

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10513 OF 2026

Ram Shyam Co-operative Housing
Society Ltd.

...Petitioner

: Versus :

M/s. Amar Construction Co. & Ors.

...Respondent

Mr. Drupad Patil *a/w. Ms. Namrata Vashisht i/b. Mr. Ankur Kalal, for the Petitioner.*

Mr. Piyush Shah *with Mr. Dishang Shah, Mr. Deep Madnani and Ms. Kinjal Gogri, for Respondent No.7B.*

Mr. A.A. Alaspurkar, *AGP for State.*

CORAM: SANDEEP V. MARNE, J.

DATED: 14 OCTOBER 2026.

P.C.:

1) Leave granted to correct the number of Deemed Conveyance Application in prayer clauses (a) and (b). Amendment to be carried out forthwith.

2) The Petitioner-Society has filed the present petition challenging the order dated 31 July 2026 passed by the District Deputy

Registrar, Co-operative Societies, Mumbai City (4) and Competent Authority (**Competent Authority**) rejecting its Application No. 52 of 2026 for deemed conveyance of the land and the building.

3) I have heard Mr. Patil, the learned counsel appearing for the Petitioner, Mr. Shah the learned counsel appearing for Respondent No.7B and the learned AGP for State.

4) Briefly stated, facts of the case are that on 19 January 1976, Respondent No.1-M/s. Amar Construction Company acquired rights in respect of the land through registered Conveyance Deed and constructed two residential buildings thereon. He sold flats to various purchasers by executing Agreements under Section 4 of MOFA. The flat purchasers have formed and registered Petitioner-Society on 14 October 1993. The Petitioner-Society filed S.C. Suit No. 2020/1994 before the City Civil Court, Bombay, inter-alia seeking conveyance of land and building, as well as, seeking injunctive reliefs against Respondent No.1 and its partners. On the other hand, Respondent No.1 instituted S.C. Suit No. 5957 of 1997 seeking injunction against the Petitioner-society from obstructing construction of flats on fourth floor of the second building. On 10 October 2000, Petitioners' S.C. Suit No. 2020/1994 was partly decreed by the City civil Court directing execution of conveyance of unspecified area of land in favour of the Petitioner-Society. S.C. Suit No. 5957/1997 filed by Respondent No.1 was dismissed on 5 August 2004.

5) The Petitioner-society put the decree in execution by filing Execution Application No. 47 of 2012. During pendency of the execution proceedings, Savitridevi Sharma and her son-Bharat Sharma,

claiming to be the legal heirs of one of the partner of Respondent No.1, instituted Suit (Lodg.) No. 1315 of 2018 complaining that they were impleaded as parties to S.C. Suit No. 2020 of 1994 and that therefore the decree does not bind them. The Suit was initially filed in this Court and by order dated 4 October 2018, this Court stayed execution of the decree passed in Suit No. 2020 of 1994. Later Suit (Lodg.) No. 1315 of 2018 was transferred to the City Civil Court and was renumbered as Suit No. 3396 of 2024. The suit is pending before the City Civil Court.

6) In the above background, Petitioner-society filed application before the Competent Authority under Section 11 of MOFA seeking unilateral deemed conveyance of the entire land and the building. Petitioner believed that since the decree passed in Suit No. 2020/1994 did not specify the exact area of land which can be conveyed in its favour and since legal heirs of one of the partners of Respondent No.1-firm had filed Suit No. 3396/2024 seeking a declaration that the decree is faulty, the Petitioner-society thought it appropriate to secure conveyance under Section 11 of MOFA through the Competent Authority. The Competent Authority has rejected Society's application for deemed conveyance by order dated 31 July 2026 citing the reason of pendency of execution proceedings, as well as grant of stay in Suit No. 3396 of 2024 by this Court to the execution of decree. Petitioner-society realised that it was not securing conveyance on account of (i) non-specification of exact area in the decree and (ii) non-impleadment of heirs of one of the Petitioners to its suit No. 2020 of 1994. Therefore, it decided to submit to prayer clauses 39(a) and (c) in suit No. 3396 of 2024 so that the shackles of pendency of suit can be removed and it can secure conveyance under Section 11 of the MOFA.

7) When the petition came up for hearing, the Petitioner-Society decided to submit to the decree of the City Civil Court in Suit No. 3396 of 2024 in terms of prayer clause 39(a) and (c). Accordingly this Court passed following order on 19 August 2026 :

1) Mr. Godbole, the learned Senior Advocate appearing for the Petitioner-Society submits that multiple hindrances are caused for the Petitioner-Society to secure conveyance of the land. He submits that S.C. Suit No. 2020/1994 has been decreed granting conveyance of unascertained area of land in favour of the Petitioner-Society. The alleged legal heir of one of the partners of the Developer has filed Suit No. 105/2019 seeking a declaration that the decree passed in S.C. Suit No. 2020/1994 is a nullity on account of the same being passed without hearing them. There are other prayers in the said Suit No.105/2019. By way of interim order passed in Suit No. 105/2019, execution of the decree passed in S.C. Suit No. 2020/1994 has been stayed.

