



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 12116 OF 2016

M/S. New Turakhia Park CHS Ltd.

...Petitioner

V/s.

M/S Turakhia Associates and Ors

...Respondents

Mr. Piyush Raheja *a/w Mr. Aakash Loya i/b Mr. Ankur Kalal for Petitioner.*

Mr. Aditya Kanchan *(through VC) for Respondent No. 9.*

Mr. Anil D'Souza *a/w Mr. Ashok Kumar Upadhyay, Mr. Mark Dbritto, Mr. Pavan Patil i/b Mr. Ernest Tuscano for Respondent No. 1 and 4.*

Ms. S. R. Crasto, *AGP for Respondent-State.*

CORAM: SANDEEP V. MARNE, J.

DATED: 22 SEPTEMBER 2026.

P.C.:

1) The Petitioner challenges order dated 15 October 2015 passed by the District Deputy Registrar, Co-operative Societies, Mumbai City (4) and Competent Authority (**Deputy Registrar**) rejecting Application preferred by the Petitioner-society for issuance of certificate of deemed conveyance.

2) I have heard Mr. Raheja, the learned counsel appearing for the Petitioner, Mr. D'souza, the learned counsel appearing for Respondent Nos. 1 and 4, Mr. Kanchan, the learned counsel appearing for Respondent No. 9 and Ms. Crasto, the learned AGP appearing for Respondent-State.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties and after going through the reasons recorded by the Competent Authority in the impugned order dated 15 October 2015, it is seen that the application of the Petitioner-society is rejected principally on three grounds of (i) alleged entitlement of Respondent No. 1-developer to put additional construction in the layout (ii) presence of another building in the layout and (iii) non-grant of Occupancy Certificate (OC) to the building of Petitioner-society.

4) After passing of order dated 15 October 2015 passed by the Competent Authority, law has developed through various judgments delivered by this Court on each of the grounds of rejection. So far as the reason of non-issuance of OC to the building of the Petitioner-society is concerned, the same cannot be a ground for rejecting application for deemed conveyance. The law in this regard is well-settled by judgment of this Court in **ALJ Residency Co-operative Housing Society Ltd. Vs. State of Maharashtra and Ors.**¹

5) So far as the reason of layout development is concerned, this Court has repeatedly held that mere objection of a developer about incomplete development of layout cannot be a ground for not granting proportionate share in the layout land to the society of completed building. Reference in this regard can be made to the judgment of this Court in **Lok Housing and Construction Ltd. vs. The State of Maharashtra and Ors.**²

1 Writ Petition No. 406 of 2018, decided on 25 November 2024

2 Writ Petition No. 6418 of 2017 decided on 26 March 2025

6) Whether Respondent No. 1 is entitled to retain any portion of land in the layout would be clear only after land entitlement of Petitioner-society and Respondent No. 9-society is determined. Therefore, mere objection raised by Respondent No. 1 about its alleged entitlement to effect further construction could not have been a reason for rejecting Petitioner's application for deemed conveyance.

7) Similarly, mere presence of another building in layout (Respondent No. 9-society) cannot be a ground for non-grant of proportionate share in favour of the Petitioner-society in the layout land. It appears that the second building in the layout has already received conveyance of proportionate share in the land.

8) In the present case, Petitioner-society is formed and registered on 16 February 1990. Its right to secure proportionate share in the land got crystallized on expiry of period of four months on formation of the society (16 June 1990) as per provisions of Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 read with Rule 9 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction etc.) Rules, 1964. Therefore, sanctioned plan which existed as on 16 June 1990 would determine the entitlement of the Petitioner-society for proportionate share in the land. Accordingly, the Competent Authority needs to undertake the exercise of proportionate land division by taking into consideration the plan which existed as on 16 June 1990. According to Mr. Raheja, such plan is dated 6 October 1976 which position is disputed by Mr. D'souza. In my view, in the remanded

proceedings, the Competent Authority needs to take into consideration the exact plan which existed as on 16 June 1990 for undertaking the exercise of proportionate land. Mr. Raheja also brings to the notice of this Court that Respondent No. 9-society has been granted proportionate share in the layout plan by taking into consideration the sanctioned plan dated 6 October 1976 and on basis of certificate of architect Mr. Aniket D. Mathakar. He invites attention of this Court to the certificate issued by the same architect which determines land entitlement of Petitioner-society as 2282.46 sq.m. in the net plot area together with undivided share in the RG admeasuring 455.37 sq.m. and 44.69% proportionate undivided rights in common internal road area admeasuring 298.07 sq.m. This computation is disputed by Mr. D'souza. In the remanded proceedings before the Competent Authorities, both parties shall be entitled to rely upon certificates of their respective architects. Such certificates need to be prepared by taking into consideration the sanctioned plan which existed as on 16 June 1990 and no other plan.

9) Thus the Competent Authority has erred in rejecting application of Petitioner-society for deemed conveyance. The impugned order deserves to be set aside and the application deserves to be remanded for fresh decision.

10) The Petition accordingly succeeds in part and I proceed to pass the following order:-

(i) Order dated 15 October 2015 passed by the Competent Authority is set aside.

(ii) Application No.182 of 2014 filed by the Petitioner-society is remanded to the Competent Authority for fresh adjudication.

(iii) While doing fresh adjudication by undertaking the exercise of proportionate land division in the layout, the Competent Authority shall have due regard to the law declared by this Court in *Satellite Garden I CHSL vs. State of Maharashtra and Ors.*³

(iv) The Petitioner-society would be at liberty to amend Application No. 182 of 2014 for the purpose of claiming the correct area for conveyance in the layout plan.

(v) Parties shall appear before the Competent Authority on 12 October 2026 alongwith copy of this order downloaded from website of this Court and shall apply for fixation of date(s) of hearing in the remanded proceedings.

(vi) All rights and contentions of the parties on merits are expressly kept open.

(vii) The Competent Authority shall proceed to decide the remanded proceedings on its own merits as expeditiously as possible preferably within a period of six months.

3 Writ Petition No.1128 of 2026 decided on 16 September 2026.

11) With the above directions, the Writ Petition is partly **allowed**. Rule is made partly absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]