Sayali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4006 OF 2026

The Bhandari Co-operative Bank Ltd … Petitioner
V/s.
The Competent Authority and Others … Respondents

Dr. D. S. Hatle i/b Mr. Deepak Jamsandekar, for Petitioner.

Mrs. M. S. Srivastava, AGP for State-Respondent no. 1.

CORAM : AMIT BORKAR, J.

DATED : MARCH 30, 2026

P.C.:

1. The present matter is placed before this Court at the instance of the liquidator of the mortgagee Bank. The challenge is directed against an order of deemed conveyance passed by the Competent Authority under Section 11 of the MOFA Act. In simple understanding, the grievance of the petitioner is that the authority has transferred rights in the property in favour of the society, even though the property was already under mortgage with the Bank, which is now in liquidation. The petitioner, therefore, says that such order is not proper in law and causes difficulty to the recovery process. This Court has carefully considered this basic foundation of the challenge.

2. It is the case of the petitioner that the liquidator steps into the shoes of the promoter, since the property was mortgaged in favour of the Bank. He submits that the agreements entered into under Section 4 of the MOFA Act were executed after the mortgage was already created. On that basis, it is argued that the Competent Authority could not have exercised power under Section 11 to grant deemed conveyance, because the rights of the Bank as mortgagee had already come into existence prior in time. The submission proceeds on the footing that once a prior charge is created, any later transaction must remain subject to such charge, and therefore the authority ought not to have passed the impugned order.

3. Upon perusal of the record, and after considering the submissions, this Court finds that the grievance of the petitioner does not survive in the manner it is projected. The reason is that the statutory scheme itself provides a separate and effective mechanism for the petitioner to enforce its rights. Section 105 of the MCS Act enables recovery of dues from the property, and this remedy is substantive in nature. The order passed under Section 11 of the MOFA Act does not wipe out or extinguish the mortgage. It only facilitates transfer of title from the promoter to the co-operative housing society, so that the flat purchasers can secure their legal rights. In other words, the deemed conveyance changes the holder of title for management and ownership purposes, but it does not remove the burden attached to the property.

4. It is important to note that a mortgage is a charge on the property itself, and not merely against a person. Therefore, even if the property stands conveyed to the society, it continues to remain subject to the mortgage. The rights of the liquidator, who represents the Bank, travel with the property. They are not defeated by the act of conveyance. The society, upon receiving such conveyance, takes the property along with all existing encumbrances. Hence, the apprehension that the rights of the petitioner are prejudiced is not supported by the legal position.

5. Further, the purpose of Section 11 of the MOFA Act is to avoid delay and hardship to flat purchasers, who otherwise remain without title for long periods. If such conveyance is made dependent upon clearance of all prior disputes, the object of the legislation would stand frustrated. Therefore, the statute consciously allows conveyance to take place, while leaving intact the rights of third parties. In that view, the order of the Competent Authority cannot be said to be without jurisdiction.

6. In view of the above discussion, this Court is of the opinion that no interference is required in the impugned order.

7. The petitioner has an adequate and efficacious statutory remedy to recover its dues from the mortgaged property in accordance with law. The grant of deemed conveyance does not take away that right.

8. With these observations, the petition stands disposed of.

(AMIT BORKAR, J.)