

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

WRIT PETITION NO.275 OF 2024

Laxman Narayan Zagade and Ors.

...Petitioners

V/s.

Competent Authority and District
Deputy Registrar, Cooperative
Societies, Pune and Ors.

...Respondents

Mr. Sugandh Deshmukh with Mr. Aniket Kanawade, Mr.
Vaibhav Thorave, Mr. Irvin D'souza and Ms. Karishma Shinde for
the Petitioners.

Mr. P.S. Dani, Senior Advocate a/w Mr. Prabhakar Jadhav, Ms.
Suchita Chavan for Respondent No.2.

Ms. Suchita Chavan for Respondent No.2.

Mr. Tejas Deshmukh for Respondent No.3.

Mr. Hamid Mulla, AGP for Respondent-State.

Mr. Gauratna Kale i/b. Mr. Sachin Dhakephalkar for
Respondent No.4.

CORAM: SANDEEP V. MARNE, J.

Dated: 26 March 2025.

Oral Judgment:

1) Petition challenges order dated 24 November 2023
passed by the Competent Authority and District Deputy

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Registrar, Co-operative Societies, Pune City, Pune granting certificate of Unilateral Deemed Conveyance of land admeasuring 4913.17 sq.mts. together with construction admeasuring 3239.06 sq.mtrs. out of total land of 6500 sq.mts in favour of Respondent No.2-society.

2) I have heard Mr. Sugandh Deshmukh, the learned counsel appearing for the Petitioners, Mr. Dani, the learned senior advocate appearing for Respondent No.2 Society, Mr. Mulla, the learned AGP for Respondent -State, Mr. Tejas Deshmukh, the learned counsel appearing for Respondent No.3 and Mr. Kale, the learned counsel appearing for Respondent No.4.

3) The main contention raised by Mr. Sugandh Deshmukh is that the construction has been caused by Respondent No.3-developer in gross violation of development permission issued by the Planning Authority. It appears that the Assistant Director of Town Planning, Pune had sanctioned the layout of land admeasuring 6500 sq.mt, in which construction of 48 flats was approved. It however appears that Respondent No.3-developer constructed total 85 units in the building comprising of 70 residential flats and 15 shops. It is contended on behalf of the Petitioners that one of the terms and conditions of development agreement executed between Petitioner landowners and Respondent No.3-developer was that construction would be caused strictly in accordance with the development permission

granted by the Planning Authority. It is contended that Petitioners have repeatedly complained in respect of the unauthorised construction caused by Respondent No.3-developer in violation of the development permission. It appears that Petitioners had petitioned this Court for seeking action in respect of the unauthorised construction and order dated 27 January 2016 was passed in Writ Petition No.5215 of 2013 directing the Pune Municipal Corporation to demolish the three floors above the authorised four floors without causing any damage to the authorised four floors. It appears that accordingly the flats constructed on 5th, 6th and 7th floors of the building have been punctured by the Municipal Corporation. The Competent Authority has recorded a finding that after puncturing of flats constructed on 5th, 6th and 7th floors of the building, the balance construction has been rendered unsafe and a report to that effect has been issued by the structural auditor on 18 April 2022. Thus, there is no dispute to the position that unauthorised construction has been caused by Respondent No.3-developer on the land concerned, development rights in respect of which were granted by Petitioner-land owners.

4) The issue for consideration is whether the original landowners can deny conveyance of land to the collective body formed by the flat purchasers only on the ground that development carried out by developer was not in accordance with the development permission.

