



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 406 OF 2018

ALJ Residency Co-operative Housing Society]
Ltd., A Society registered under the provisions of]
the Maharashtra Co-operative Societies Act,]
1960 Having address at Pali Mala Road,]
Pali Naka, Bandra (W), Mumbai 400 050.] **...Petitioner.**

Versus

1. The State of Maharashtra Mumbai]
2. The District Deputy Registrar of]
Co-operative Societies (3) Mumbai having]
its office MHADA building Ground Floor,]
Bandra (East) Mumbai – 400 051.]
3. Mr. Ebrahim Abdullah Khan]
Residing at Flat No. 101, 1st Floor]
Sinliar CHS. Ltd., Near Carmel School]
Hill Road, Bandra (W) Mumbai-50.]
4. Mr. Abdul Rehman Khan]
Age Adult, Indian Inhabitain]
Residing At Flat No.102, 1st Floor]
Lovely Heven CHS.Ltd., Opposite Punjabi]
Sweets, Hill Pali Road, Bandra (W),]
Mumbai- 40050]
5. Mrs. Zubaida Mukarab Khan **[Deleted]**]
6. Mr. Majhar Mukarab Khan]
7. Mr.Afsar Mukarab Khan]
8. Ms.Fayyaz Mukarab Khan]
9. Mr.Ayaz Mukarab Khan]
10. Mr. Elyas Mukarab Khan]
11. Mr. Riyza Mukarab Khan]
12. Mrs.Feroza Salim Khan]
13. Mrs. Hafeeza Danish Ansari]
All having address at Flat No. 301, 302, 303]
3rd Floor, Plot No.49/C, Pali Naka Junction,]
Bandra (West), Mumbai-400 050]

14. Mrs. Bhauri Y. Khan]
15. Mrs. Hamida A. Khan]
16. Mrs. Kamru Lal Khan]
17. Mrs. Mehar Banoo A. Khan]
14 to 17 having address at Plot No.200,]
Sanjay Nagar D Joshi Marg, Jhotwara,]
Jaipur]
Mr Abdul Sattar Khan (since deceased)]
Through his legal heirs]
18. Mrs. Jameela Abdul Sattar Khan]
19. Mr. Ibrar Abdul Sattar Khan]
20. Mr. Ishrar Abdul Sattar Khan]
21. Mr. Farhan Abdul Sattar Khan]
18 to 21 residing at Flat No.B/201/202, 2nd]
Floor Pionner Heritage Residency II]
Opposite Sane Guruji School, Santacruz (W),]
Mumbai 400 054]
22. M/s. Bhati Homes Pvt. Ltd.]
A company incorporated under the]
Companies Act, 1956 having its registered]
office at Accost, 151, Pali Road, Bandra (W),]
Mumbai 400 050] **...Respondents.**

Mr. Mayur Khandeparkar, Mr. Tushar Gujjar and Mr. Deep Madnanai i/b SL Partners for the Petitioner.

Ms. A. A. Nadkarni, AGP for the Respondent-State.

Mr. Jay yadav i/b J. R. Vakil & Associates for the Respondent No. 3.

Mr. C. K. Tripathi and Ms. Induprakash Tripathi for the Respondent No. 6.

Coram : Sharmila U. Deshmukh, J.

Reserved on : November 21, 2024

Pronounced on : November 25, 2024.

Judgment :

- 1. Rule.** With Consent, Rule made returnable forthwith and taken up for final disposal.

2. By this petition filed under Article 227 of the Constitution of India, the order dated 30th January 2017 passed by the Competent Authority – District Deputy Registrar Co-operative Societies, Mumbai in Application No.72 of 2016 filed under Section 11(3) of Maharashtra Ownership of Flats (Regulation of Promotion of Construction of sale, Management and Transfer) Act, 1963 [for short **“MOFA”**] dismissing the application is assailed.

