

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

WRIT PETITION NO.1765 OF 2024

V.M. Group through its proprietor
Vijay Mohanlal Tapadia

...Petitioner

V/s.

The Competent Authority, The
District Deputy Registrar and Ors.

...Respondents

Mr. Yogeshwar Bhate with *Mr. Kuldip T. Pawar, Ms. Aishwarya S. Shinde and Ms. Akanksha Bhobate for the Petitioner.*

Mr. P.G. Sawant, AGP for Respondent No.1-State.

Mr. Amolkumar Jadhav for Respondent Nos.2 and 3 (through VC)

CORAM: SANDEEP V. MARNE, J.

DATED: 23 JUNE 2025.

Oral Order:

1) Petition challenges order dated 4 October 2023 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Pune city, Pune, granting certificate of unilateral deemed conveyance in favour of Respondent No.2-society by which land admeasuring 2507.19 sq.mts. together with construction admeasuring 4291.761 sq.mts. has been directed to be conveyed in favour of Respondent No.2-Society.

2) I have heard Mr. Bhate, the learned counsel appearing for the Petitioner, Mr. Sawant, the learned AGP for Respondent No.1-State and Mr. Jadhav, the learned counsel appearing for Respondent Nos.2 and 3. I have gone through the order passed by the Competent Authority as well as the records of the case filed alongwith the Petition.

3) The main complaint of the Petitioner is that he was not made aware about proceedings for deemed conveyance filed by Respondent No.2-Society. It appears that Respondent No.2-Society initially served notice dated 10 March 2023 on the Petitioner demanding conveyance of the land. The society thereafter filed application under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**MOFA**) seeking unilateral deemed conveyance of the land and building. The Competent Authority issued notice to the Petitioner on 8 May 2023. The notice was dispatched on the office address of the Petitioner. However, it appears that the Petitioner failed to appear before the Competent Authority. Therefore, the public notice was published on 7 June 2023 in daily '*Punyanagri*' in respect of date of hearing of the application of deemed conveyance. Petitioner once again failed to remain present before the Competent Authority. It is contended that the Petitioner underwent surgery on 24 February 2023 and did not attend his office for a period of six months, which remained shut. It is contended that neither Petitioner nor any of his employees were in the office for a period of six months. Reliance is placed on

documents being fitness certificate dated 23 February 2023 as well as certificate issued by Medical Officer of Yogesh Hospital in support of claim that Petitioner was hospitalised from 25 February 2023 to 27 February 2023. However, there is no document on record to indicate that the Petitioner was sick after 27 February 2023.

4) During the course of his oral submissions, Mr. Bhate has in fact suggested that development in respect of the entire layout spread over land admeasuring 12,100 sq.mts. is still incomplete. Petitioner has apparently taken up vast tract of land for development. It is therefore difficult to believe that neither Petitioner nor his employees were in the office when the notice of the proceedings was dispatched. On account of Petitioner's refusal to appear before the Competent Authority, Respondent No.2-Society took the steps of publishing the notice in local newspaper. In my view therefore, sufficient steps are taken by the Society so as to secure presence of the Petitioner before the Competent Authority. In that view of the matter, the complaint sought to be raised on behalf of the Petitioner about violation of principles of natural justice cannot be accepted.

5) During the course of hearing of the Petition, this Court enquired with Mr. Bhate as to the exact objection that the Petitioner has to the order of deemed conveyance. He has cited the following four broad objections:

- (i) That flat purchaser did not pay the entire amount of consideration;

- (ii) Execution of the entire project is still incomplete;
- (iii) There is balance FSI in the land, in which Petitioner is entitled to put up additional construction; and
- (iv) That the land has been mortgaged with the Bank.

6) In my view, none of the above grounds are germane for the purpose of deciding application for deemed conveyance. If Petitioner believes that any of the flat purchasers have not paid full amount of consideration for purchase of the flat, remedy of the Petitioner lies elsewhere. He needs to file suit for recovery of unpaid consideration. Non-payment of consideration cannot be a ground for opposing Society's application for deemed conveyance.

7) So far as layout development is concerned, the Government Resolution of 22 June 2018 permits conveyance of such portion of land on which development is complete. It cannot be that the statutory obligation put on the promoter of conveying the land and building under Section 11 of MOFA can be indefinitely delayed till the promoter takes his own sweet time in completing the development of the layout. Therefore, incomplete development of the layout cannot be a ground for rejecting the prayer of the society for deemed conveyance.

8) So far as the ground of exploitation of balance FSI in the land is concerned, it is seen that the Competent Authority has granted deemed conveyance of land admeasuring 2507.19 sq.mts. out of total land of 12,100 sq.mts. Thus, the Petitioner is free to develop the balance portion of the land and the order

passed by the Competent Authority would not come in his way in completing the balance construction in the layout.

9) The last objection of the land being mortgaged with financial institutions again does not cut any ice. Merely because promoter has mortgaged the land for raising finances, same cannot be a ground for escaping the statutory obligation under Section 11 of the MOFA.

10) It is well settled position of law that grant of unilateral deemed conveyance of land and the building does not prevent an aggrieved party from maintaining a suit challenging conveyance of land in favour of a society. Reference in this regard can be made to the recent judgment of the Apex Court in ***Arunkumar H. Shah HUF Vs. Avon Archade Premises Co-operative Society Limited***¹. Therefore, if Petitioner or any financial institution is aggrieved by conveyance of land in favour of Respondent No.2-Society they are free to adopt their remedy by filing civil suit in this regard. It is seen that Competent Authority has granted conveyance of land admeasuring 2507.19 sq.mts out of total land admeasuring 12,100 sq.mts. after perusing Architect's certificate dated 27 March 2023 relied upon by the Society. The said certificate is issued after perusal of the sanctioned plan by the Planning Authority. Except making bald grievances of conveyance of incorrect area of land in favour of Respondent No.2-Society, Petitioner has not produced his certificate of Architect demonstrating that society is entitled to

¹ Civil Appeal No.5377 of 2025, decided on 21 April 2025.

conveyance of lesser portion of land. Even when the Petition is called out for hearing today, no document is produced before me to demonstrate any error in the area conveyed.

11) Impugned order is thus unexceptionable. I am therefore not inclined to interfere in the impugned order dated 4 October 2023 passed by the Competent Authority. Writ Petition is devoid of merits and it is accordingly **dismissed**.

[SANDEEP V. MARNE, J.]