5) In ***ALJ residency Co-operative Housing Society Ltd. Vs. State of Maharashtra and Ors.***¹ this Court had an occasion to deal with the issue as to whether the Competent Authority can exercise jurisdiction under Section 11 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (MOFA) to grant certificate of unilateral deemed conveyance in respect of a building, which is yet to be issued occupation certificate. This Court referred to the provisions of Government Resolution dated 22 June 2018, which permits conveyance of land and building in favour of Society, whose building is yet to be issued occupation certificate upon submission of a self-declaration by the society accepting all responsibilities and liability regarding the building and to make an application to the Planning Authority for issuance of occupation certificate. The judgment in ***ALJ Residency Co-operative Housing Society*** has been followed by me in ***Yogesh Jayant Khadilakar Vs. State of Maharashtra***² in which it is held in paragraphs 4 and 11 as under:

4. So far as the issue of permissibility for the Competent Authority to exercise jurisdiction under Section 11 of the Act filed by collective body of flat purchasers, where the building is yet to be granted occupancy certificate is concerned, the same appears to be no longer *res integra*. In ***ALJ Residency*** (supra), this Court (*Justice Sharmila Deshmukh*) has held that in absence of an occupancy certificate, an order for deemed conveyance under provisions of Section 11 of the MOFA can be passed by the Competent Authority. This Court took note of provisions of Government Resolution dated 22 June 2018, which permits entertainment of application for deemed conveyance by the Competent Authority by submission of a self-declaration by the Society to make good the default of occupancy certificate. This Court accordingly held in paragraphs 25 to 30 of the judgment as under:

¹ Writ Petition No.406 of 2018, decided on 25 November 2024

² Writ Petition No. 13755 of 2022 decided on 11 February 2025.

“25. The requisite accompaniments to the application for deemed conveyance as per Section 11(3) of MOFA are the true copies of the registered agreement for sale and all other relevant documents including the occupation certificate, if any. The use of the expression “if any” following the words “including the occupation certificate” occurring in Sub-Section (3) of Section 11 of the MOFA would indicate that the requirement of occupation certificate is not mandatory and the adjudication of deemed conveyance application is not impeded by non-issuance of occupation certificate. The subsequent GR of year 2018 makes it more than evident that a building without an occupation certificate can still be granted deemed conveyance, if otherwise eligible, with the caveat that thereafter the Society will obtain occupation certificate. There is no reason why such an interpretation, which stood clarified by GR of 2018, should not be adopted in the present case and the flat purchasers be assisted in their genuine attempt to fulfill the promoter’s obligation and cure the illegality by either applying for regularization or redevelopment. In the absence of the occupation certificate, the Co-operative Housing Society cannot be dis-entitled to the order of deemed conveyance as the default is on part of the Promoter in obtaining the occupancy certificate which is the statutory obligation of Promoter. Mr. Khandeparkar is right in submitting that the Promoter’s default cannot be turned by the Promoter to its advantage and taken as a defence to resist the application for deemed conveyance. The flat purchasers cannot be put to a disadvantage on account of promoter’s default. It needs to be noted that grant of deemed conveyance does not impart lawfulness to the structure and all that it does is to vest the title of the promoter in the Petitioner.

26. The fact that, in the year 2018, the Government of Maharashtra while issuing the Government Resolution dated 22nd June, 2018 simplifying the procedure to be followed for issuing the deemed conveyance order has set out the documents to be uploaded along with the online application, which makes a specific reference that where the concerned Society does not have occupation certificate, then a self-declaration of making an application to the Planning Authority for occupation certificate after getting the deemed conveyance in accordance with Appendix-5 is required to be executed supports right of Petitioner to obtain deemed conveyance.

27. I am unable to subscribe to the contention of Mr. Tripathi that grant of deemed conveyance will amount to legalising unauthorised construction. Acceptance of such submission will place the Cooperative Housing Societies in a predicament where the Co-operative Housing Society though willing to cure the illegalities/irregularities committed by the Promoter will not be able to do so by reason of absence of ownership rights. It is settled that an application for regularisation can be filed only by the owner of the

structure and without grant of deemed conveyance, the status of the Co-operative Society would bar them even from applying for regularisation or from proceeding with the re-development.