3. Briefly stated, facts of the case are that the Petitioner-Society has been constructed on land bearing CTS No.C/873, C/874, C/875, C/884 and C/885 admeasuring 1284.29 sq mtrs. situated at Pali Mala Road, Pali Naka, Bandra West, Mumbai – 400 050. The subject property was owned by one Abdulla Khan Jamruddin Khan who expired on 9th December 1976. In the year 1980, an application for grant of Letters of Administration was allowed by the High Court and the Respondent No. 3 was granted Letters of Administration to administer the estate of Late Abdulla Khan Jamruddin Khan. On 19th March 1993, an agreement came to be executed between the Respondent No.3–Administrator, with the consent of other legal heirs, and the Respondent No.22–Developer for the purchase and development of subject property. Intimation of Disapproval [IoD] was issued by the planning authority on 4th August 1994 and the commencement certificate was issued on 2nd April 1998. Subsequently, the Petitioner-Society came to be

constructed and the Respondent No.22 entered into MOFA agreements with the flat purchasers and the flat purchasers have taken possession of their individual flats.

4. Alleging non compliance of Section 11 of MOFA, an application came to be filed by the Petitioner-Society before the Competent Authority on 8th May 2015 for grant of certificate entitling the Petitioner-Society for execution of unilateral deemed conveyance. The said application was opposed by the legal heirs of deceased owner. Vide order dated 30th January 2017, the Competent Authority rejected the application for deemed conveyance, which is under challenge in the present petition.

5. Mr. Khandeparkar, learned counsel appearing for the Petitioner would submit that the application came to be rejected for the reasons that the copy of agreement for sale was not annexed to the said application and only the Permanent Alternate Accommodation Agreement [for short "*the PAAA*"] was annexed, the copy of occupation certificate and commencement certificate was not annexed, that the Architect's certificate produced on record states that upper two illegal floors are to be demolished and MCGM by letter dated 4th July 2008 has proposed demolition, there is discrepancy about the CTS numbers as the approved lay-out refers to three CTS numbers and applications mentions five CTS numbers, and there is

pending litigation. He submits that as far as the rejection of application on the ground that the application was defective as not being accompanied by the requisite documents is concerned, the provisions of Rule 13 of Maharashtra Ownership of Flats (Regulation of Promotion of Construction etc) Rules, 1964 [for short "***the Rules of 1964***"] provides for scrutiny of an application and issuance of notice to the parties only upon satisfaction that the application is complete in all respect. He submits that once notice has been issued, the same implies that the application is complete in all respects and thereafter it is not open for the Competent Authority to reject the application on the said ground. Even otherwise by pointing out various clauses, he submits that the PAAA agreement was in fact MOFA agreement. He submits that the commencement certificate was produced on record which has not been noticed by the Competent Authority. As far as non obtaining of occupancy certificate is concerned, he submits that the Competent Authority while adjudicating an application under Section 11 of MOFA is not required to get into the issue of legality of structure of the building as there is no bar to grant of deemed conveyance where no occupation certificate has ben obtained. He submits that this Court in ***Sukhsagar Co-op. Hsg. Socy Ltd v. State***¹, though rendered in the context of registration of Society, has held that the issue of

1 2004(3) Mh.L.J. 1010.

construction as per building regulation are matters to be considered by municipal corporation and registration of Society does not carry with it, a recognition as regards to lawfulness of construction in which members of Society claim entitlement to occupy residential premises.

6. He points Section 11(3) of MOFA and would submit that the said provision provides for all relevant documents to be annexed to the application including the occupation certificate, if any. He submits that use of the expression "if any" would contemplate that irrespective of grant of occupation certificate, the power to grant deemed conveyance can be exercised by the Competent Authority. He submits that the obligation is upon the promoter to obtain the occupation certificate. He submits that if the statutory obligation imposed upon the promoter has not been complied with by the promoter, then, the same cannot be taken as a defence by the promoter for the purpose of opposing the application for grant of deemed conveyance. He submits that in the present case for the purpose of applying for regularisation of the alleged unauthorised construction and/or for redevelopment, it is necessary that the ownership rights are conveyed in favour of the Petitioner-Society. Pointing out the GR dated 22nd June 2018, he submits that as per the said GR, which though has been issued subsequent to the order of Competent Authority, provides for a self-declaration where the concerned Society does not have the occupation

certificate, to make an application to the concerned authority for the occupation certificate after getting deemed conveyance. He submits that the obligation which is required to be complied with by the promoter is now required to be complied by the Petitioner-Society and for the said purpose, the application for grant of deemed conveyance cannot be rejected. He submits that the Respondents who had opposed the application are the legal heirs of original owner and thus fall within the definition of "promoter" under Section 2(c) of MOFA. He submits that the time prescribed for grant of conveyance is 4 months from the date of registration of Society, and the Society has been registered on 20th January 2004 and thus time had long expired and, therefore, it is now not open for the promoter to take advantage of their own default and oppose the application.

