

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.976 OF 2023

Garden Court Cooperative Housing
Society Ltd., through Secretary
Ramakant Singhal ... petitioner

V/s.

ATUL
GANESH
KULKARNI

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The Competent Authority & District
Deputy Registrar of Coop. Societies,
Thane & Others ... respondents

Mr. Raju Suryawanshi with Mr. Suraj N. Naik for the
petitioner.

Ms. S.S. Jadhav, AGP for respondent No.1-State.

Mr. M.P. Rao, Senior Advocate i/by Ms. Sheetal Mhatre
for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : MARCH 9, 2026

PC.:

1. By the present writ petition filed under Article 227 of the Constitution of India, the petitioner challenges the order dated 14 June 2022 passed by respondent No.1. By the said order, the Competent Authority partly allowed Deemed Conveyance Application No.70 of 2022 and granted conveyance of land admeasuring 2781.63 square meters in favour of the petitioner society, as against the claim of 4464 square meters made by the petitioner.

2. The facts giving rise to the present petition may be stated as follows. The buildings of the petitioner society are situated on a total plot of land admeasuring 4916.13 square meters. The said land forms part of the following survey numbers. First, Old Survey No.666, New Survey No.255, Hissa No.2, admeasuring 3733.88 square meters out of the total land admeasuring 18440 square meters. Second, Old Survey No.666, New Survey No.255, Hissa No.3, admeasuring 660 square meters. Third, Old Survey No.669, New Survey No.254, Hissa No.1, admeasuring 522.25 square meters out of the total land admeasuring 1440 square meters. The property is situated at Village Bhayandar, Taluka and District Thane. The construction on the said land was undertaken in accordance with the plans approved by the Mira Bhayandar Municipal Corporation.

3. The respondent No.2, being the builder and promoter, proposed to develop a residential project known as “Garden Court”. The project comprised three buildings, namely Building A, Building B and Building C. In furtherance of the said project, the respondent No.2 obtained necessary permissions for construction. A Commencement Certificate dated 17 November 2007 bearing No. MI.BHA/MANAPA/NAR/2770/2007-2008 was issued for Buildings B and C. A Revised Commencement Certificate dated 29 December 2007 bearing No. MI.BHA/MANAPA/NAR/3462/2007-2008 was issued for Building A. At the time of launching the project, the respondent No.2 circulated pamphlets and brochures to prospective flat purchasers. These documents disclosed only three buildings in the project, namely Building A consisting of stilt

plus nine upper floors, and Buildings B and C consisting of stilt plus seven upper floors each. No disclosure was made in the said material regarding any future development proposed on the said property.

4. Agreements for sale were thereafter executed between the respective flat purchasers and respondent No.2 under the provisions of the Maharashtra Ownership Flats Act, 1963 and the Rules of 1964. Subsequently, the respondent No.7 Municipal Corporation granted an Occupation Certificate dated 27 May 2011 in respect of the buildings constructed in the petitioner society, namely Building A consisting of stilt plus nine upper floors and Buildings B and C consisting of stilt plus seven upper floors. On the same day, that is on 27 May 2011, the respondent No.7 Corporation issued a Revised Commencement Certificate in favour of respondent No.2 permitting construction of a further building, namely Building Type D consisting of stilt plus one upper floor with a built up area of 248.22 square meters. Possession of the respective flats was handed over to the purchasers sometime in the year 2011. Thereafter a co operative housing society of the flat purchasers came to be formed and registered on 16 June 2011 bearing Registration No. TNA/(TNA)/HSG/(TC)/22710/2011-12.

5. According to the petitioner, the respondent No.2 had disclosed only Buildings A, B and C in the brochures and in the approved plans shown to the flat purchasers at the time of sale of flats. In such circumstances, the respondent No.2 was under a legal obligation to obtain prior consent of the flat purchasers of Buildings A, B and C before seeking any revised permission for

construction of Building D consisting of stilt plus one floor, as contemplated under Section 7 of the Maharashtra Ownership Flats Act, 1963. However, the respondent No.2 proceeded to obtain such permission without obtaining the consent of the flat purchasers. This, according to the petitioner, was in clear contravention of the provisions of Section 7 of the Act of 1963.

6. The petitioner contends that the statutory provision contained in Section 7 prohibits the promoter from carrying out alterations or additions in the structure of the building after the approved plans and specifications are disclosed to the purchasers, unless prior consent of the concerned flat purchasers is obtained. In the present case, the respondent No.2 sought further permission for construction of Building D without obtaining the consent of the flat purchasers of Buildings A, B and C. The respondent No.7 Municipal Corporation also issued the revised permission in the absence of such consent. According to the petitioner, this action is contrary to the mandate of the statute. It is further the case of the petitioner that respondent No.2 was under an obligation to convey the right, title and interest in the land and building in favour of the petitioner society within four months from the date of registration of the society, as required under Section 11 of the Act of 1963. However, despite the lapse of about eleven years and despite repeated representations made by the petitioner society, no steps were taken by respondent No.2 to execute the conveyance.