28. The provisions of MOFA impose statutory obligation on the promoter to obtain occupation certificate and the promotor cannot take advantage of its own default and then resist the grant of deemed conveyance on the ground that there is no occupation certificate issued to the structure in respect of which a deemed conveyance is sought. The acceptance of such a defence on the part of promoter would amount to putting the premium on the default which is committed by the promoter. The definition of a promoter under Section 2(c) of the MOFA includes the person who constructs or causes to be constructed the structure and therefore, the owners also fall within the expression “promoter” and are also required to comply with the statutory obligations. Having defaulted in their statutory obligation in obtaining necessary documents and permissions from the Planning Authority, it is now not open for the promoters to then resist the relief of deemed conveyance on the ground that the structures are illegal or no occupation certificate has been granted. The planning regulations permit the owner of the properties to apply for the regularization of the structure and in event the Co-operative Society is granted the deemed conveyance, the same will assist the Society in applying for regularisation of the building, if so permissible in law.

29. The present facts would indicate that the flat purchasers are caught in a vicious circle where though they are put in possession of their flats under validly registered MOFA agreements, they are under a disability from applying for regularization by reason of non compliance of the obligation by the Promoter to obtain the occupation certificate.

30. The reluctance of the Competent Authority to issue the certificate for deemed conveyance stems from the fact that the structure is unauthorised. The grant of deemed conveyance does not have the effect of regularising the unauthorised structure. All that the Competent Authority does is that it steps in the shoes of the Promoter and conveys right, title and interest of the promoters to the flat purchasers. To put it simply, the Owners stand divested of their rights, which right in land and building then vests in the flat purchasers. The grant of deemed conveyance will not bar the planning authorities from taking action against the illegal structure. The issue as to whether the flat purchasers can be deprived of their statutory right to enforce the MOFA obligations against the Promoters on the ground of illegality of the structure, in my view, has to be answered in the negative. The default of Promoters in obtaining the necessary permissions and approvals

cannot impinge the right of the flat purchasers to seek conveyance of the land and structure, even if the structure is unauthorised. I am fortified in my view by the wordings of Section 11(3) of MOFA as irrespective of occupation certificate being placed on record, the Competent Authority can proceed further and after hearing the parties, grant the certificate for enforcing the unilateral deemed conveyance of the property. The order of Competent Authority rejecting the application on the ground of the illegality of the structure, thus, is unsustainable.”

5. Reliance by Mr. Joshi on interim order passed by this Court in ***Janak Chimantal Thacker & Ors.*** (*supra*) does not cut any ice. Apart from the fact that the observations made therein are merely *prima facie*, the said order has already been considered by this Court in ***ALJ Residency Co-operative Housing Society Ltd.*** (*supra*).

6. So far as the judgment of this Court in ***Tushar Jivram Chauhan and Anr.*** (*supra*) is concerned, this Court held in paragraphs 23 and 25 as under:

“23. The future use and utilization of layout also required to be seen. The consent or permission of existing registered Society or consent of all the occupants of the flat/apartment for future development in accordance with law, is also important element before granting such conveyance. The Competent Authority cannot skate it out. The scope and authority and jurisdiction even of summary nature, must be used judicially with the framework of law and Rules, apart from natural justice. If no jurisdiction or authority or restricted power, it must be noted and acted accordingly to avoid further complications of law and the facts.

25. The averment is also made, which also remained uncontroverted, that deemed conveyance order so passed was not communicated and/or known to the Petitioners till June 2014. The Petitioners came to know from one of the members about the order, as well as, the certificate. An Application for certified copy was also moved of entire proceedings. The Petitioners filed the present Petition on 30 June 2014 and challenged the impugned order and certificate. The Respondents, inspite of pendency of the Writ Petition, got registered deemed conveyance dated 18 July 2014, in spite of receipt of notice by Respondent No.3 of the present Petition. Apart from breach of above basic principles, even on merits, there is a substance in the submission so raised by the Petitioners that the conveyance so granted, was beyond the plinth area of the building and that of other area. The entitlement of deemed conveyance, even if any, cannot be beyond the agreement between the parties. The Authorities, based upon the incorrect statement/false statement, passed the impugned order and granted the Certificate. There is nothing to show that the Society is in possession of plot admeasuring 1672.80 sq. mtrs; **the Petitioners and Respondent**