7. He would further submit that a complaint was filed before the State Consumer Dispute Redressal Commission and by an order dated 31st August, 2018, the developer was directed to obtain the completion certificate, occupation certificate and other documents and to convey the property.

8. He would further submit that in the Civil Suit of the year 2007 filed by the Respondent-owners against the developers, consent terms were entered into and one of terms agreed upon by the developer was to obtain and/or procure the occupancy certificate in respect of certain

flats. He would submit that in the case of ***Samruddhi Co Operative Housing Society vs Mumbai Mahalaxmi Construction Pvt. Ltd²***, the Apex Court has held that Sections 3 and 6 of the MOFA indicate that the promoter has an obligation to provide occupation certificate to the flat owners and for the purpose of applying for an occupation certificate and/or for redevelopment the grant of deemed conveyance is necessitated.

9. He would further submit that Section 16 of the MOFA provides that the provisions of MOFA are in addition to the Transfer of Property Act, 1882 and shall take effect notwithstanding anything contained to the contrary in any contract. He submits that the Respondent No.3, who was the Administrator and signatory to the development agreement with the Respondent No.22, has conveyed his readiness and willingness for the conveyance of the said property.

10. *Per contra* Mr. Tripathi, learned counsel appearing for the Respondent No.6 would submit that the application itself was defective as the requisite documents were not annexed. He points out to the list of documents which was annexed to the application for deemed conveyance and would submit that with the said application, the agreement for sale of the flat purchasers was not annexed and the PAAA agreement was annexed. He submits that there is no sanctioned

² (2022) 4 SCC 103.

plan produced on record. Pointing out to the commencement certificate tendered across the bar, as according to him, the documents did not contain the complete commencement certificate, he submits that the commencement certificate was only up to the plinth area and there is no further commencement certificate granted. He submits that the construction of the building itself is illegal as the plans which were approved was only up to the basement floor plan. He submits that the Competent Authority has held that as the PAAA agreement has been produced, there is no clarity as to the owners of the property and how the property has been transferred for the purpose of development. He submits that the Competent Authority has further held that as per the sanctioned plan, the plan has been sanctioned only in respect of CTS Nos.873, 874 and 875 whereas the applicant is claiming conveyance in respect of additional CTS No. 884-C and 885. He submits that as the building itself is illegal, no application for grant of deemed conveyance could have been granted by the Competent Authority. He relies upon interim dated 15th September 2021 passed by this Court in Writ Petition No. 2314 of 2021, arriving at a prima facie opinion that Competent Authority cannot be oblivious to specific requirements as ordained by Section 3 read with 4 of MOFA to grant conveyance of an unauthorised building for which no occupation certificate was granted.

11. In rejoinder, Mr. Khandeparkar would submit that the IOD placed on record makes a reference to all the 5 CTS numbers and even the schedule to the flat purchaser's agreement refers to the same. He would further submit that although the GR of 2018 refers to a self declaration, which will have to be given in the present case as the building has been dilapidated as in urgent need of redevelopment or regularization, the declaration will have to be given either for the redevelopment or regularization. He submits that under the agreements, the MOFA obligations have been created and the flat purchasers are caught in a vicious circle as without deemed conveyance, they cannot not apply for regularization or go for redevelopment and if it is held that without occupation certificate, the deemed conveyance cannot be granted, then the interest of the flat purchasers would be severely affected. He submits that the grant of an occupation certificate cannot be linked to the grant of deemed conveyance when the statute does not provide for the same.

12. Rival contentions now fall for determination

13. The pivotal issue arising for consideration is whether the illegality of the structure would impair the right of the Co-operative Housing Society to seek a certificate for execution of unilateral deemed conveyance of the land and building under Section 11 of MOFA.

