

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10985 OF 2022
WITH
INTERIM APPLICATION NO.10714 OF 2024
WITH
INTERIM APPLICATION NO.10508 OF 2022

Vijay Suraksha Realty LLP & Ors. ... Petitioners
V/s.
Chairman/Secretary, Bldg. Nos.6 & 7,
Vijay Park CHS Limited & Others ... Respondents

Mr. Aditya Udeshi with Mr. Rahul Sanghvi i/by Sanjay
Udeshi & Co. for the petitioners.

Mr. Tejas Vora with Mr. D.R. Mishra for respondent
No.1.

Mr. Aniesh S. Jadhav for respondent No.3-TMC.

Mr. S.H. Kankal, AGP for State.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 9, 2026

P.C.:

1. By the present petition filed under Article 227 of the Constitution of India, the petitioners call in question the legality, validity and propriety of the Judgment and Order dated 6 August 2020 passed by the Competent Authority under the Maharashtra Ownership of Flats Act, 1963. By the said order, the Authority has directed grant of deemed conveyance in favour of respondent No.1 society.

2. The facts giving rise to the present proceedings may be stated thus. Petitioner No.3 had acquired development rights in respect of the subject land. The said land stood mortgaged with petitioner No.2. Thereafter, by a registered Deed of Assignment dated 27 April 2015, petitioner No.2 assigned its business rights in favour of petitioner No.1.

3. Petitioner No.1 proceeded to develop the property and executed agreements under Section 4 of MOFA in favour of purchasers, who are members of respondent No.1 society. Respondent No.1 society came to be registered in the year 2001. In terms of the statutory mandate, the promoter was required to execute conveyance within four months from the date of registration of the society. It is the case on record that no conveyance was executed. Consequently, in the year 2020, respondent No.1 society filed an application under Section 11 of MOFA seeking grant of deemed conveyance.

4. The petitioners contend that they appeared before the Competent Authority on 1 February 2020 and sought time to file their written statement. The matter was thereafter adjourned to 15 February 2020. On that date also, time was sought to file reply. On 6 March 2020, as certain respondents had not appeared, the Competent Authority directed paper publication. The petitioners state that they had prepared their reply and intended to file the same on 26 March 2020. However, due to the outbreak of the Covid 19 pandemic and the ensuing lockdown, the matter could not be taken up on the scheduled date.

5. It is further the case of the petitioners that on 8 September 2020, they addressed an application to the Competent Authority seeking information regarding the next date of hearing. On 5 October 2020, they received a communication stating that the matter had been fixed on 1 July 2020, reserved for orders on 6 August 2020, and that the application for deemed conveyance had been allowed.

6. Learned counsel for the petitioners submits that the impugned order stands vitiated for want of adequate opportunity of hearing. He contends that although the matter was fixed on 1 July 2020, no hearings were conducted between 26 March 2020 and 30 June 2020, and there was no compelling urgency to proceed to reserve the matter for orders. It is further submitted that serious disputes exist regarding the extent of area to be conveyed and the proportionate entitlement of respondent No.1 society. According to the petitioners, the project was not fully completed and the developer was required to utilise the balance TDR and FSI. In view of these disputed questions relating to description and extent of property, it is contended that the Competent Authority ought not to have granted deemed conveyance and the society ought to have been relegated to a civil suit. On these grounds, setting aside of the impugned order is sought.

7. In reply, learned counsel for respondent No.1 draws attention to the roznama to demonstrate that on 1 February 2020, 15 February 2020 and 6 March 2020, the advocate for the petitioners was present and was afforded opportunity to file reply.

He submits that despite sufficient opportunity, no reply was filed. The Competent Authority, therefore, rightly recorded that the opponents were not interested in opposing the grant of deemed conveyance. It is further submitted that under Rule 9 of the MOFA Rules, the promoter is under a statutory obligation to convey title in favour of the society. Though the society was registered in 2001, for nearly nineteen years no conveyance was executed. The Authority has directed conveyance of land admeasuring 1952.34 square metres, being the land beneath Building Nos. 6 and 7 of respondent No.1 society. The area granted is proportionate to the constructed area of the society. It is contended that no excess land has been conveyed. The order does not prejudice any other society, if subsequently formed, nor does it curtail the petitioners' right to develop the remaining land. Out of the total plot admeasuring approximately 56,730 square metres, only 1952.34 square metres has been conveyed. The petitioners' substantive development rights over the remaining land remain unaffected. In the event of any subsisting grievance, the petitioners have a remedy in civil proceedings.

