

Dusane

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6888 OF 2023

Makwana Builders & Ors. ...Petitioners

V/s.

Makwana Complex Building No.1 ...Respondents
CHS Ltd. and Ors.

Mr. Ankit Rajput i/by Rutvij Bhatt for Petitioners.

Ms. Nilam Vete for Respondent No. 1

Smt. V.S. Nimbalkar, AGP for State- Respondent
Nos. 3 to 6.

CORAM: MADHAV J. JAMDAR, J.

DATE: 23rd August 2023

P.C.:

1. Heard Mr. Rajput, learned Counsel appearing for the Petitioners, Ms. Vete, learned Counsel appearing for Respondent No.1 and Smt. Nimbalkar, learned AGP appearing for State-Respondent Nos. 3 to 6.

2. By the present Writ Petition, filed under Articles 226 and 227 of the Constitution of India, the Petitioners are challenging the legality and validity of the order dated 17th March 2022 passed by the Competent Authority- District Deputy Registrar, Palghar, by which deemed conveyance has been granted in

favour of Respondent No.1- Society. The District Deputy Registrar has taken into consideration that the Society has been registered on 9th September 2010.

3. Ms. Vete, learned Counsel appearing for Respondent No.1 states that the possession has been given to the respective flat purchasers in the year 2004.

4. The Competent Authority has relied on the calculations made by the Architect of Respondent No.1- Society. The said calculations are as under:

"To Whomsoever it may concern
Area Certificate

1	Name of the Society	MAKWANA COMPLEX BULDG NO..1 CHS LTD.
2	CTS No./Village/Tal./Dist.	S.No. 196 BPT Village: Narangi, Tal. Vasai, Dist. Palghar
3	Building Plan Sanction No.	CIDCO/VVSR/ CC/BP-2109 & 2110/ E/1440 Dated - 23/01/2002
4.	Building Completion Certificate No. (O.C.)	NOT FOUND
5	Net plot area	5263.43 Sq. Mt.
6	Area under Road (Retainable Land)	780.00 Sq. Ft.
7	Area of R.G. (740.25/2)	370.12 Sq. Mt.
8	Open Space	1183.18 sq. Mt.
9	FSI Permissible	One
10	FSI Utilised	One
11	Permissible Built-up area	6043.43 Sq. Mt.
12	Existing Built-up Area of BLDG	3710.12 Sq. Mt.
13	Balance F.S.I.	In other Building
14	Built-up Area/Amenity	Stilt Parking - Not Found Club house - Not Found Society Office - Not Found

	Watchman Cabin	-	Not Found
	Store Room	-	Not Found
	Pump house	-	Not Found
	Garage	-	Not Found

5. Accordingly the Competent Authority has granted Deemed Conveyance with respect to 2930.12 sq. mtrs. area arrived at by deducting areas shown at Serial Nos. 6,7,8 from net plot area and also included proportionate area of the road and other amenities. Therefore, there is no illegality in the order passed by the Competent Authority.

6. However, it is clarified that as held by this Court in several decisions including **Mazda Construction Co. Vs. Sultanabad Darshan Co-op. Housing Society Limited¹**, **M/s Shree Chintamani Builders Vs. State of Maharashtra & Ors.²**, and **ACME Enterprises Vs. Registrar, Co-operative Societies³** an order granting deemed conveyance will not conclude the issue of right, title and interest in the immovable property and therefore the Petitioners are at liberty to file civil suit establishing their right to the property.

7. Accordingly, the Writ Petition is dismissed subject to above with no order as to costs.

(MADHAV J. JAMDAR, J.)

¹ 2012 SCC Online Bom. 1266 [2013 (2) All MR 278]
² 2016 SCC Online Bombay 9343
³ 2023 SCC OnLine Bom 1102