2) Mr. Godbole submits that with a view to secure conveyance from the Competent Authority, Petitioner-Society shall take instructions as to whether it would submit to the prayers in para-39(a) and (c) of Suit No. 105/2019. If decree in S.C. Suit No.2020/1994 is set aside as nullity on account of non-grant of hearing to the Plaintiffs of Suit No.105/2019, the same would pave way for the Plaintiff-Society to secure conveyance through the Competent Authority by impleading all the persons who claim rights in respect of the land.

3) In order to take the necessary steps, hearing of the petition is deferred till 21 September 2026. If Petitioner-Society takes a decision for setting aside the decree dated 10 November 2000 with liberty to approach the Competent Authority for deemed conveyance and files such application before the City Civil Court, the same shall be decided by the City Civil Court in an expeditious manner, preferably before the next date of hearing. List on **21 September 2026**.

8) The Society filed Notice of Motion No. 5229 of 2026 seeking decree on admission under the provisions of Order 12 Rule 6 of

the Civil Procedure Code, 1908 in terms of para-39(a) and (c) of the Suit. Since the City Civil Court was not deciding Notice of Motion No. 5229 of 2026, this Court passed further order on 30 September 2026 :

1) It appears that in pursuance of order dated 19 August 2026, the Petitioner who is Defendant No.1 in S.C. Suit No. 3396 of 2024 has filed Notice of Motion (Lodg.) No. 13214 of 2026 before the City Civil Court praying that the Suit be decreed on admission under Order 12 Rule 6 of the Civil Procedure Code, 1908 in terms of prayer clauses 39(a) and (c) of the plaint.

2) The Motion appears to have been affirmed on 9 September 2026 but could not be registered without the leave of the Court. On 29 September 2026, City Civil Court has granted leave for registration of the Motion. By order dated 19 August 2026, this Court had directed decision of the Motion in an expeditious manner, preferably before 21 September 2026. The City Civil Court appears to have adjourned the Motion to 28 October 2026 only for the purpose of filing of reply by the Plaintiffs. Since Motion is filed for decreeing the Suit in terms of some of the prayers, Petitioner cannot be granted such a long time for filing of reply.

3) It would be open for the Plaintiffs to file their reply to the Motion, if they so desire, on/or before 6 October 2026. Parties shall appear before the City Civil Court alongwith copy of this order and the Court shall take on board the Motion and the Suit on 6 October 2026. The City Civil Court is requested to decide the Motion preferably on 6 October 2026 itself. It is made clear that if the Plaintiffs fail to file reply to the Motion by 6 October 2026, the City Civil Court shall proceed to decide the Motion in absence of reply.

4) These directions are given considering peculiarity of facts and circumstances of the present case which the learned Judge of the City Civil Court needs to bear in mind. Pendency of S.C. Suit No. 3396 of 2024 is coming in the way of Petitioner-society not securing conveyance in respect of the land and the building. The Petitioner-society has consented for passing of a decree in S.C. Suit No. 3396 of 2024 in terms of prayer clauses 39(a) and (c) only with a view to ensure that after the decree in S.C. Suit No. 2020 of 1994 is declared as a nullity, it can press its claim for deemed conveyance before the Competent Authority. After the City Civil Court decrees the Suit in terms of prayer

clauses 39(a) and (c) under the provisions of Order 12 Rule 6 of the Code, this Court is proposing to remand the proceedings to the Competent Authority for re-adjudication of Petitioner's application for deemed conveyance. The Learned Judge of the City Civil Court is requested to bear in mind this position for ensuring that the order in the Motion filed by the Petitioner-society in an expeditious manner.

5) What is sought in the Motion is only partial decree on admission which is permissible under the provisions of Order 12 Rule 6 of the Code. Even after decreeing of the Suit in terms of prayer clauses 39(a) and (c), Plaintiffs would be free to continue the Suit in respect of the balance prayer clauses.

6) List the petition for further consideration on **12 October 2026**.

9) Now, the City Civil Court has made Notice of Motion No. 5229 of 2006 absolute in terms of prayer clauses (a) and (c) of the plaint. Operative part of the order dated 9 October 2026 passed by the City Civil Court in Notice of Motion No. 5229 of 2026 in S.C. Suit No. 3396 of 2024 reads thus :

1. Notice of Motion No. 5229 of 2026 is allowed in terms of prayer clause (a) and (c) of the plaint.
2. The judgment and decree passed in S.C. Suit No. 2020 of 1994 is set aside.
3. Decree be drawn up accordingly.

