IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3727 OF 2023

Deep Sadan Co. Op. Housing Society Limited ...Petitioner

Versus

The State of Maharashtra and Others ...Respondents

VISHAL SUBHASH PAREKAR
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Date: 2025.12.22 10:51:10 +0530

Mr.Aseem Naphade a/w. Mr. Ameet Mehta, Ms. Avani Rathod, Mr. Rupesh Singh, Mr. Akash Singh i/b. Solicis Lex, for the Petitioner.
Mr. S.K. Halwasia a/w. Smt. S.S. Halwasia i/b. M/s. Halwasia & Co., for Respondent No. 5.
Dr. Dhruti Kapadia, AGP for the State.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : DECEMBER 19, 2025

P. C. :

1. Heard.

2. By this Petition, the challenge is to the order dated 20th January, 2021 passed by the Competent Authority issuing certificate for unilateral execution of deemed conveyance of land admeasuring 676.63 square meters out of total plot area admeasuring 5514.5 sq.mts. of Plot No. 19 and 20 bearing CTS No. 33/9, Goregaon, Tal. Borivali, Mumbai.

3. The facts of the case necessary to be stated is that on the subject plot, the Petitioner society was constructed comprising of five

buildings and indenture of conveyance was duly executed in favour of he Petitioner- society on 5th August, 1972 by the Respondent No. 8 - Developer. Subsequently, the Respondent No. 8 undertook construction of an additional building being the Respondent No. 5 on the subject society plot. The Respondent No. 5 Society was thereafter registered as separate co-operative housing society in the year 2009. As there was non-compliance of statutory obligation, under the Maharashtra Ownership Flats Act, 1963 (MOFA), the Respondent No. 5 society filed an application under Section 11 with the Competent Authority seeking unilateral deemed conveyance of land admeasuring 716.18 sq.mtrs. The application came to be objected by the Petitioners as also the other Respondents. The Petitioners contended that there is already conveyance executed in favour of the Petitioner society on 5th August, 1972 in respect of plot area admeasuring 5139 sq.mtrs and considering the entire plot of land according to Architect certificate, which was produced by Respondent No. 5, was 5514.50 sq. mtrs., an area of 676.63 sq.mtrs. could not be permitted to be conveyed Respondent No. 5.

4. The Competent Authority by the impugned order noted that the total area of the plot as per IOD plan dated 5th August, 1973 was 5514.50 sq. mtrs. It was observed that the total built up area is 5836.77 sq.mtrs and the built area of the Applicant society is 716.18 sq. mtrs.

The Competent Authority further observed that the area of the plot is 5514.50 sq.mtrs and granted deemed conveyance of the area admeasuring 676.63 sq.mtrs to the Respondent No. 5 by dividing the Respondent No.5's constructed area with the total constructed area and multiplying by total plot area. There is no consideration of conveyance which has already been executed in favour of Petitioner.

5. Mr. Naphade learned counsel for the Petitioner has taken this Court through the indenture of conveyance of 5th August, 1972 to contend that the Petitioner has been granted conveyance of 5139 sq.mtrs. He would further point out the Architect's certificate to contend that the total plot area even as per Architect is 5514 sq. mtrs. and therefore after deducting the area of 5139 sq. mtrs which has been conveyed to the Petitioner, the area of 716.18 sq.mtrs could not have been conveyed to the Respondent No. 5. He would submit that in support of their application for deemed conveyance, the Respondent No. 5 has produced assignment agreement /agreement to transfer which does not set out the obligations of the promoter which the Competent Authority has a duty to convey under the statutory provisions of MOFA. He would further submit that considering the there is an indenture of conveyance in favour of the Petitioner, the Competent Authority could not have considered the application for deemed conveyance and the appropriate remedy available to the

Respondent No. 5 was to file a Civil Suit seeking the decree for conveyance.

6. Mr. Halwasia, learned counsel for the Respondent No. 5 would submit even if the agreements are not produced as they were unavailable, the Competent Authority can take into consideration the documents produced for determining the area which is required to be conveyed. He would submit that the conveyance has been executed in favour of the Petitioner was restricted conveyance and permitted the developer to carry out construction of an additional building in the layout and accordingly the Respondent No. 5 building was constructed. He submit in that respect the Petitioner by permitting the developer to construct Respondent No. 5 building is co-promoter for the purpose of conveyance under the provisions of MOFA. He would further submit that by order of 11th March, 2024 passed by this Court during the earlier round of hearing in present Petition, the issue of remand was under consideration as it was observed that the Architect's certificate produced by the Respondent No. 5 makes a reference to the built up area of four buildings and not five buildings of the Petitioner- society.