7. In these circumstances, the petitioner society addressed a legal notice dated 17 February 2021 to respondent Nos.2 to 6, who are the builder, promoter and land owners. By the said notice, the

petitioner called upon them to execute a conveyance transferring the right, title and interest in the said property together with the structures standing thereon in favour of the petitioner society. However, the said notice did not yield any response. The petitioner society therefore decided to invoke the statutory remedy available under Section 11(3) of the Maharashtra Ownership Flats Act, 1963 by filing an application before respondent No.1, the Competent Authority, seeking grant of unilateral conveyance in its favour.

8. Accordingly, on 17 January 2022 the petitioner society filed an application under Section 11(3) of the Act of 1963 before respondent No.1 Competent Authority claiming conveyance of land admeasuring 4464 square meters in its favour. The said application came to be registered as Deemed Conveyance Application No.70 of 2022. During the course of the proceedings before the Competent Authority, respondent No.2 filed an additional written statement on 18 April 2022 along with a certificate issued by an Architect dated 12 April 2022. By relying upon the said material, respondent No.2 contended that it had obtained revised permission on 8 April 2022 for construction of Building D. According to respondent No.2, by virtue of the revised permission the built up area of Building D was increased from 248.22 square meters to 6284.47 square meters. It was therefore contended that on a pro rata basis the maximum land area that could be conveyed in favour of the petitioner society would be only 2781.63 square meters and not 4464 square meters as claimed by the petitioner.

9. The petitioner points out that the application under Section 11 of the Act was filed on 17 January 2022 whereas the revised commencement certificate relied upon by respondent No.2 came to be issued much later on 8 April 2022. The record further shows that respondent No.2 had appeared before the Competent Authority on 22 February 2022, 28 February 2022 and 28 March 2022. However, despite such appearances respondent No.2 did not file its written statement. According to the petitioner, respondent No.2 deliberately refrained from filing its reply as it was awaiting the grant of revised permission from the Municipal Corporation. The petitioner alleges that respondent No.2 intended to file its reply only after securing such revised permission so that it could rely upon the same to dispute the area claimed by the petitioner society.

10. It is the case of the petitioner that immediately after the revised permission dated 8 April 2022 was granted, respondent No.2 proceeded to file its written statement and additional written statement on 12 April 2022 and 18 April 2022 respectively. By doing so, respondent No.2 brought the revised permission on record before the Competent Authority and sought to claim entitlement for construction of Building D in accordance with the revised sanctioned plan. The petitioner alleges that the intention of respondent No.2 from the inception was to appropriate the remaining land area which otherwise ought to have been conveyed to the petitioner society. According to the petitioner, this attempt was made under the guise of the revised permission and without obtaining the consent of the flat purchasers. The petitioner further

asserts that if the entire area of 4464 square meters had been granted in favour of the petitioner society, respondent No.2 would not have been entitled to claim any additional floor space index on the said layout.

11. The respondent No.1 Competent Authority thereafter proceeded to decide the application and passed the impugned order dated 14 June 2022. By the said order, the Competent Authority partly allowed the deemed conveyance application filed by the petitioner society. However, instead of granting the area of 4464 square meters as claimed by the petitioner, the Competent Authority restricted the conveyance to an area of 2781.63 square meters. It is this order which is challenged in the present writ petition.

12. Mr. Suryawanshi, Learned Advocate for the petitioner submitted that the respondent No.1 failed to conduct proper inquiry while deciding the area sought by the petitioner in its application. The authority failed to consider the fact that revised permission dated 11 April 2022 granted to the respondent No.2 in respect of building Type-D of Stile + 16th upper floors was not binding on the petitioner-society as no prior consent of the flat purchasers of the petitioner was taken and that the said revised permission dated 11 April 2022 was granted much belatedly after filing of the said deemed conveyance application. He further submitted that the authority failed even to peruse the Architect's Certificate and physical area survey report annexed to the application and on the basis of which the petitioner had sought an area of 4464 square meters.

13. He further submitted that the competent authority failed to mention how much area from each of the two hissa numbers has been granted to the petitioner. The respondent No.1 had only mentioned the total admeasuring 2781.63 square meters which has been granted to the petitioner. He submitted that generally an application under Section 11 of the MOFA 1963 once filed is either liable to be allowed or rejected in toto. If the competent authority is of the opinion that the area being sought by the petitioner is not justified, in that case the competent authority ought to have at least directed the society to carry out necessary amendment in the application in the area claimed, failing which the application is liable to be rejected. However, instead of affording any such opportunity, the competent authority proceeded to pass the order. The competent authority itself cannot determine the entitlement of area of the petitioner-society.

