

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.997 OF 2025

Shivraj Constructions, through
it's partner

... Petitioner

V/s.

District Deputy Registrar, Coop.
Societies, Thane & Ors.

... Respondents

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Mr. Shrishailya Deshmukh for the petitioner.

Ms. Kavita Solunke, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : MARCH 25, 2025

PC.:

1. The present writ petition, filed under Article 226 of the Constitution of India, assails the legality and propriety of the order passed by respondent no.1, whereby deemed conveyance has been conferred in favour of respondent no.2 in respect of the land bearing Survey No. 47/1-CB, situated in Village Panchpakhadi, Taluka and District Thane, to the extent of 579.63 square meters. The petitioner impugns the said order on the ground that the conferment of deemed conveyance does not account for the reduction in the area of the layout, which occurred subsequent to the agreements executed under Section 4 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management, and Transfer) Act, 1963 (hereinafter referred

to as "MOFA Act").

2. The learned counsel appearing on behalf of the petitioner submits that the petitioner has stepped into the shoes of the promoter, who had originally entered into agreements with the members of respondent no.2 society in respect of Building No.B, as per the sanctioned layout plan, over a net plot admeasuring 579.63 square meters. It is contended that, at the time of execution of the agreements under Section 4 of the MOFA Act, the plot area forming part of the agreement with the members of respondent no.2 society was 579.63 square meters. However, post-execution of the said agreements, a substantial portion of the land was acquired for public purposes, resulting in a reduction in the overall area of the layout. Consequently, it is the case of the petitioner that the entitlement of respondent no.2 to deemed conveyance should have been proportionately reduced by the competent authority to reflect the actual area available after such acquisition. The petitioner, therefore, asserts that the competent authority has erred in failing to take into consideration the diminished layout area while adjudicating the claim for deemed conveyance.

3. It is a well-settled principle that the competent authority, while exercising its jurisdiction under Section 11 of the MOFA Act, is required to adjudicate upon the rights and obligations of both the promoter and the association of flat purchasers, as derived from the agreements executed under Section 4 of the MOFA Act. In the present case, it is undisputed that the area initially promised to be conveyed in favour of the members of respondent no.2 society

was 579.63 square meters. However, if post-execution of the agreements, the area of the entire layout stands reduced due to factors beyond the control of the parties, such as acquisition for public purposes, then the question of proportionate adjustment in the area available for conveyance arises. The competent authority, being a statutory body exercising limited jurisdiction under Section 11 of the MOFA Act, is not empowered to undertake a detailed adjudication of such issues, particularly where disputed questions of title or proportionate adjustment of land are involved. In such circumstances, the appropriate remedy available to an aggrieved person, such as the petitioner, is to institute civil proceedings before a competent civil court for seeking adjudication of his rights in relation to the deemed conveyance conferred in favour of respondent no.2. Therefore, while the deemed conveyance granted by the competent authority under Section 11 of the MOFA Act may hold good for the purpose of procedural compliance under the Act, the same cannot be regarded as final and binding upon the petitioner insofar as his civil rights are concerned. The petitioner's right to claim proportionate adjustment of the area, following the acquisition, remains unaffected by the said order.

4. In view of the foregoing discussion, it is held that the issue of proportionate reduction in the area of the layout, and the extent of land that can be lawfully conveyed to respondent no.2, are matters requiring adjudication by a competent civil court. Accordingly, all contentions raised by the petitioner in the present proceedings are kept open to be agitated before the appropriate forum, including the question of the actual extent of land that should be the subject

of deemed conveyance in favour of respondent no.2 society. With these observations, the petition stands disposed of, leaving it open to the petitioner to pursue appropriate legal remedies in accordance with law.

(AMIT BORKAR, J.)