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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15546 OF 2024

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Srishti Sector II Coop.. Housing Society
Federation Limited, through Chairman
Chandrakant M. Deshpande

... Petitioner

V/s.

The District Deputy Registrar, Coop.
Societies & Ors.

... Respondents

Mr. Surel Shah, Senior Advocate with Mr. Vinayak R.
Patil and Mr. Rajesh K. Shinde for the petitioner.

Ms. Sulbha Chipade, AGP for respondent No.1-State.

Mr. Vishal Kanade with Mr. Saket Mone, and Mr.
Raghav Taneja Mr. Kakarand Savant for respondent
No.12.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 17, 2026

P.C.:

1. By the present writ petition filed under Article 227 of the Constitution of India, the petitioner challenges the Judgment and Order dated 6 July 2023 passed by the District Deputy Registrar, Cooperative Societies, Thane, acting as the Competent Authority (Respondent No.1) under Section 5A of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short, "MOFA"), in Deemed Conveyance Application No.177 of 2023.

2. The facts giving rise to the present writ petition are as follows. The petitioner is a registered Housing Society Federation comprising twelve housing societies, registered under Section 10 of MOFA, 1963. The office of the petitioner Federation is situated at Sector No.2, Srishti Complex, Mira Bhayandar, District Thane.

3. The subject matter of the deemed conveyance proceedings concerns land bearing old Survey Nos.232, 233, 234, 235 and 240/2, corresponding to new Survey Nos.65, 66, 67, 68 and 64/2, admeasuring approximately 26,946 square meters, situated at Penkarpada (Mire), Taluka and District Thane. Respondent No.2 is the promoter and developer, while Respondent No.3 is the owner of the said land. Respondent No.2 undertook development of a project known as “Srishti Complex”, consisting of five separate sectors. In so far as the petitioner’s sector is concerned, all constituent societies have obtained occupation certificates.

4. The societies, associations and federations situated in Sectors Nos.1, 3 and 4 have already obtained deemed conveyance pursuant to orders dated 11 March 2014 and 27 March 2023. Respondent No.2 has also executed conveyance deeds in favour of the societies situated in Sector No.4. Sector No.5-A has not applied for deemed conveyance. The petitioner addressed several communications to Respondent No.2 seeking execution of the conveyance deed. Although Respondent No.2 initially expressed willingness to execute conveyance, no effective steps were taken thereafter. Consequently, the petitioner instituted Deemed Conveyance Application No.177 of 2023 before Respondent No.1 seeking grant of deemed conveyance.

5. Upon receipt of the application, Respondent No.1 issued notices to Respondent Nos.2 and 3. As they failed to appear, the proceedings were initially closed for orders. Subsequently, Respondent No.2 filed an application seeking an opportunity of hearing, which was allowed. Thereafter, Respondent No.2 filed its reply and written submissions on record.

6. By order dated 6 July 2023, Respondent No.1 rejected the application for deemed conveyance primarily on the grounds that copies of the memorandum and bye-laws were not annexed; that Srishti Complex constitutes an integrated and comprehensive development over the entire land parcel and the development is still ongoing; that grant of unilateral conveyance in favour of a separate society would result in unequal distribution of Floor Space Index (FSI); and that the application for deemed conveyance was premature. Aggrieved by the said order, the petitioner has filed the present writ petition.

7. Mr. Shah, learned Senior Counsel appearing for the petitioner, submitted that Srishti Complex comprises five distinct sectors and that Respondent No.2 has undertaken development of each sector independently. He pointed out that Respondent No.2 has voluntarily executed conveyance in favour of the societies situated in Sector No.4, while the societies in Sectors Nos.1 and 3 have obtained deemed conveyance through orders passed by the Competent Authority. It was contended that non-production of the copy of bye-laws by the applicant Federation cannot constitute a valid legal ground for rejection of the application for deemed conveyance. Referring to Section 10 of MOFA, he submitted that

the statutory requirement is execution of conveyance in favour of an organisation formed by the purchasers. According to him, the purchasers formed individual societies in respect of their buildings, and those societies thereafter constituted the petitioner Federation. He further submitted that Respondent No.2, being an outsider to the internal structure of the societies, has no locus to question the status or constitution of the Federation, as the same concerns internal arrangements amongst the societies and their members, who are the beneficiaries of the conveyance.