14. The execution of development agreement between the legal heirs of the owners and the Respondent No.22 pursuant to which the construction has been carried out is not disputed. Similarly, it is not disputed that the occupation certificate has not been received in respect of the subject property and the commencement certificate has been received only up to the plinth area whereas the entire building was fully constructed and is occupied by not only by the flat purchasers under MOFA agreements but also by the Respondent No 6 who is contesting the application.

15. The Competent Authority has rejected the application broadly on the following findings:

- (a) The PAAA has been annexed instead of MOFA agreement.
- (b) The Architect Certificate notes that by an order of 5th July, 2008, the Planning Authority has proposed demolition of the 6th and 7th floors.
- (c) The sanctioned plan refers to only three CTS numbers whereas the application refers to five CTS numbers.
- (d) The Applicants have not produced the Commencement Certificate and Occupation Certificate.

16. Section 11(3) of MOFA provides for filing of the application accompanied by the registered Agreement for Sale executed by the Promoter with the individual member of the Society and the

requirement is so included as the Competent Authority is mandated to convey the right title and interest of the Promoter in accordance with the flat purchaser's agreement. The application seeks conveyance of the land and building. The PAAA annexed with the application is executed by the Developer with one of the Co-owners. Clause 16 thereof reads as under:

"16. After all the structures that are constructed by the Developer on the said property are complete and ready and fit for occupation and after the proposed Co-operative Housing Society as aforesaid is registered and only after all the premises in all the structures that may be constructed have been sold and disposed off by the Developers and the Developers have received dues payable to them under the terms of the respective Agreement with various Purchaser of premises the Developer shall execute and/or cause to be executed by the persons concerned a Deed of Assignment in respect of the said property and all the structures constructed thereon in favour of the proposed Co-operative Housing Society"

17. Clause 19 of the Agreement records that all charges in respect of formation of the proposed Co-operative Housing Society of the allottees and the acquirers of the flats as contemplated by the provisions of the MOFA will be borne by the Co-operative Housing Society. Clauses 16 and 19 of the PAAA sets out the obligations of the promoter. As the PAAA has been executed in respect of a tenement which is part of the Petitioner-Society, the obligations of the promoter *qua* the co-owner is no different from the obligations *qua* the free sale flat purchasers. The annexing of MOFA agreement has a purpose which was satisfied by annexing the PAAA and unless it is

demonstrated that the right, title and interest of promoter required to be conveyed under Section 11 of MOFA to the Society is not discerned from the PAAA, the application cannot be rejected on this ground.

18. Even if it is accepted that PAAA does not set out the relevant clauses, the statutory provisions of MOFA makes it incumbent to include in a MOFA Agreement, the particulars set out in Section 4 of MOFA and the agreement is required to be in prescribed Form V. The explanatory Note to the Model Form V sets out that certain clauses of the Model Agreement which are statutory and mandatory and shall be retained in every agreement. Clause 13 of Model Form V which is non derogable reads thus:

“13. Unless it is otherwise agreed to by and between the parties hereto the Promoter shall, within four months of registration of the Society or Limited Company, as aforesaid cause to be transferred to the Society or Limited Company all the right, title and the interest of the Vendor/Lessor/Original Owner/Promoter and/or the owners in the aliquot part of the said land together with the building/s by obtaining/ or executing the necessary conveyance/and or assignment of lease of the said land (or to the extent as may be permitted by the authorities) and the said building in favour of such Society or Limited Company, as the case may be such conveyance/assignment of lease shall be in keeping with the terms and provisions of this Agreement.”

19. Thus, under the statutory scheme of MOFA itself, the Promoter is required to convey his right, title and interest in the land and building to the association of flat purchasers within a period of four months from the registration of Society unless otherwise agreed to between

the parties and in event of non compliance by the Promoter, the duty is cast upon the Competent Authority to fulfill the obligation of the Promoter by issuing the certificate of unilateral deemed conveyance.