7. Mr. Naphade in rejoinder would submit that there is no pleading in the application, under section 11 impleading the Petitioner as a co-promoter and there is no relief of conveyance sought from the Petitioner. He would further point out the averments in the written

statement filed by the Petitioner before the Competent Authority denying that the Respondent No. 5 is in possession of land admeasuring 716.18 sq.mtrs. He would submit that the agreement on which reliance has been placed by Mr. Halwasia to show limited conveyance was not a registered agreement but an agreement pertaining to financial assistance sought to be availed by the society.

8. I have considered the submissions and perused the record.

9. The Respondent No. 5 came with a case of non-compliance of the statutory obligation by Respondent No. 8 promoter and seeking issuance of certificate of unilateral deemed conveyance in respect of area admeasuring 716.18 sq.mtrs out of the total plot area admeasuring 5514.5 sq. mtrs. The pleadings in the application do not indicate that Respondent No. 1 society was impleaded as promoter and the impugned order does not indicate any such submission being canvassed before the Competent Authority. It is for the first time before this Court that a submission is canvassed that the Petitioner is a promoter having permitted the Respondent No. 8 to carry out the additional construction even after execution of conveyance in the absence of any such contention being raised before the Competent Authority, for the first time, in petition under Article 227, the Respondent No. 5 cannot raise any such contention.

10. It is not disputed that there is an indenture of conveyance executed in favour of the Petitioner of an area admeasuring 5139 sq.mtrs. However, the fact remains that as admitted by the Petitioner in their written statement before the Competent Authority, the Respondent No.5 building is built on a plot of 375.50 sq.mtrs which was available due to revision in the plot area from 5139 sq. mtrs to 5514.50 sq. mtrs. The Petitioner admitted before the Competent Authority that the area available for the Respondent No. 5 is 375.50 sq.mtrs. It is not denied by the Petitioners that the Respondent No. 5 society is part of the same layout. The Respondent No. 5 being an independent society is entitled to conveyance. There is revision in the plot area from 5139 to 5514.50 sq.mtrs which made available the additional FSI for construction of Respondent No. 5 building.

11. Perusal of the impugned order does not indicate that the Competent Authority has taken into consideration the conveyance executed in favour of Petitioner for an area of 5139 sq. mtrs. As of date, there is no challenge to the said conveyance in the civil proceedings and the Competent Authority in exercise of its jurisdiction under section 11 of MOFA cannot go into the question of validity of the said conveyance. The Competent Authority was therefore required to consider the conveyance in favour of the Petitioner and keeping the area which was conveyed under the conveyance deed, in mind, the

constructed built up area of Respondent No. 5 society was required to be considered for ascertaining the area which would be available for sustaining the constructed built up area of Respondent No. 5 society. The impugned order does not indicate any such exercise being conducted by the Competent Authority. The architect's certificate which has been produced on record speaks of the constructed area of the Respondent No. 5 society to be 716.18 sq.mtrs. The impugned order notes that the stand of Petitioner was that the Respondent No.5's building is standing on land admeasuring 375.50 sq. mtrs, at the time of using TDR by the Developer. The G.R. of 22nd June, 2018 states that while making deemed conveyance in respect of buildings in layout where TDR is utilized, their conveyance should be made according to plinth and appurtenant area. The Respondent No. 5 society was registered in the year 2009 and there is a possibility of increase in FSI and that the land area may be available for purpose of sustaining Respondent No.5's built up area.

12. As the Competent Authority has failed to take into consideration the indenture of conveyance executed in favour of the Petitioner and failed to carry out the exercise to determine the proportionate area for sustaining constructed area of Respondent No. 5, in accordance with G.R. of 22nd June, 2018, in my view, the matter can be remanded for the limited purpose for conducting this exercise.

13. It is clarified that it is not within the jurisdiction of the Competent Authority to give any finding as regards the validity of conveyance dated 5th August, 1972 executed in favour of the Petitioner or to disturb the area conveyed in favour of the Petitioner under the said conveyance.

14. Needless to clarify that it is open for Respondent No. 5 to file appropriate civil proceedings for challenging the said conveyance and for seeking conveyance of its own area. Within the limited summary inquiry, the Competent Authority to consider the built up area of Respondent No. 5 society and the land required or sustaining the built up area as per G.R. dated 22nd June, 2018. If such area is available without disturbing the area of 5139 sq. mtrs already conveyed in favour of the Petitioner society, the Competent Authority to consider the issuance of a certificate of entitlement of unilateral deemed conveyance of the said area.

15. With these observations the impugned order dated 20th January, 2021 is hereby quashed and set aside. The matter is remanded for consideration afresh by the Competent Authority in the light of observations made in this order.

[SHARMILA U. DESHMUKH, J.]