10) Prayer clause-39(a) and (c) of Suit No. 3396 of 2024 reads thus:

(a) this Hon'ble Court may be pleased to declare that, the Decree dated 10.11.2000, passed by the Hon'ble City Civil Court at Mumbai and confirmed in Order dated 27.08.2018, passed in Order Below Exhibit 1 in

Execution Application No.47 of 2012 in S.C. Suit No. 2020 of 1994, filed by the Defendant No.1 Society herein against the partnership firm of M/s. Amar Construction Company and Defendant Nos. 2 to 5 in respect of the Suit property more particularly described in the Schedule of the Property being Exhibit 'A' hereto, is nullity, illegal, vexatious, bad in law and not binding upon the Plaintiffs;

(c) is Hon'ble Court may be pleased to pass a mandatory injunction order permanently restraining the Defendant No.1, it's servants, agents and persons claiming through them, from proceeding further to execute Conveyance in respect of the Suit property, more particularly described in the Schedule of the Suit Property being Exhibit 'A' hereto, in Order Below Exhibit 1 in Execution Application No. 47 of 2012 in S.C. Suit NO. 2020 of 1994, filed by the Defendant No.1 Society herein against the partnership firm of M/s. Amar Construction Company and Defendant Nos.2 to 5.

(emphasis added)

11) Thus, now a declaration is given by the City Civil Court that the decree dated 11 October 2000 passed in S.C. Suit No. 2020/1994 does not bind the Plaintiffs in S.C. Suit No. 3396 of 2024, as well as in respect of the suit property. Therefore now, there is no question of execution of decree dated 10 October 2000 passed in S.C. Suit No. 2020/1994. Since the decree no longer exists, the shackles for seeking deemed conveyance are removed and now the doors for the Petitioner-society to seek unilateral deemed conveyance under Section 11 of MOFA have opened. The Competent Authority did not reject Petitioner-society's application for deemed conveyance on merits but it was persuaded to reject the same only on account of operation of interim order of this Court granting stay to the execution proceedings in S.C. Suit No. 2020/1994. Now that the decree does not subsist in the eyes of law and since the same could no longer be executed, there can be no impediment for the Competent Authority exercising jurisdiction

under Section 11 of MOFA for granting Certificate of unilateral deemed conveyance in favour of the Petitioner-society.

12) Mr. Shah submits that Suit No. 3396 of 2024 is still pending and that the right of the plaintiff in the land cannot be conveyed by the Competent Authority during pendency of the suit. This Court has repeatedly held that existence of disputes over title between the original land owners and promoters cannot be a ground for not conveying the land in favour of organisation of flat purchasers. Plaintiffs in suit No. 3396 of 2024 claim share in the assets of the firm which includes the land meant to be conveyed to the Petitioner-society. Under Section 11 of MOFA, the promoter firm is under statutory obligation to convey the land and the building in favour of the society. It is doubtful whether any right in the land would subsist in the firm after sale of all flats in the building. Be that as it may. Though suit No. 3396 of 2024 may remain pending, the same cannot come in the way of Petitioner-society securing deemed conveyance of land and building under Section 11 of MOFA. If plaintiffs in suit No.3396 of 2024 believe that they are owners of the land which would be conveyed to Petitioner-society, it would be open for them to challenge the conveyance deed that would be executed after passing of order by the Competent Authority. By now it is well settled position that passing of order of deemed conveyance by the Competent Authority is not final determinative of rights and entitlements of parties in respect of the conveyed land and that the aggrieved party can always secure a declaration to the contrary from Civil Courts. [SEE: *Arunkumar H. Shah (HUF) vs. Avon Arcade Premises Co-operative Housing Society Ltd.*¹]

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13) In my view therefore, Defendant's application No. 52 of 2026 deserves to be remanded before the Competent Authority for fresh adjudication.

14) I accordingly proceed to pass the following order :

- i. Order dated 31 July 2026 passed by the Competent Authority is set aside and Application No 52 of 2026 is remanded for being adjudicated afresh.
- ii. Competent Authority shall proceed to decide the remanded proceedings as expeditiously as possible, preferably within a period of 4 months.
- iii. Parties shall appear before the Competent Authority alongwith copy of this order on 26 October 2026 and shall apply for fixation of date(s) of hearing in the remanded proceedings.
- iv. All rights and contentions of the parties on merits are expressly kept open.

15) With the above directions, the Petition is partly allowed and disposed of. There shall be no order as to costs. Now S.C. Suit No. 3396 of 2024 shall remain pending only qua the balance prayers (*excluding prayer clauses 39(a) and (c)*).

[SANDEEP V. MARNE , J.]

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signed by
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