8. Addressing the second ground recorded by the Competent Authority, namely that the layout is not fully developed, learned Senior Counsel submitted that such reasoning is legally unsustainable. He argued that the obligation to execute conveyance arises within four months from the date of registration of the society, and the petitioner having been registered on 28 August 2000, the statutory duty had long crystallised. He further submitted that the correspondence placed on record demonstrates that Respondent No.2 itself dealt with the petitioner as an Association. Drawing attention to Clause 1 of the agreement executed under Section 4 of MOFA, he submitted that Respondent No.2 agreed to construct the building in phased development on the portion of land falling in Sector No.2, as shown in the layout plan annexed thereto. According to him, the remaining sectors have already been developed. Reliance was also placed on Clause 5 of the agreement, which stipulates that the developer shall execute conveyance in favour of the corporate body to be formed by the purchasers of tenements in the building. It was submitted

that the petitioner Federation, being the body ultimately constituted by such purchasers through their societies, is entitled to seek conveyance in terms of the said clause.

9. Inviting attention to Clause 34(ii) of the agreement, learned Senior Counsel submitted that the promoter had contemplated formation of an apex society comprising members of the constituent societies, and that such apex body was intended to administer the common areas. He further relied upon the Architect's Certificate to contend that, having regard to the sanctioned plan and the extent of development, the petitioner Federation is entitled to conveyance of land admeasuring 26,946 square meters.

10. Per contra, Mr. Kanade, learned counsel appearing for Respondent No.2, supported the impugned order and submitted that in the absence of the memorandum and bye-laws, the Competent Authority was justified in rejecting the claim of the petitioner Federation. He contended that Clause 5 of the agreement under Section 4 specifically contemplates execution of conveyance in favour of a corporate body formed by purchasers of tenements in the concerned building, and does not envisage conveyance in favour of a Federation. According to him, the Competent Authority rightly declined deemed conveyance in favour of the petitioner in the absence of requisite foundational documents. He further submitted that the Architect's Certificate relied upon by the petitioner is not in conformity with legal requirements.

11. Referring to Exhibit B-II, being the layout plan of Sector No.2, learned counsel for Respondent No.2 submitted that the area earmarked as “shopping” forms part of the layout annexed to the agreement executed under Section 4 of MOFA and was specifically reserved by Respondent No.2 for future development. On that basis, it was argued that deemed conveyance of the entire layout, as sought by the petitioner, cannot be granted.

12. In rejoinder, Mr. Shah, learned Senior Counsel for the petitioner, submitted that the contention relating to the area designated as “shopping” was never raised before the Competent Authority in the reply filed by Respondent No.2 and, therefore, cannot be permitted to be urged for the first time at this stage. He further submitted that Section 11 of MOFA mandates transfer of the entire right, title and interest of the promoter in favour of the association of purchasers. According to him, unless the agreement or sanctioned plan specifically reserves any portion of the property in favour of the promoter, no residual right can be claimed by the promoter. Consequently, it was argued that the promoter is under a legal obligation to convey the entire area in favour of the association of purchasers, and the petitioner is entitled to conveyance of the full extent of land claimed in the application.

13. I have considered the pleadings, the impugned order, the material placed on record, and the rival submissions advanced on behalf of the parties. The controversy lies in a narrow compass. The question is whether the Competent Authority was justified in rejecting the application for deemed conveyance filed by the petitioner Federation, and whether the reasons recorded in the

impugned order can be sustained in law.

14. At the outset, it is necessary to notice the undisputed factual position. The project known as Srishti Complex consists of five sectors. The developer, Respondent No.2, has already executed conveyance in favour of societies situated in Sector No.4. The societies in Sectors Nos.1 and 3 have obtained deemed conveyance through orders of the Competent Authority. It is therefore clear that conveyance, whether voluntary or deemed, has already taken place in respect of other sectors forming part of the same overall development. This factual circumstance has an important bearing while examining the objection that the development is incomplete or that conveyance at this stage would disturb planning or distribution of development potential.

15. The first ground on which the application came to be rejected is non-production of memorandum and bye-laws of the petitioner Federation. In my view, this reason cannot be accepted as a legally sustainable ground to deny deemed conveyance. The scheme of MOFA, particularly Sections 10 and 11, places a statutory obligation upon the promoter to convey title in favour of an organisation formed by flat purchasers. The emphasis of the statute is on substance and not on technical form. The material on record shows that purchasers formed individual societies, and those societies in turn constituted the petitioner Federation. The developer itself has corresponded with the petitioner as a representative body of the societies. Once the existence of an organisation representing purchasers is not in dispute, rejection solely on the basis of non-filing of bye-laws amounts to elevating a

procedural requirement above the statutory right created in favour of flat purchasers.