8. Learned counsel for respondent No.1 further relies upon the area calculation map to demonstrate that the land admeasuring 1952.34 square metres is an identifiable and demarcated portion of the larger plot. He also refers to the Architect's Certificate on record to submit that the net plot area attributable to the society corresponds to the said extent. It is, therefore, submitted that no case is made out for interference in exercise of supervisory jurisdiction and that the writ petition deserves dismissal.

Analysis:

9. The petitioners strongly rely on the plea of violation of natural justice. That contention must be tested on settled principles. The law on this aspect now stands clarified by the Supreme Court in State of *U.P. v. Sudhir Kumar Singh*, (2021) 19 SCC 706. The Supreme Court has explained that natural justice is not a rigid formula. It is not a mechanical ritual. A mere allegation of breach does not invalidate an order. The Court must examine whether real prejudice has been caused. The test is not technical non-compliance. The test is whether the party suffered actual disadvantage. The Court is entitled to examine the record and determine whether the outcome would have been different had a fuller hearing been granted.

10. Applying this principle to the present case, the objection of the petitioners does not fall in the category of no notice or total absence of hearing. The record shows appearance on multiple dates. Time was sought for filing reply. The petitioners were aware of the proceedings. At the highest, the grievance is that there was no further oral hearing before the matter was reserved for orders. The proceeding under Section 11 of MOFA is primarily documentary. It rests on agreements under Section 4, registration of the society, plans, architect certificates and area statements. It is not a proceeding that ordinarily requires oral evidence or cross examination. Nothing prevented the petitioners from filing their written objections along with supporting material. No order of the Authority barred them from placing documents on record. Therefore, the case cannot be treated as one of denial of hearing in

the strict sense.

11. The Supreme Court in *Sudhir Kumar Singh* has further held that where facts are largely undisputed, and no real prejudice is shown, breach of natural justice does not automatically vitiate the order. The central question is simple. Would the result have been different if an oral hearing had taken place. In the present matter, the determinative factors were statutory obligation under MOFA, non execution of conveyance for nearly nineteen years, existence of a registered society and identification of proportionate land through architect certification and area map. The petitioners do not point out any specific factual material which they were prevented from producing. They do not demonstrate that they were ready with a rival plan, rival measurement or legal proposition that required oral elaboration. They do not indicate that cross-examination of any person was necessary. They do not show how oral submissions would alter the statutory position that a promoter must convey title.

12. The Supreme Court has also cautioned that prejudice must be real and not speculative. It must be demonstrated with some factual basis. A general assertion that oral arguments ought to have been permitted does not meet that standard. The petitioners have not identified any concrete prejudice. They have not shown that any crucial document was excluded. They have not stated that any fact was wrongly assumed without giving them chance to rebut. In absence of such foundation, the plea remains abstract.

13. Viewed in this light, even if one assumes that the matter was reserved without further oral hearing, no real prejudice has been established. The petitioners had notice. They appeared. They sought time. The proceeding was documentary in nature. The statutory duty was clear. The entitlement of the society was supported by identifiable material. The petitioners' defence rests on general assertions regarding future development and balance FSI, which do not displace the immediate obligation to convey proportionate land beneath the constructed buildings.

14. Therefore, on application of the principles laid down in *Sudhir Kumar Singh*, the plea of violation of natural justice cannot succeed. The alleged defect, even if assumed, has not caused real prejudice. It does not justify interference under Article 227.