20. From the PAAA placed on record, what was required to be discerned by the Competent Authority is the right, title and interest of the promoter in the land and building which is required to be conveyed to the flat purchasers of the property. The schedule to the PAAA refers to the subject property and Clause 16 and 19 of the Agreement sets out the obligation of the Promoter in addition to the statutory obligation under MOFA.

21. Apart from the above, the Rules provides for the duty with which the Competent Authority is tasked before the admission of the Application. Rule 13 of the Rules of 1964 provides for scrutiny of application and Rule 13(1)(a) of the Rules of 1964 provides that on receipt of an application, the same is required to be examined and the office of the Competent Authority is to be satisfied that the said application conforms with all the provisions of the MOFA and the Rules framed thereunder.

22. In event, the application suffered from any defect for the reason of non compliance of any of the requirements of MOFA and/or Rules framed thereunder, Rule 13(1)(c) of the Rules of 1964 provides for a

notice in Form-VIII to the Applicant to rectify the defects. In the present case, there was no notice issued to the Petitioners in Form-VIII calling for rectification of defect. Rule 13(2) provides for issuance of a notices in Form-X to the opponents only on admitting the application, which is required to be admitted only after the application is complete in all respects. Having issued notice to the opponents, it is implied that the application was complete in all respects and, therefore, the rejection of the application for grant of deemed conveyance on the ground that the same was not accompanied by the flat purchasers agreement is unsustainable. Pertinently, in paragraph 4 of the impugned order, the Competent Authority has held that the applicant has annexed all the requisite documents along with the application for the purpose of inquiry.

23. Although the defective application was one of the reasons, the factors which weighed with the Competent Authority for rejecting the application is the illegality of the structure as the occupation certificate was not received, the commencement certificate was issued upto plinth level and unauthorised construction of 6th and 7th floor for which demolition notice was issued by the planning authority.

24. Section 11 of the MOFA provides for the obligation of the promoter. The manner of enforcement of that obligation by the Co-operative Society and the parameters of inquiry by the Competent

Authority read thus :

"11. Promoter to convey title, etc., and to execute documents, according to the agreement.

(1) A promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid or to an association of flat takers or apartment owners, his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed under section 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.

(2) It shall be the duty of the promoter to file with the Competent Authority, within the prescribed period, a copy of the conveyance executed by him under sub-section (1).

(3) If the promoter fails to execute the conveyance in favour of the Cooperative society formed under section 10 or, as the case may be, the Company or the association of apartment owners, as provided by sub-section (1), within the prescribed period, the members of such Co-operative society or, as the case may be, the Company or the association of apartment owners may, make an application, in writing, to the concerned Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the society or the Company or the association, who have purchased the flats and all other relevant documents **(including the occupation certificate, if any)**, for issuing a certificate that such society, or as the case may be, Company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered. (Emphasis supplied)

(4) The Competent Authority, on receiving such application, within reasonable time and in any case not later than six months, after making such enquiry as deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, shall issue a certificate to the Sub-Registrar or any other appropriate Registration Officer under the Registration Act, 1908, certifying that it is a fit case for enforcing unilateral execution, of conveyance deed conveying the right, title and interest of the promoter in the land and building in favour of the applicant, as deemed conveyance.

(5) On submission by such society or as the case may be, the Company or the association of apartment owners, to the Sub-

Registrar or the concerned appropriate Registration Officer appointed under the Registration Act, 1908, the certificate issued by the Competent Authority alongwith the unilateral instrument of conveyance, the Sub-Registrar or the concerned appropriate registration Officer shall, notwithstanding anything contained in the Registration Act, 1908, issue summons to the promoter to show cause why, such unilateral instrument should not be registered as 'deemed conveyance' and after giving the promoter and the applicants a reasonable opportunity of being heard, may on being satisfied that it was fit case for unilateral conveyance, register that instrument as, 'deemed conveyance'."