16. The submission of Respondent No.2 that conveyance can only be in favour of a society and not a federation also does not merit acceptance in the facts of the present case. Clause 5 of the agreement under Section 4 refers to execution of conveyance in favour of a corporate body to be formed by purchasers. The language employed is broad. It does not restrict the corporate body to a single form, nor does it prohibit formation of an apex or federation structure. Clause 34(ii), relied upon by the petitioner, shows that the promoter itself contemplated formation of an apex body for administration of common areas. When the contractual framework itself envisages an apex structure, it is not open for the promoter to later contend that such a body cannot receive conveyance. The objection to the locus or structure of the petitioner therefore cannot be sustained.

17. The second reason recorded by the Competent Authority is that the layout is not fully developed and that grant of conveyance would be premature. This reasoning also fails on a plain reading of the statutory provisions. The obligation to execute conveyance under MOFA arises within a fixed period from formation of the society. The petitioner Federation stands registered since 28 August 2000. The statutory duty to convey title cannot be postponed indefinitely on the ground that the promoter intends to continue development elsewhere. If such reasoning is accepted, the promoter would be able to delay conveyance endlessly by merely asserting future plans. The law does not permit such

postponement. The record further shows that other sectors have already been developed and conveyed. Therefore, the plea of incompleteness lacks factual as well as legal foundation.

18. The contention regarding unequal distribution of FSI is equally unsustainable. Deemed conveyance proceedings are not intended to re-open planning issues or commercial interests of the promoter. The Competent Authority is required to examine whether purchasers are entitled to conveyance of the land and building forming part of their development. Once the promoter has created independent sectors, granted occupation certificates, and allowed formation of societies, the rights of purchasers crystallise. Internal calculations of development potential cannot defeat a statutory right.

19. Respondent No.2 also questioned the Architect's Certificate produced by the petitioner. However, no substantial material has been placed to demonstrate that the certificate is legally invalid or contrary to sanctioned plans. Mere assertion that it is not in accordance with law, without specific defect being pointed out, cannot justify rejection of the application. On the contrary, the certificate supports the petitioner's claim regarding the area appurtenant to the development.

20. The argument advanced by Respondent No.2 based on the area marked as "shopping" in the layout also does not carry the matter further. Firstly, this objection was not raised before the Competent Authority in the reply and appears to have been urged subsequently. Secondly, under Section 11 of MOFA, the promoter is

required to transfer all right, title and interest in the land and building in favour of the association of purchasers, unless a specific and clear reservation is shown in the agreement or sanctioned plan. No such express reservation, preserving absolute rights of the promoter over the said area, has been demonstrated. A general reference in the layout cannot by itself defeat the statutory mandate. The promoter cannot retain portions of the property by implication when the law requires complete transfer of title to the purchasers' body.

21. The submission of the petitioner that the promoter, being an outsider, cannot question internal arrangements of societies and federation also deserves acceptance to a limited extent. The promoter's concern in deemed conveyance proceedings is confined to identifying the property and ensuring that conveyance is granted to the legitimate body representing purchasers. Once that representative character is established, the promoter cannot resist conveyance by questioning internal organisational structure.

22. When the impugned order is examined in this overall background, it becomes evident that the Competent Authority has proceeded on technical and extraneous considerations rather than on the statutory object of MOFA. The Act is a beneficial legislation enacted to protect flat purchasers from delay and denial of conveyance. The authority was required to adopt a purposive approach. Instead, the application was rejected on grounds that neither go to the root of entitlement nor have legal support under the Act.

23. For all these reasons, the impugned order dated 6 July 2023 cannot be sustained. The petitioner has established that it represents the purchasers through their societies, that the statutory obligation to convey has long matured, and that the grounds relied upon by the Competent Authority are legally untenable. The petition therefore deserves to be allowed.

24. Accordingly, the writ petition is allowed. The impugned order dated 6 July 2023 passed by the District Deputy Registrar and Competent Authority in Deemed Conveyance Application No.177 of 2023 is set aside. The application for deemed conveyance stands allowed.

25. Respondent No.1 shall proceed to issue the deemed conveyance certificate and complete all consequential steps in accordance with law within four weeks from the date of production of this order.

26. All pending applications, if any, stand disposed of.

(AMIT BORKAR, J.)