

AGK

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

**WRIT PETITION NO.8752 OF 2024
AND
WRIT PETITION NO.8753 OF 2024
AND
WRIT PETITION NO.8754 OF 2024
AND
WRIT PETITION NO.8755 OF 2024**

Jijabai Baban Nimhan ... Petitioner
V/s.
The State of Maharashtra & Ors. ... Respondents

Mr. Omkar Kulkarni for the petitioner.

Mr. Aditya R. Deolekar, AGP for the respondents –
State.

CORAM : AMIT BORKAR, J.

DATED : JUNE 28, 2024

P.C.:

1. The challenge in these writ petitions is to the order passed by the Competent Authority in exercise of power under Section 11(3) of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 conferring deemed conveyance on the Co-operative Society.

2. The petitioner has raised an objection regarding maintainability of the application on the ground that the application entertained by the Competent Authority was not in the format and necessary documents as required to adjudicate such

issue were not furnished. Moreover, according to him, the demarcation of the property was not done resulting into the petitioner's right being affected.

3. In view of the Division Bench judgment of this Court in **Mazda Construction Company v. Sultanabad Darshan CHS Ltd.**, reported in 2012 SCC OnLine Bom 1266 and this judgment having been followed in a series of judgments by Single Judge and Division Bench of this Court, it is well settled that the adjudication under Section 11(3) of the said Act confers upon the society only those rights which are conferred on the promoter by the owners. Whether the substantive rights of the owners are affected and the nature of rights which can be said to be affected can be adjudicated by the Civil Court in a suit by owner for enforcement of his rights over the suit property. It is also well settled that adjudication under Section 11(3) shall not affect Civil Court's power to adjudicate the right of owners over the immovable property.

4. In this view of the matter, by granting liberty to the petitioner to file a civil suit to adjudicate his rights over the property in dispute, the writ petition stands disposed of.

5. It is made clear that the Civil Court, in case the petitioner files a suit, shall decide the same uninfluenced by the observations made in this order or in the order of conferment of deemed conveyance.

(AMIT BORKAR, J.)