

Shabnoor

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

WRIT PETITION NO.1036 OF 2025

Brahmani Builders
The Proprietor Firm
Through Dhiren Derasari ... Petitioner
V/s.
Shri Krishna Rukhmini Co-operative
Housing Society Ltd. & Ors. ... Respondents

Mr. Sagar A. Joshi for petitioner.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 30, 2025

P.C.:

1. The present petition assails the order passed by the Competent Authority under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management, and Transfer) Act, 1963 (“MOFA Act”), granting deemed conveyance in favor of Respondent No. 1 – Society. It is pertinent to note that Section 11 of the MOFA Act empowers the Competent Authority to issue a deemed conveyance certificate, ensuring statutory enforcement of the promoter’s obligation to execute conveyance in favor of the society, thereby safeguarding the interests of flat purchasers and preventing

indefinite delays in conferring lawful title.

2. The petitioner asserts that the impugned order erroneously confers upon Respondent No. 1 – Society an area exceeding the specifications delineated in the development agreement and the sanctioned plan approved under the Maharashtra Regional and Town Planning Act, 1966. This divergence, according to the petitioner, not only contravenes the contractual covenants binding the parties but also disrupts the statutory framework governing property rights, as the sanctioned plan constitutes the foundational document regulating permissible construction and entitlements.

3. The legal position governing the controversy is settled by the authoritative pronouncement of the Division Bench in **Zainul Abedin Yusufali Massawawala & Ors. vs. Competent Authority, District Deputy Registrar of Co-operative Housing Societies, Mumbai & Ors. (2016 SCC OnLine Bom 6028)**. The Court, while adjudicating a challenge to a deemed conveyance order premised on analogous claims of excess area, unequivocally delineated the contours of the Competent Authority's jurisdiction under Section 11 of the MOFA Act. The Division Bench, in paragraph 9 of its judgment, underscored the following principle:

“9... The Competent Authority, while discharging its function under Section 11 of the MOFA Act, acts in an executive capacity to enforce the promoter’s statutory obligation to execute conveyance as per the existing agreements and sanctioned plans. It lacks adjudicatory authority to resolve title disputes or interpret contractual terms expansively. Should the Authority transgress these boundaries—as alleged here by permitting the society to claim a larger property contrary to the development agreement—the aggrieved party’s remedy lies not in writ jurisdiction under Article 226 of the Constitution, but before a competent civil court. The civil court, vested with plenary jurisdiction under Section 9 of the Civil Procedure Code, 1908, is the appropriate forum to adjudicate competing claims of title, ownership, and contractual interpretation, including allegations of erroneous reliance on covenants by the Competent Authority.”

4. In light of the foregoing discussion, the petitioner’s grievances pertaining to alleged encroachment upon its proprietary rights and contractual breaches necessitate adjudication through a

comprehensive civil trial. The Competent Authority's findings, limited to ensuring compliance with statutory conveyance obligations, shall not operate as res judicata or influence the civil court's independent evaluation of the parties' rights under the Specific Relief Act, 1963, or other applicable laws. The civil court shall examine the matter de novo, untrammelled by observations in the impugned order or this judgment, and determine the entitlement to the disputed area based on evidence adduced, including the development agreement, title documents, and sanctioned plans.

5. For the reasons elaborated above, this Court finds no grounds to exercise its extraordinary writ jurisdiction under Article 226, particularly when an efficacious alternative remedy exists. The writ petition is accordingly disposed of, with a clarificatory direction that the dismissal shall not prejudice the petitioner's right to pursue civil remedies. In the interests of justice, the parties shall bear their respective costs.

(AMIT BORKAR, J.)