitted that the same building is partly in possession of society members and partly in possession of tenants, the land beneath such a unified structure cannot be bifurcated artificially. The Competent Authority has rightly held that it is not permissible to issue an entitlement certificate for deemed conveyance in piecemeal or in part. The nature of the structure being indivisible, the land beneath must necessarily follow the building as a whole.

13. This Court further finds that the Competent Authority has rightly relied upon the earlier judgment dated 11th September 2024 passed by the Coordinate Bench in Writ Petition No.2033 of 2021, and has applied the law correctly while interpreting the Government Resolution dated 22nd June 2018. The Competent Authority has come to a proper conclusion that the said Government Resolution does not apply to the facts of the present case. The petitioner's reliance on the judgment of *Tushar Jivram Chauhan vs. State of Maharashtra*, reported in 2015(4) Mh.L.J. 867, is also misplaced. In that case, the facts were materially different. The Court was dealing with a situation where two buildings stood independently, and therefore the land beneath the structure belonging to the promoter was capable of being separated and excluded. In the present case, such distinction is absent. The building here is one continuous structure, and the land

beneath cannot be segregated based on partial occupancy. Therefore, the judgment in *Tushar Jivram Chauhan* (supra) has no application to the present dispute, and the Competent Authority has rightly distinguished the said precedent.

14. It is now a well-settled principle of law that this Court, while exercising its jurisdiction under Article 226 or 227 of the Constitution of India, exercises self-imposed *judicial restraint* in interfering with the orders passed by the Competent Authority under Section 11 of the MOFA. This view has been consistently adopted in a series of judgments of this Court. One such leading decision is that of *Mazda Construction Company and Others v. Sultanabad Darshan CHS Ltd. and Others*, 2012 SCC OnLine Bom 1266. In that case, this Court had the occasion to consider the scope and powers of the Competent Authority while exercising jurisdiction under Sections 10 and 11 of MOFA. In paragraph 20 of the judgment, the Court made a significant observation which is reproduced herein for reference:

“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.”

This observation reinforces the legal position that the Competent Authority under Section 11 merely facilitates transfer of the promoter’s existing right, title, and interest to the society, and does not expand or exceed what is legally available to be conveyed.

15. The legal position was further clarified by a Division Bench of this Court in *M/s. Shree Chintamani Builders v. State of Maharashtra & Ors.*, 2016 SCC OnLine Bom 9343. The Division Bench observed that the issuance of a deemed conveyance certificate by the Competent Authority under MOFA does not amount to a final adjudication of ownership or extinguishment of title. Importantly, the Court clarified that the promoter or landowner retains the right to file a civil suit to establish their title, claim ownership, or question the extent or quantum of land conveyed. Thus, the civil remedy remains open to promoters and landowners who are aggrieved by such orders, and the jurisdiction of the civil court is not barred in such cases.

16. In yet another decision of this Court in *Zainul Abedin Yusufali Massawawala and Others v. Competent Authority and Others*, 2016 SCC OnLine Bom 6028, the Division Bench once again reiterated this position of law. It was held that the Competent Authority under Section 11 does not have jurisdiction to decide complex questions relating to title, ownership, or possession. If the promoter alleges that the society has claimed or received more land than what was agreed upon in the flat

purchase agreement, the Competent Authority is not the forum to adjudicate such disputes. The Court, in paragraph 9 of that judgment, held:

“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...”

17. From the above authorities, it is now clear beyond doubt that the Competent Authority is not empowered to conduct proceedings akin to a civil trial or to finally determine title disputes. Any finding or observation made by the Competent Authority while granting deemed conveyance cannot operate as *res judicata* or as a final pronouncement of title between the parties. Both the promoter and the society retain the right to agitate their claims and contentions regarding ownership, possession, or boundaries of the property before the competent civil court.

18. Applying the above principles to the facts of the present case, this Court is of the opinion that the promoter’s grievance regarding alleged excess land conveyed to the society is not a matter for examination under Article 226 or 227. The proper course available to the promoter is to institute a civil suit before the appropriate forum and seek adjudication of its rights, if any, in accordance with law. This Court, while exercising supervisory jurisdiction, cannot go into disputed questions of title or possession, especially when

the Competent Authority has acted within its jurisdiction and followed the procedural safeguards. Accordingly, while keeping open all rights and remedies of the petitioner to raise such issues in a properly instituted civil suit, no interference is called for in the impugned order. Hence, the writ petition is liable to be dismissed.

(AMIT BORKAR, J.)