14. Per contra, Mr. Rao, learned Senior Advocate on behalf of the respondent-developer submitted that in the agreement executed with purchasers, it was specifically stated that the developer shall be carrying out future development. By specifying such recital in the agreement, the developer gets protection of Section 7A of the Maharashtra Ownership Flats Act, 1963. He, therefore, submits that Section 7A entitles the respondent-developer to carry out further construction. He submitted that earlier three attempts to stall construction of building-D was unsuccessful and, therefore, the petitioner initiated proceedings for deemed conveyance. He, therefore, submitted that the writ petition is liable to be dismissed.

REASONS AND CONCLUSIONS:

15. The material placed on record shows that the residential project in question was launched and marketed to the prospective flat purchasers on the basis of plans and brochures which disclosed only three buildings forming part of the layout. The promotional material distributed by the developer at the time of sale clearly represented that the project would consist of three residential buildings. Acting on these representations, various purchasers agreed to purchase flats in the project. Agreements for sale were thereafter executed with them in accordance with the provisions of the Maharashtra Ownership Flats Act, 1963.

16. It is also not disputed that possession of the flats in these buildings was handed over sometime in the year 2011. Shortly thereafter, in June 2011, the co-operative housing society of the flat purchasers came to be registered. Once the society was formed, the statutory scheme under the Act obligated the promoter to execute a conveyance of the land and building in favour of the society within the prescribed period. The registration of the society therefore created a legal right in favour of the society to obtain conveyance of the property on which the buildings stand.

17. The petitioner society, while filing its application for deemed conveyance, produced supporting documents in order to demonstrate the exact area of land which ought to be conveyed in its favour. These documents include an Architect's Certificate and a physical survey report prepared after measurement of the property. Both documents indicate that the area attributable to the buildings

of the petitioner society comes to 4464 square metres. The application for deemed conveyance was filed on 17 January 2022 before the Competent Authority under Section 11 of the Act.

18. However, during the pendency of these proceedings the developer obtained a revised permission from the municipal authority. The revised permission is dated 11 April 2022. Relying upon this revised permission, the developer contended before the Competent Authority that additional development had now been sanctioned and therefore the area available for conveyance to the society stood reduced. On that basis the developer urged that the society could be granted only 2781.63 square metres of land on a proportionate basis. The Competent Authority appears to have accepted this submission of the developer and consequently restricted the conveyance to the said reduced area.

19. The developer has strongly relied upon the clause in the agreements for sale which, according to him, permitted future development on the land. In support of this submission, reliance is placed upon the decision of the Supreme Court in *Jayantilal Investments v. Madhuvihar Coop. Housing Society (2007) 9 SCC 220*. It therefore becomes necessary to examine the legal position explained in the said judgment and to understand the true scope of the promoter's right to undertake additional construction.

20. The Supreme Court in the said decision considered the effect of the amendments introduced in the Maharashtra Ownership Flats Act, 1963, particularly the insertion of Section 7A by Maharashtra Amendment Act 36 of 1986. The Supreme Court in

Jayantilal Investments has made it clear that the right of the promoter to construct additional buildings is not an unrestricted right. Such construction must form part of the overall scheme or layout plan of the project. The promoter can exercise this right only when the development is carried out in accordance with the approved layout and within the development potential of the plot. In other words, the promoter does not obtain an unfettered right to introduce entirely new construction at any stage merely by relying upon a clause in the agreement. The Supreme Court further emphasised that even after the insertion of Section 7A, the statutory obligations imposed upon the promoter under Sections 3 and 4 of the Act continue to operate with full force. These provisions require the promoter to make true and full disclosure to the flat purchasers regarding all relevant aspects of the project. This includes disclosure of the nature and extent of common areas, amenities and most importantly the development potential of the land. The promoter must disclose the available Floor Space Index and whether any part of such development potential has already been utilised elsewhere. The agreement executed with the flat purchasers must follow the prescribed statutory form and must contain these disclosures. The judgment also highlights that under the prescribed form of agreement, certain clauses are treated as statutory and mandatory. These clauses require the promoter to disclose the available FSI of the land and the manner in which it is proposed to be utilised. The promoter must also disclose whether any additional FSI or transferable development rights may be used for development of the project. These disclosures are required so

that the flat purchaser is fully aware of the entire development scheme before entering into the transaction.