25. The requisite accompaniments to the application for deemed conveyance as per Section 11(3) of MOFA are the true copies of the registered agreement for sale and all other relevant documents including the occupation certificate, if any. The use of the expression "if any" following the words "including the occupation certificate" occurring in Sub-Section (3) of Section 11 of the MOFA would indicate that the requirement of occupation certificate is not mandatory and the adjudication of deemed conveyance application is not impeded by non issuance of occupation certificate. The subsequent GR of year 2018 makes it more than evident that a building without an occupation certificate can still be granted deemed conveyance, if otherwise eligible, with the caveat that thereafter the Society will obtain occupation certificate. There is no reason why such an interpretation, which stood clarified by GR of 2018, should not be adopted in the present case and the flat purchasers be assisted in their genuine attempt to fulfill the promoter's obligation and cure the illegality by

either applying for regularization or redevelopment. In the absence of the occupation certificate, the Co-operative Housing Society cannot be dis-entitled to the order of deemed conveyance as the default is on part of the Promoter in obtaining the occupancy certificate which is the statutory obligation of Promoter. Mr. Khandeparkar is right in submitting that the Promoter's default cannot be turned by the Promoter to its advantage and taken as a defence to resist the application for deemed conveyance. The flat purchasers cannot be put to a disadvantage on account of promoter's default. It needs to be noted that grant of deemed conveyance does not impart lawfulness to the structure and all that it does is to vest the title of the promoter in the Petitioner.

26. The fact that, in the year 2018, the Government of Maharashtra while issuing the Government Resolution dated 22nd June, 2018 simplifying the procedure to be followed for issuing the deemed conveyance order has set out the documents to be uploaded along with the online application, which makes a specific reference that where the concerned Society does not have occupation certificate, then a self-declaration of making an application to the Planning Authority for occupation certificate after getting the deemed conveyance in accordance with Appendix-5 is required to be executed supports right of Petitioner to obtain deemed conveyance.

27. I am unable to subscribe to the contention of Mr. Tripathi that grant of deemed conveyance will amount to legalising unauthorised construction. Acceptance of such submission will place the Co-operative Housing Societies in a predicament where the Co-operative Housing Society though willing to cure the illegalities/ irregularities committed by the Promoter will not be able to do so by reason of absence of ownership rights. It is settled that an application for regularisation can be filed only by the owner of the structure and without grant of deemed conveyance, the status of the Co-operative Society would bar them even from applying for regularisation or from proceeding with the re-development.

28. The provisions of MOFA impose statutory obligation on the promoter to obtain occupation certificate and the promoter cannot take advantage of its own default and then resist the grant of deemed conveyance on the ground that there is no occupation certificate issued to the structure in respect of which a deemed conveyance is sought. The acceptance of such a defence on the part of promoter would amount to putting the premium on the default which is committed by the promoter. The definition of a promoter under Section 2(c) of the MOFA includes the person who constructs or causes to be constructed the structure and therefore, the owners also fall within the expression "promoter" and are also required to comply with

the statutory obligations. Having defaulted in their statutory obligation in obtaining necessary documents and permissions from the Planning Authority, it is now not open for the promoters to then resist the relief of deemed conveyance on the ground that the structures are illegal or no occupation certificate has been granted. The planning regulations permit the owner of the properties to apply for the regularization of the structure and in event the Co-operative Society is granted the deemed conveyance, the same will assist the Society in applying for regularisation of the building, if so permissible in law.

29. The present facts would indicate that the flat purchasers are caught in a vicious circle where though they are put in possession of their flats under validly registered MOFA agreements, they are under a disability from applying for regularization by reason of non compliance of the obligation by the Promoter to obtain the occupation certificate.

30. The reluctance of the Competent Authority to issue the certificate for deemed conveyance stems from the fact that the structure is unauthorised. The grant of deemed conveyance does not have the effect of regularising the unauthorised structure. All that the Competent Authority does is that it steps in the shoes of the Promoter and conveys right, title and interest of the promoters to the flat purchasers. To put it simply, the Owners stand divested of their rights, which right in land and building then vests in the flat purchasers. The

grant of deemed conveyance will not bar the planning authorities from taking action against the illegal structure. The issue as to whether the flat purchasers can be deprived of their statutory right to enforce the MOFA obligations against the Promoters on the the ground of illegality of the structure, in my view, has to be answered in the negative. The default of Promoters in obtaining the necessary permissions and approvals cannot impinge the right of the flat purchasers to seek conveyance of the land and structure, even if the structure is unauthorised. I am fortified in my view by the wordings of Section 11(3) of MOFA as irrespective of occupation certificate being placed on record, the Competent Authority can proceed further and after hearing the parties, grant the certificate for enforcing the unilateral deemed conveyance of the property. The order of Competent Authority rejecting the application on the ground of the illegality of the structure, thus, is unsustainable.