No.4 agreed to convey the Suit premises with entire building with Respondent No.3; there was no Occupation Certificate granted by the Municipal Corporation. Therefore, no question of granting deemed conveyance in favour of Society. It is specifically mentioned in the agreement under MOFA itself, that the plinth area of the "Ganesh Krupa Building" could be conveyed and not entire suit property. The plinth area of new building is 227.87 sq.mtrs. and therefore, there was no question of conveying the property of this area/plot/building No. (A) and (B) consisting of various tenants on the suit property. They will be affected by this conveyance/certificate. The Petitioners have been collecting rent from the said tenants as landlord. There is nothing to show that the agreement of flat purchasers in question, are registered. The agreement so read and referred between Respondent Nos. 2 and 4 was without reading the clauses of the agreement itself, where it is specifically mentioned that only the plinth area 227.87 sq. mtrs. would be conveyed. The order of deemed conveyance is beyond the said area and so also, the certificate. It is also beyond the sanctioned plan submitted by Respondent No.3. The Petitioners have no objection if deemed conveyance is granted in respect of 227.87 sq. mtrs. and not more than that."

(emphasis and underlining added)

7. Mr. Joshi would submit that attention of this Court was not invited to the judgment in ***Tushar Jivram Chauhan*** (*supra*) while rendering the judgment in ***ALJ Residency Co-operative Housing Society Ltd.*** (*supra*). In my view, reliance by Mr. Joshi on judgment in ***Tushar Jivram Chauhan and Anr.*** (*supra*) does not assist the case of the Petitioner since the judgment is rendered before issuance of the Government Resolution dated 22 June 2018. Furthermore, the judgment can otherwise not be read in support of an absolute proposition that in every case, where there is no occupancy certificate, the Competent Authority is rendered without jurisdiction to entertain the application under section 11 of the Act. Under the Government Resolution dated 22 June 2018, while laying down the guidelines for deciding the applications filed under section 11 of the Act, the State Government has permitted production of following documents in place of occupation certificate:

“viii) If the concerned society does not have Occupation Certificate then self-declaration that actual possession of the building has been taken and similarly ready to accept all responsibilities/liabilities regarding the said building and to make an application to the concerned Urban Local Authority for Occupation Certificate after getting Deemed Conveyance. (According to Appendix 5) “

8. Thus, there is no absolute bar for the Competent Authority to entertain an application for deemed conveyance under Section 11 of the Act where the Society is unable to produce occupation certificate in respect of its building. So long as the Society submits a self-declaration that the

actual possession of the building has been taken and that the Society is ready to accept all responsibilities/liability regarding the building as well as to make an application to the planning authority for issuance of occupancy certificate, the Competent Authority can entertain and decide application for issuance of certificate of unilateral deemed conveyance under section 11 of the Act.

9. Mr. Joshi would submit that Government Resolution dated 22 June 2018 merely prescribes guidelines, which do not have statutory force and that the guidelines permitting production of mere self-declaration by the Society in place of occupation certificate cannot obliterate the statutory provisions which mandate production of all requisite documents while conduct of enquiry by the Competent Authority under Section 11 of the Act and the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1964 (**the Rules**). He would rely upon sub-section (3) of Section 11 of the Act, which, according to Mr. Joshi, mandates production of occupancy certificate alongwith application for grant of certificate of unilateral deemed conveyance. However, this aspect again has already been gone into in the judgment in **ALJ Residency**. Even otherwise, provisions of Section 11(3) of the Act use the expression “*including the occupation certificate, if any*”. Use of the words 'if any' would obviously mean that production of occupancy certificate is not a mandatory condition for entertainment of application by the Competent Authority even under section 11 of the Act.