21. The Supreme Court thus explained that the concept of development rights must be balanced with the rights of the flat purchasers. While the law permits construction of additional buildings in accordance with the layout plan, the promoter remains under a obligation to place the complete development scheme before the purchasers at the time when agreements are executed. The purchasers must know whether the project consists of a single building or multiple buildings and what further development is contemplated on the land.

22. At this stage it becomes necessary to closely examine the timing as well as the legal effect of the revised permission obtained by the developer. The chronology of events is significant. The deemed conveyance application was filed on 17 January 2022. At that time the revised permission did not exist. The proceedings had already commenced before the Competent Authority. The developer had also appeared in the proceedings on earlier dates. However, the developer did not file any written reply at that stage. The reply was filed only after the revised permission dated 11 April 2022 was obtained. This sequence cannot be overlooked. The statutory right of the society to seek conveyance had already been invoked before the Competent Authority. Once such proceedings are pending, the promoter cannot defeat the claim of the society by subsequently securing a fresh development permission and then relying upon it to reduce the land which otherwise ought to be conveyed. The law does not permit the promoter to improve his

position during the pendency of the conveyance proceedings in a manner that prejudices the rights of the flat purchasers. The entitlement of the society must therefore be examined on the basis of the project as originally disclosed and the material available when the application was filed.

23. The evidence placed before the Court indicates that at the time when flats were sold, the purchasers were informed about only three buildings forming part of the project. The brochures and the plans shown to them did not disclose the construction of a substantially larger additional building. In such circumstances, the subsequent introduction of a much larger structure through a revised permission raises a serious issue as to whether the statutory requirement of obtaining consent of the purchasers was complied with. The developer has not produced any material to demonstrate that such consent of the flat purchasers was obtained prior to securing the revised permission. In absence of such consent, reliance upon the revised permission to curtail the society's entitlement to land becomes legally doubtful.

24. When the principle laid down in *Jayantilal Investments* is carefully examined, it becomes clear that the existence of such a recital alone is not sufficient. The crucial requirement is whether the entire development scheme was disclosed to the flat purchasers at the time of sale and whether the additional construction forms part of the sanctioned layout plan. Only when the full scheme is placed before the purchasers does the question of obtaining their consent not arise for additional construction carried out in accordance with the layout plan. In absence of such

disclosure, the promoter cannot rely upon Section 7A to justify subsequent development which materially alters the project that was originally represented to the purchasers.

25. The impugned order passed by the Competent Authority also suffers from serious deficiencies in its reasoning. The order merely records that the society is entitled to an area of 2781.63 square metres. However, the order does not explain how this figure has been arrived at. The property involved in the present case consists of more than one hissa number. The order does not indicate how much area from each of these survey components is included in the conveyance. Such absence of clarity creates uncertainty regarding the exact extent and identity of the property to be conveyed. Equally important is the fact that the order does not discuss the Architect's Certificate and the physical survey report submitted by the petitioner. These documents formed the primary basis of the petitioner's claim for 4464 square metres. A quasi judicial authority deciding a dispute of this nature is expected to examine such evidence and record reasons if it chooses not to accept the same. The impugned order, however, does not contain any analysis of these documents. The reasoning therefore appears incomplete and inadequate.

26. Another procedural aspect also deserves consideration. The Competent Authority has reduced the area claimed by the petitioner without first giving an opportunity to the petitioner to address such proposed reduction. If the authority was of the view that the claim of 4464 square metres was excessive, it ought to have directed the petitioner to clarify or amend its claim. The

authority could also have required additional measurements or evidence. Instead of adopting such course, the authority has on its own determined a different figure and granted only that extent of land.

27. On an overall assessment of the record, the material produced by the petitioner appears sufficient to support the claim of 4464 square metres. The Architect's Certificate and the physical survey report constitute reliable technical evidence regarding the extent of land attached to the buildings of the petitioner society. The developer's reliance upon a subsequently obtained permission cannot override this evidence, particularly when the statutory requirements regarding consent of purchasers have not been demonstrated.

28. In view of the foregoing discussion and reasons recorded hereinabove, the following order is passed:

- (i) The Writ Petition is allowed.
- (ii) The impugned order dated 14 June 2022 passed by Respondent No.1 in Deemed Conveyance Application No.70 of 2022 is quashed and set aside.
- (iii) Deemed Conveyance Application No.70 of 2022 filed by the petitioner society stands allowed in terms of the area claimed by the petitioner, namely 4464 square meters.
- (iv) Respondent No.1 Competent Authority shall take necessary steps for issuance of the conveyance certificate and for execution of unilateral conveyance in favour of the

petitioner society in respect of the said area.

(v) Rule is made absolute in the above terms. There shall be no order as to costs.

(AMIT BORKAR, J.)