31. Pertinent observations were made by this Court in ***SukhSagar Co-operative Housing Society Ltd v. State of Maharashtra*** (supra) in the context of registration of Society on default of the builder. In that case, the occupation certificate was not issued to the Society and while allowing registration, it was observed thus :

“ The revisional authority seems to have regarded it as a prerogative of a builder to register a Co-operative Housing Society. The expression “prerogative” is clearly misplaced for it

is the obligation and a solemn statutory obligation, of the builder to do so. The Minister converts an obligation of the builder into a right- a right which enables him to exclude a genuine attempt of the flat purchasers to register the society when the builder is in breach of his obligation. This approach does manifest disservice to the provisions of law. Builder's obligations involve duties and liabilities. Those cannot be regarded as builder's right, allowing them to ride rough shod over the legitimate claims and entitlements of the community. Where the promoter is in breach of his obligations, it will be far fetched to contend that the society cannot be registered on the application of the flat purchasers themselves.

.....The registration of the Society does not carry with it, a recognition as regards the lawfulness of the construction in which members of the Society claim an entitlement to occupy residential premises. The registration of the society does not impinge upon the statutory powers of Municipal Corporation, to determine whether an occupation certificate should be granted.....However, the formation of Co-operative Society will in fact, enure to the benefit of those beneficially entitled to rights under the scheme because it would enable the flat purchasers to take recourse to the remedies open in law to ensure due compliance by the developer of his obligations under the scheme."

32. Though rendered in the context of registration of Society, the decision deals with the entitlement of the flat purchasers upon non compliance of the statutory obligations by the Promoter. Applying the law to the facts of present case, the attempt of the flat purchasers is to rectify the illegality either by applying for regularisation or by going for re-development for which the grant of deemed conveyance is a necessity. The issuance of certificate of deemed conveyance does not place an embargo on right of the Municipal Corporation to take appropriate steps for dealing with the unauthorised structure.

33. The order dated 15th September, 2021 passed in **Janak**

Chimanlal Thacker v. Prathmesh Tower Premises Co-op Society Ltd & Ors (Writ Petition No 2314 of 2021) is *prima facie* finding and does not constitute binding precedent.

34. As regards the finding that there are only three CTS numbers mentioned in the sanctioned plan, the IoD placed on record mentions all the five CTS numbers and, therefore, the said finding is factually erroneous. It is not necessary for this Court to go into the consent terms tendered before the Civil Court and the Consumer Court's order, as the said documents were not placed for consideration before the Competent Authority and therefore, cannot be placed before this Court for the first time.

35. Considering the discussion above, the absence of occupation certificate will not impair the rights of the flat purchasers to obtain certificate of deemed conveyance as the non compliance of the statutory obligations by the Promoter cannot place fetters on the statutory right of the flat purchasers to the conveyance of the Promoter's right, title and interest in the property.

36. Resultantly, impugned order passed by the Competent Authority is unsustainable and is hereby quashed and set aside. Resultantly, Petition succeeds and the following order is passed.

:- ORDER :-

[i] The impugned order dated 30th January, 2017 is hereby quashed and set aside.

[ii] The application No.72 of 2016 is remitted to the Competent Authority for the limited purpose of issuing a certificate for execution of unilateral deemed conveyance in respect of the land bearing CTS No.C/873, C/874, C/875, C/884 and C/885 admeasuring 1284.29 sq.mtrs along with the buildings standing thereon, subject to a self declaration being filed by the Petitioner-Society in prescribed Appendix-V to the Government Resolution dated 22nd June, 2018 with an addition that after getting the deemed conveyance, the Petitioner-Society may enter into the agreement for the purpose of redevelopment of the building.

37. Rule is made absolute in above terms.

38. In view of the disposal of Writ Petition, nothing survives for consideration in the pending interim/civil applications and the same stands disposed of.

[Sharmila U. Deshmukh, J.]