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

WRIT PETITION NO. 16795 OF 2024

Joana Paulina Miranda (decd) Thr. Lhrs
and Others.

... Petitioners

V/s.

Makka House Co-operative Housing
Society and Others

... Respondents

Mr. Ashutosh M. Kulkarni with Gaurav Sharma, for
Petitioners.

Mr. R. S. Pawar, AGP for State.

Mr. E. A. Sasi with Ms. Bhagyashri Mangle, for
Respondent Nos. 8 to 10.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 09 , 2026

P.C.:

1. The petitioners have approached this Court questioning the legality and correctness of the order dated 20 September 2024 passed by Respondent No. 2. By the said order, Application No. 68 of 2024 filed by Respondent No. 1 under Sections 11(3) and 11(4) of the MOFA Act has been allowed and unilateral deemed conveyance has been granted in favour of the society. The challenge is essentially on the ground that the Competent Authority lacked jurisdiction to pass such an order. The

background facts are therefore required to be examined in some detail.

2. The petitioners claim to be owners of sub divided CTS No. 506/1 admeasuring 1280 sq. metres at village Oshiwara, Taluka Andheri. The property forms part of larger survey lands bearing Survey No. 35, Hissa Nos. 1, 2, 3 part and Survey No. 37, Hissa No. 1 of village Bandivali and Survey No. 8, Hissa No. 1 and Survey No. 9, Hissa No. 1 part and Survey No. 36, Hissa Nos. 1 and 9 of village Oshiwara. Respondent No. 1 society was registered on 26 December 1989. Under Section 11 of the MOFA Act, the promoter is required to execute conveyance in favour of the society within the statutory period from the date of its registration. It is not in dispute that no conveyance was executed despite lapse of several years. The society therefore invoked the statutory remedy and filed Application No. 68 of 2024 on 4 April 2024 seeking deemed conveyance. Notices were issued to the petitioners and to the promoters. An opportunity of hearing was granted. After considering the material placed before it, the Competent Authority passed the impugned order granting deemed conveyance in favour of the society.

3. The principal submission advanced on behalf of the petitioners is based on Section 31 read with Schedule II Clause 2 of the MMRDA Act. It is contended that the provisions of the MOFA Act do not apply to lands belonging to or vesting in the MMRDA. Reliance is placed on a judgment of the Division Bench

in case of *Shahed Kamal Vs Pagarani Universal Infrastructure Private Limited* dated 17 March 2022 in Appeal (L) No. 8104 of 2020. The argument is that since the land in question belongs to the MMRDA, the Competent Authority could not have exercised powers under Section 11 of the MOFA Act.

4. However, on a careful reading of the petition itself, it is seen that in paragraphs 9 to 32 the petitioners have set out the flow of title and have asserted ownership in themselves. The documents referred to indicate transactions with private parties. There is no clear averment on oath stating that the land vests in the MMRDA. No document is produced before the Competent Authority showing such vesting. Even before this Court, there is no material placed to substantiate that the land is owned by or vested in the MMRDA. The Competent Authority has also not been shown to have proceeded on the basis that the land vests in the MMRDA. A jurisdictional objection must rest on foundational facts. In the absence of those facts, the plea remains a bare assertion.

5. The further submission is that in respect of adjoining land, the Competent Authority had earlier rejected a similar application on the ground that MOFA does not apply to land owned by the MMRDA. On that basis, it is urged that the present land ought to have been excluded as well. This argument cannot be accepted for two reasons. First, each application for deemed conveyance must be decided on the material placed in that

proceeding. A finding in another matter, concerning different property, cannot automatically govern the present case. Second, if the petitioners intended to rely on the plea that the land vests in the MMRDA, it was incumbent upon them to place cogent material before the Competent Authority. The writ jurisdiction of this Court is not meant for adjudicating disputed questions of title which require evidence. A contention which involves detailed factual inquiry cannot be permitted to be raised for the first time without foundational material.

6. In these circumstances, the objection as to lack of jurisdiction does not stand established. The Competent Authority has exercised power under Section 11(3) and 11(4) of the MOFA Act after issuing notice and granting hearing. No procedural irregularity is demonstrated. The impugned order therefore does not suffer from jurisdictional error.

7. At the same time, it is clarified that the order granting deemed conveyance is subject to the outcome of any substantive proceedings regarding title. It shall be open to the petitioners to institute a civil suit and raise all permissible legal and factual contentions in accordance with law. The civil court shall decide such proceedings independently and on their own merits.

8. The petition therefore stands disposed of.

(AMIT BORKAR, J.)