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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3459 OF 2025

Parwati Sunil Patil Alias Parwati
Budhaji Bhandari & Ors.

... Petitioners

V/s.

District Deputy Registrar of Coop.
Societies, Mumbai City (4) & Ors.

... Respondents

Mr. Yatin R. Shah for the petitioners.

Ms. A.A. Nadkarni, AGP for respondent Nos.1 and 4-
State.

Mr. Harsh L. Bihani with Ms. Atiksha Jain i/by HN
Legal for respondent No.2.

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CORAM : AMIT BORKAR, J.

DATED : APRIL 28, 2026

P.C.:

1. The present petition is instituted by the petitioners, claiming to be the owners of the subject property, assailing the legality and correctness of the order passed by the Competent Authority in exercise of powers conferred under Section 11(3) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short, "MOFA"), whereby unilateral deemed conveyance has been granted in favour of respondent No.2–society.

2. The principal ground of challenge, as canvassed on behalf of the petitioners, is that on the date of filing of the application

seeking conferment of unilateral deemed conveyance, two out of the four co-owners had already expired, and the remaining two co-owners were not duly served with notice. It is contended that the address furnished in the application was not that of the owners but of the developer, and consequently, no effective or real opportunity of hearing was afforded to the petitioners, vitiating the proceedings.

3. In support of the aforesaid submissions, learned counsel for the petitioners has placed reliance upon the judgment of the Supreme Court in *Krishnadatt Awasthy vs. State of M.P. & Others* AIR 2025 SC (Civil) 1043, as well as an unreported judgment of a Coordinate Bench of this Court in *Gerald Michael Misquitta vs. State of Maharashtra & Others*, to contend that a breach of principles of natural justice, particularly denial of opportunity of hearing, by itself constitutes sufficient ground to set aside the impugned order.

4. Per contra, respondent No.2–society has filed its affidavit-in-reply, inviting attention to the order passed by the Urban Land Ceiling Authority under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, “ULC Act”), wherein the address of the owners is reflected as being identical to the address mentioned in the application preferred under Section 11(4) of MOFA. It is further contended that apart from dispatching notices at the said address, public notice was also published in two local newspapers, and therefore, the Competent Authority has rightly recorded a finding that despite due and valid service, the petitioners failed to appear in the proceedings.

5. The petitioners have controverted the said stand by filing a rejoinder affidavit, asserting that the address reflected in the order passed under Section 20 of the ULC Act was recorded at the instance of the promoter, and not as the actual address of the owners. It is, therefore, contended that reliance on such address is misconceived, and the inevitable consequence is that the impugned order has been passed in breach of the principles of natural justice, without affording any real or effective opportunity of hearing to the petitioners.

6. Having considered submissions made on behalf of petitioners, and also taking into account reply affidavit and rejoinder affidavit placed on record, this Court finds that dispute raised is not of such nature which can be fully examined in writ jurisdiction. It is seen that no clear and patent illegality is demonstrated on face of impugned order. The objections raised by petitioners are relating to service, authority, and factual aspects concerning title and ownership. These are matters requiring detailed evidence, examination of documents, and possible cross verification. Such exercise is not possible in summary jurisdiction under Article 226. Therefore, in my opinion, proper and appropriate remedy available to petitioners is to institute civil suit before competent Civil Court. Further, since rights claimed are of ownership, it is necessary that such civil proceedings must be initiated by owners themselves, as they are proper persons to agitate and establish such rights.

7. It appears from record that construction of building of respondent No.2-society was commenced somewhere in year 1991

and occupation certificate came to be granted in year 1998. The society itself was registered in year 1997. As per Rule 9 of MOFA Rules, there is obligation on promoter to execute conveyance within four months from date of registration of society. However, in present case, despite lapse of considerable time, till year 2009, no conveyance was executed in favour of society. This long delay is not explained by petitioners. Because of such inaction, society was left without legal title over property though members were already in occupation. Therefore, society had no option but to approach Competent Authority by filing application under Section 11 of MOFA. This conduct of society shows that it was compelled to take recourse to statutory remedy due to failure on part of promoter and owners to complete legal formalities within reasonable time.

8. One more circumstance which has material bearing is no objection given by developer. It is seen from development agreement and Power of Attorney executed by owners that developer was specifically authorised to take necessary steps including execution of conveyance in favour of society or purchasers. This authority is not disputed in clear terms. When such power is already granted by owners themselves, acts done by developer within such authority cannot be lightly ignored. In present case, developer has given no objection in proceedings under Section 11 of MOFA. This indicates that developer did not dispute conveyance in favour of society. Therefore, when authorised agent of owners has consented in proceedings, it becomes difficult to accept contention that entire process is without basis. At least within limited scope of writ jurisdiction, this

Court cannot hold that Competent Authority committed error in acting upon such material.

9. However, this does not mean that rights of owners are finally concluded. If petitioners are asserting that developer exceeded authority or acted contrary to their interest, such issue requires full trial. Evidence will be required to examine nature of authority, validity of documents, and conduct of parties. Therefore, remedy in civil law is still open.

10. This position is also clarified by Supreme Court in *Arunkumar H. Shah v. Avon Arcade Premises Coop. Society Ltd.*, 2025 SCC OnLine SC 828, wherein it is observed as follows:

“45. Our conclusions on interpretation of sub-sections (4) and (5) of Section 11 of MOFA are as under:

45.1. It is no doubt true that quasi-judicial powers have been conferred on competent authority while dealing with applications under Section 11(3) of MOFA. However, proceedings before competent authority under Section 11(3) are of summary nature, as can be seen from MOFA Rules. Therefore, competent authority, while passing final order, must record reasons;

45.2. The competent authority, while following summary procedure, cannot conclusively and finally decide question of title. Therefore, notwithstanding order under sub-section (4) of Section 11, aggrieved parties can always maintain civil suit for establishing their rights;

45.4. The registering officer has no power to sit in appeal over order of competent authority while exercising power under Section 11(5). He can refuse registration only on limited grounds. Thus, scope of powers conferred is restricted.”

11. From above position, it becomes clear that order passed under Section 11 of MOFA does not finally decide title. It only facilitates conveyance for benefit of society. Therefore, even if petitioners have grievance, same is not shut out. They can still approach Civil Court and establish their rights independently.

12. In that view of matter, this Court is of opinion that interference in writ jurisdiction is not warranted, however liberty deserves to be granted to petitioners.

13. Accordingly, writ petition at instance of owners stands dismissed. No order as to costs.

14. However, it is clarified that petitioners, being owners, are at liberty to institute appropriate civil suit for enforcement of their civil rights. In such proceedings, observations made in impugned order as well as in present order shall not influence Civil Court, which shall decide matter independently on its own merits and in accordance with law.

15. With this clarification, the writ petition stands disposed of.

(AMIT BORKAR, J.)