10. In my view, the broad objective behind enacting provisions of Section 11 of the Act must be borne in mind. The objective is to ensure that upon promoter's failure to discharge obligation of transferring his right, title and interest in the land and building in Society's favour in accordance with the agreement executed under section 4 of the Act, the Competent Authority steps in and passes an order for issuance of certificate of unilateral deemed conveyance. By doing so, the Competent Authority ensures that what was required to be done by the Promoter is brought into effect by a deeming fiction of conveyance. Upon issuance of certificate of unilateral deemed conveyance, the collective body of flat purchasers secures title in respect of the land and the building (subject of course to challenge before Civil Court). In a given case, where Society's building is unauthorized on account of absence of occupancy certificate or is likely to be demolished by the Planning Authority, issuance of certificate of unilateral deemed conveyance in fact ensures that the Society retains ownership in respect of the land and in the event of demolition of the building, the Society would be able to reconstruct the building on the land, of which the Society has become an owner. Therefore, the aspect of unauthorized nature of building (on account of absence of occupancy certificate) cannot really be linked with the obligation of the promoter to transfer his right, title and interest in the land and building under Section 11 of the Act. In fact, if production of occupancy certificate is made a pre-condition for grant of deemed conveyance under section 11 of the Act, an errant promoter would take benefit of his own wrong. He would construct building contrary to sanctioned plans, accept bookings for sale of flats therein and not procure

occupancy certificate. He can then approach the Planning Authority for getting the building demolished. If conveyance of the land is not granted in favour of the society in such a case, the Promoter would retain ownership in respect of the land and instead of the society reconstructing the building, it would be the promoter who would be entitled to construct a new building after demolition of earlier unauthorized building. On the contrary, if deemed conveyance of the land is granted in society's favour, whose building is constructed contrary to sanctioned planes, the society can have the same either regularized or, in the worst-case scenario, demolished and reconstructed by conforming to the planning norms. In my view therefore, issuance of certificate of unilateral deemed conveyance under Section 11 of the Act to a building which is yet to receive occupation certificate would in fact fulfill the objective behind the Act and prevent the mischief of promoter taking benefit of his own wrong as discussed above. Section 11 of MOFA is aimed at suppressing the mischief of promoters not conveying the land in society's favour. As grant of deemed conveyance of land to Society whose building is sans occupancy certificate also seeks to suppress the mischief of errant promoter taking benefit of his own wrong, interpretation placed by this Court would not cause any violence to provisions of Section 11 of MOFA.

11. I therefore respectfully agree with the views expressed by Deshmukh *J.* in ***ALJ Residency*** and hold that it is lawful for the Competent Authority to grant deemed conveyance of land and building under Section 11 of MOFA, where the Society's building is yet to be granted occupation certificate, upon submission of self-declaration as mandated under the GR dated 22 June 2018.

6) In the present case as well, occupation certificate is apparently not issued in respect of the building of the society. To that extent, the case would be fully governed by the judgments of this Court in ***ALJ Residency Co-operative Housing Society*** and ***Yogesh Jayant Khadilakar*** (supra). Mr. Deshmukh would however submit that present case involves not just issue of absence of occupation certificate, but the entire construction itself was found to be in excess of the development permission. He would particularly highlight the position that construction of only 1281.72 sq.mts. was sanctioned by the Planning Authority whereas what is actually constructed at the site is 4199.26 sq.mts. He would submit that instead of restricting the land

corresponding to built-up area of 1281.72 sq.mts (as per sanctioned plan), the Competent Authority has erroneously conveyed land corresponding to built-up area of 3239.06 sq.mts.

