

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.12043 OF 2025

I-17 Mahavir Nagar Co-Operative ... Petitioner
Housing Society Ltd.

V/s.

The Competent Authority And ... Respondents
District Deputy Registrar

Mr. Mayur Khandeparkar with Mukherjee, Mandar Joshi and Milind Nair, Devanshi Joshi, for the petitioner.

Mr. J.P. Patil, AGP , for the State.

Mr. Chirag Balsara i/by Pradeep Tiwari, for the respondent nos. 2 to 4 and 16.

CORAM : N.J. JAMADAR, J.

DATE : 13TH OCTOBER 2025.

ORAL ORDER:

1. Heard the learned counsel for the parties.
2. The challenge in this petition is to an order dated 23rd October 2024, passed by the Competent Authority whereby an application for unilateral deemed conveyance came to be rejected.
3. The petitioner-society had filed an application for a certificate of unilateral deemed conveyance alleging the breach of obligations on the part of the promoter in conveying the subject building and land in

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accordance with the provisions contained in Section 11 of the Maharashtra Ownership Flats (Regulation Of The Promotion Of Construction, Sale, Management And Transfer) Act, 1963.

4. The application was resisted by the respondents.

5. The Competent Authority was persuaded to reject the application opining, inter alia, that the application for deemed conveyance was not supported by a MOFA Agreement and the petitioner-society had not complied with the guidelines prescribed by the State Government in the Government Resolution dated 22nd June 2018, in the matter of grant of deemed conveyance certificate where buildings of more than one societies form part of one layout. The Competent Authority noted that the architect's certificate was incorrect and the petitioner-society had not submitted the approved building plan. Thus, the Competent Authority rejected the application, expressly observing that, the application was rejected without considering the merits of the application.

6. Learned counsel for the petitioner submitted that, the finding of the Competent Authority that there was no MOFA Agreement is factually incorrect. Alongwith the affidavit in rejoinder, a copy of the

agreement dated 6th June 1978, was tendered for the perusal of the Competent Authority. In the event, the Competent Authority was of the view that, the petitioner had not produced the original approved building plan, and the architect's certificate was not correct, an opportunity ought to have been given to the petitioner to rectify the defects instead of straightway rejecting the application. Therefore, the application is required to be remitted back to the Competent Authority for a fresh determination after providing an opportunity to the petitioner to produce the documents.

7. Mr. Balsara, the learned counsel for the respondent nos. 2 to 4 and 16, on the other hand, would urge that, the impugned order, in effect, records that, the agreement dated 6th June 1978, is not the agreement on the strength of which the petitioner society could seek conveyance of the land and building. It was submitted that the said agreement was not with respondent nos. 2 to 4 and 16, and, therefore, the respondent nos. 2 to 4 and 16 cannot be termed as the promoters. To lend support to this submission, Mr. Balsara placed reliance on a judgment of this Court in the case of *'D.D. Udeshi and Ors and State of Maharashtra and Ors'*¹.

1 Cri. Appln. 4311 of 2006 dated 30.06.2008

8. The impugned order does not indicate even remotely that, the Competent Authority has examined the agreement dated 6th June 1978, and, thereupon, did not find it to be an agreement within the contemplation of Section 4 of the MOFA, and the one on the strength of which the petitioner-society could make a claim for conveyance of the land and building. It simply records that the application is not supported by a copy of the MOFA agreement.

9. Prima facie, the said finding appears to be factually incorrect. Had the Competent Authority examined the said agreement dated 6th June 1978, and recorded such findings, different considerations would have come into play.

10. The submission on behalf of the petitioner that, the Competent Authority ought to have provided an opportunity to the petitioner to place on record the copy of the approved building plan, and a correct architect's certificate appears justifiable.

11. In the case of '*Ganesh Prerna Co-operative Housing Society Ltd. Vs. The Competent Authority and District Deputy Registrar, Co-op. Soc. Thane and Ors.*'², a learned single Judge of this Court after referring to the provisions for MOFA and the Government Resolution dated 22nd

2 WP No. 8864 of 2024 dated 20th March 2025

June 2018, has observed that, the omission to produce a sanctioned plan is an infirmity which could have been cured by directing the society to file on record a legible copy of the sanctioned plan.

12. In any event, having regard to the duty expected to be discharged by the Competent Authority, under the provisions of MOFA Act, straightaway rejection of the application for deemed conveyance on the ground of infirmity in the application while recording that, the application has been rejected without delving into merits of the matter, does not seem to be sustainable. Therefore, this Court is persuaded to allow the petition and remit the matter back to the Competent Authority for a fresh decision in accordance with law.

13. Hence, the following order:

ORDER

- i) The petition stands allowed.
- ii) The impugned order stands quashed and set aside.
- iii) The Application No. 84 of 2024 for deemed Conveyance is remitted back to the Competent Authority for a fresh decision in accordance with law.
- iv) The petitioner-society is permitted to file additional documents, including approved building plan and the

architect's certificate, within a period of three weeks from the date of uploading of this order.

v) The respondent would be at liberty to file further affidavit-in-reply / compilation of documents.

vi) All contentions of all the parties, including the contention on behalf of the respondent nos. 2 to 4 and 16 that, respondent nos. 2 to 4 and 16 cannot be termed as the promoters and there is no MOFA agreement in the contemplation of Section 4 of the Act, are kept open for determination by the Competent Authority.

vii) The Competent Authority is requested to make an endeavour to hear and decide the application as expeditiously as possible, after providing an effective opportunity of hearing to the parties.

Petition disposed.

(N.J. JAMADAR, J)