15. The prolonged delay between registration and conveyance strengthens the society's case. The society was registered in 2001. For about nineteen years no conveyance occurred. The statutory obligation on the promoter is clear; inaction over such a long period undermines any claim of innocence or inadvertence. The Competent Authority was entitled to take this factor into account while exercising its summary jurisdiction under MOFA. Long delay, without acceptable explanation, disentitles the promoter to demand protracted further inquiry where the society's claim stands supported by documentary material.

16. The nature and legal effect of an order passed under Section 11 of MOFA must be understood in its proper perspective. The Division Bench of this Court in *Zainul Abedin Yusufali Massawalla*

and others versus Competent Authority, 2016 SCC OnLine Bom 6028, has clearly explained that a deemed conveyance order transfers only such right, title and interest as the promoter in fact possesses. It does not create a higher or independent title. It does not enlarge the rights of the society beyond what the promoter himself lawfully holds.

17. The Division Bench has further clarified that if a promoter is of the view that the deemed conveyance order conveys a larger extent of land or a greater right than what the purchasers are legally entitled to, the proper and efficacious remedy is to institute a civil suit. The civil court is fully competent to examine the title documents, development agreements, extent of land, measurement disputes and all connected questions. Importantly, the findings recorded by the Competent Authority under Section 11 do not bind the civil court. They do not operate as *res judicata*. The civil court conducts an independent adjudication on evidence. Thus, the promoter's substantive civil rights remain unaffected.

18. This position has been consistently followed by this Court in *Shimmering Heights CHSL and others versus State of Maharashtra (Writ Petition No. 3129 of 2016 decided on 6 April 2016)*, in *P.R. Enterprises and others versus Competent Authority (Writ Petition No. 11251 of 2016 decided on 27 November 2018)*, and in *Mehboob Ali Humza and others versus District Sub Registrar (3), Mumbai and others (Writ Petition No. 3129 of 2016 decided on 24 June 2016)*. In all these decisions, the Court has reiterated that writ jurisdiction is not meant for resolving disputes concerning ownership, extent of land, development potential or rival title

claims. Such disputes require detailed appreciation of documentary evidence and, where necessary, oral testimony. They demand a proper trial. A writ court does not conduct a mini trial. Its role is confined to examining whether the statutory authority acted within jurisdiction and followed the law.

19. Applying these principles to the present case, the petitioners' grievance essentially relates to the quantum of land conveyed, the alleged impact on development rights, and the entitlement of the society to a proportionate share. These are not pure questions of procedural illegality. They are issues touching upon civil rights and proprietary interests. If the petitioners believe that the society has been granted more land than legally due, or that their development rights stand adversely affected, the appropriate remedy is to institute a civil suit seeking declaration and consequential relief.

20. The statutory framework also supports this conclusion. The Competent Authority under Section 11 performs a limited function. It verifies the existence of registered agreements with flat purchasers. It considers whether the statutory obligation to convey has been complied with. It examines sanctioned plans and supporting documents to ascertain proportionate entitlement. It does not adjudicate complex title disputes between promoters, landowners or third parties. The statute does not confer such wide adjudicatory power.

21. In the present matter, the Authority confined itself to examining the registered agreements, the long non execution of

conveyance, the sanctioned plans and the architect's certification identifying the area attributable to the society. It did not declare absolute title over the entire parent plot. It conveyed only a specific portion relatable to the constructed buildings. In law, that conveyance passes only such rights as the promoter held.

22. Once it is clarified that the deemed conveyance order does not foreclose civil remedies and does not bind the civil court on questions of title or extent, no irreparable legal prejudice is caused to the petitioners. Their rights under general civil law remain intact. They are at liberty to challenge the society's claim before the competent civil court. They may seek appropriate declaratory or injunctive reliefs. All questions relating to title, measurement, development rights and entitlement can be fully adjudicated in those proceedings.

23. For these reasons, and in view of the consistent line of authority, this Court must exercise restraint. Interference in supervisory jurisdiction is unwarranted. The proper course for the petitioners is to pursue their remedies by instituting a civil suit. The writ petition is therefore liable to be dismissed, with liberty to the petitioners to seek appropriate relief before the civil court.

24. In view of disposal of the writ petition, all pending interim applications stand disposed of as infructuous.

(AMIT BORKAR, J.)