7) There is no dispute to the position that entire land admeasuring 6500 sq.mts was subjected to agreement executed under provisions of Section 4 of the MOFA. In that view of the matter, the owners as well as promoter are under statutory obligation under Section 11 of the MOFA to convey their right, title and interest in respect of the entire land admeasuring 6500 sq.mts. in favour of the collective body formed by flat purchasers. In that view of the matter, both the factors of (i) utilization of only part of FSI potential of 1281.2 sq. mts and (ii) construction in excess of the sanctioned permission would not have posed nay jurisdictional difficulty for the Competent Authority in entertaining society's application under Section 11 of MOFA. In ***New Sonal Industrial Premises Ltd. Vs. District Deputy Registrar***³ this Court has held that if the entire plot of land is subjected to Agreement under Section 4 of MOFA, mere non-exploitation of entire FSI cannot be a ground for denying deemed conveyance of the entire plot of land. Therefore, mere sanction of built-up area of 1281.2 sq. mts in respect of land admeasuring 6500 sq. mtrs. cannot be a valid ground to upset the order of deemed conveyance. Similarly, action of the promoter in constructing building(s) in contravention of development permission would not provide a license to the landowners to

³ Writ Petition No. 10548 of 2024 decided on 13 February 2025

escape statutory obligation under Section 11 of the MOFA. As observed by this Court in ***Yogesh Jayant Khadilkar*** (supra) the promoter or landowner cannot be permitted to take benefit of a situation where construction of the building is found to be illegal and the building is required to be demolished. Denial of the deemed conveyance of the land would result in a situation where errant developer or the original landowner would continue to claim right in respect of such land and redevelopment of the building would then be carried over by the promoter or landowner by keeping the society out. Thus denial of conveyance would result in loss of right of flat purchasers to reconstruct the building by having the unauthorised building demolished. On the other hand, if conveyance of the land under Section 11 of the MOFA is ensured in favour of the society whose building is found to be not in conformity with development permission, the same would enable the society to pull down the building and construct a new building in accordance with the planning norms.

8) In the present case as well, it appears that existing building has been certified to be not fit for habitation. Society will have to possibly undertake activity of redevelopment of the plot by demolition of existing building. In such circumstances, if conveyance is denied in favour of the society, the Petitioners and Respondent No.3 developer would continue to claim right, title and interest in respect of the land. If the building falls or is pulled down, Petitioners would claim right to construct a new building on account of non-conveyance of land in favour of the

society. This would result in a windfall gain for the land owners, who have already exploited the potential in the land by executing development agreement with the developer. In such a situation, in my view, grant of deemed conveyance in favour of the society in fact upholds objective behind enacting Section 11 of the MOFA.

9) It appears that there are disputes between Petitioners - landowners and Respondent No.3-developer and accordingly, Special Civil Suit No.67 of 2023 has been filed by the landowners seeking to terminate the development agreement. Mere existence of disputes between original landowner and the promoter cannot be a reason for delaying statutory obligation under Section 11 of the MOFA.

10) Considering the overall conspectus of the case I am of the view that the Competent Authority has rightly exercised jurisdiction under Section 11 of the MOFA by granting certificate of unilateral deemed conveyance in favour of Respondent No.2-Society. In exercise of jurisdiction under Article 227 of Constitution of India, this Court would not otherwise come to the assistance of landowners who have already exploited the ownership rights in the land by entering into development agreement with the promoter. The Promoter is not aggrieved by the order of deemed conveyance. The objective behind filing the present petition is to assert right in respect of the land, which was already given for development to the promoter. No

interference is therefore warranted in the impugned order in exercise of jurisdiction under Article 227 of the Constitution of India. Petition is accordingly **rejected**.

11) It is however clarified that upholding of order dated 24 November 2023 in the present Petition shall not come in the way of Respondent No.2-Society in claiming entire land admeasuring 6500 sq.mts by independently setting up a challenge to the order dated 24 November 2023.

[SANDEEP V. MARNE, J.]

Note: This judgment is corrected vide order dated 1 April 2025