

Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1262 OF 2024

WITH
INTERIM APPLICATION NO.1189 OF 2024

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Shelter Construction Co. & Ors ... Petitioners
V/s.
Zubeda Park CHS Association Ltd ... Respondent

Mr. Mahesh R. Joshi, for Petitioners.

Mrs. D. S. Deshmukh, AGP for State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 30, 2024

P.C.:

1. The promotor is challenging an order passed by the Competent Authority in exercise of power under Section 11(3) of the Maharashtra Ownership of Flats Act, 1963 (“MOFA”) directing confirmation of deemed conveyance in favour of society registered by the purchasers.

2. According to the petitioner, the FSI available with the petitioner prior to coming into existence of the association has been transferred in favour of association. This point is no longer res integra in view of judgment of Division Bench of this Court in the case of **Zainul Abedin Yusufali Massawala & Ors Vs. Competent Authority**, reported in (2016) SCC OnLine Bom 6028,

the Division Bench of this Court relying on its Single Bench decision of this Court in the case of **Mazda Construction Company And Others Vs. Sultanabad Darshan CHS Ltd. And Others**, reported in (2012) SCC OnLine Bom 1266 held that the effect of conferment of such deemed conveyance is to transfer the rights available with the promoter in favour of association of purchasers. If, according to the promoter to excess rights than the eligibility of association are deemed to be conferred, the remedy of such aggrieved person to institute civil suit for enforcement of such rights. Therefore, keeping remedy of petitioner open of filing civil suit for enforcement of his rights, no interference in the impugned order is called for.

3. The writ petition is, therefore, dismissed.
4. In view of disposal of writ petition, the interim application stands disposed of.

(AMIT BORKAR, J.)