

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

WRIT PETITION NO. 4176 OF 2024

M/s. Pragati Corporation Through Its

Partner Arun Ratilal Patel & Anr.

... Petitioners

Versus

Neeldhara Co-Operative

Housing Society Ltd And Ors.

... Respondents

Mr. Vineet B. Naik, Senior Advocate *a/w Ms. Gunjan Jayakar & Mr. Miheer S Jayakar, for the Petitioners.*

Mr. Karl Tamboly *a/w Mr. Mutahhar Khan and Mr. Medhavin Bhatt i/b MV Law Partners, for Respondent No.1.*

Ms. Priyanka Chavan, AGP *for Respondent-State.*

CORAM : SANDEEP V. MARNE, J.

DATE : 28 APRIL 2025.

P.C. :

1) The Petition challenges order dated 27 September 2023 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Mumbai City (4) issuing certificate of unilateral deemed conveyance of land admeasuring 1759.34 sq. mtrs. alongwith undivided rights in the FSI advantage of DP Road area admeasuring 697.45 sq.mtrs. in favour of Respondent No.1-Society.

2) I have heard Mr. Naik, the learned senior advocate appearing for the Petitioner and Mr. Tamboly, the learned counsel

appearing for Respondent No.1 and Ms. Chavan, the learned AGP appearing for the Respondent-State.

3) It appears that the total plot area taken up for development is 3203.30 sq.mtrs. Land admeasuring 841.40 sq.mtrs. was required to be deducted for construction of DP road. Similarly there was deduction of land admeasuring 408.91 sq.mtrs. for reservation of garden. After deducting the land for DP road and garden, the net plot area available for development was 1953.00 sq.mtrs. It appears that for reservation for DP road FSI, credit of 841.40 sq.mtrs. was given in favour of the Developer and accordingly the total permissible built-up area in respect of the plot was 2794.40 sq.mtrs. The plan submitted by the Petitioner-Developer, which got approved in the year 2010, shows that FSI of 0.89 was consumed while submitting the plans for construction and therefore it was decided to construct two buildings by utilising FSI of only 2495.49 sq.mtrs. Even though the total built-up area as per FSI of 1.00 was 2794.40 sq.mtrs. as per the sanction plan of 2010, the consumed FSI of 2495.49 sq.mtrs. was divided into the building of the first Respondent-Society of 2247.71 sq.mtrs. and the balance built-up area of 247.78 sq.mtrs. was reserved for Building No. 2 (which is yet to be constructed). It appears that an Occupancy Certificate has been procured in respect of the building of the first Respondent-Society based on the 2010 sanctioned plan.

4) The Architect of the first Respondent-Society has accordingly divided the total land admeasuring 1953 sq.mtrs. by considering proportionate built-up area of the first Respondent-Society and the area reserved for Building No.2. By taking into consideration the built-up area utilised for the building of the first

Respondent-Society as 2247.71 sq.mtrs., the Architect has allotted 90.07% share in the land to the first Respondent-Society. Similarly by taking into consideration the built-up area of 247.78 sq.mtrs. reserved for Building No.2, he has allotted 9.93% share in the land for Building No.2. This is how the total land area of 1953 sq.mtrs. is divided amongst the two buildings are as under:

- i) Building of first Respondent-Society - 1759.07 sq.mtrs.
- ii) Building No. 2 - 193.93 sq.mtrs.

5) The Architect has thereafter granted proportionate share in the FSI advantage of DP road area in respect of both the buildings and accordingly recommended FSI advantage to the first Respondent-Society of 697.45 sq.mtrs.

6) Now what is sought to be done by the Petitioner-Promoter is to make calculations on the basis of FSI of 1.00 to impress upon this Court that the total built-up area permissible in respect of plot admeasuring 1953 sq.mtrs. was 2794.40 sq.mtrs. and after deducting the built-up area consumed for constructing the building of the first Respondent-Society (2247.71 sq.mtrs.), what must be left to be utilised by the Petitioner is not 247.78 sq.mtrs, but built-up area admeasuring 546.69 sq.mtrs. It is therefore contended that proportionate sub division needs to be made on the basis of built-up areas of Respondent-Society of 2247.71 sq.mtrs. and of Petitioner of 247.78 sq.mtrs.

7) In my view, mere an utilized FSI potential in the land cannot be a ground for denial of deemed conveyance of land

proportionate to the built-up areas sanctioned for various buildings in the layout. Once the plans are sanctioned and built-up area of each buildings are crystalised in such plan without reserving any portion of land for any further development, mere availability of balance/additional FSI in future cannot be a ground for allotment of additional share in the land to a developer in respect of unconstructed building. FSI is a dynamic concept which changes (mostly increases) with passage of each day. This increasing trend in the permissible FSI cannot put the developers to an advantageous position. In the present case, the Petitioner-developer was supposed to complete the construction as per the 2010 sanctioned plan by constructing the Building No. 1 (Respondent Society) and Building No. 2. For some reason, the Petitioner was unable to complete construction of Building No. 2, which was to be constructed with built-up area of 247.78 sq.mtrs. If the construction of both the buildings would have been completed contemporaneously, Petitioner would not have been able to utilize the alleged balance FSI or additional FSI for carrying out any further construction on the plot and the conveyance would have been proportionate to the built-up areas sanctioned in the said plan for both the buildings. Mere inability of Petitioner to complete construction of Building No. 2 therefore cannot put him to an advantageous position by claiming the alleged balance FSI for construction of unconstructed Building No.2 for claiming higher share in the land.

8) In my view, the Society's Architect has rightly done the calculations dividing the land proportionate to the actual built-up area reflected in the 2010 sanctioned plan. Merely because the Developer has not consumed the entire FSI at the time of getting the plan sanctioned in the year 2010, it cannot be contended that conveyance of the land proportionate to the built-up area indicated

in the same cannot be granted by the Competent Authority. The view taken by the Competent Authority by dividing the land proportionate to the built-up area in respect of two buildings as per the sanctioned plan of 2010 appears to be a plausible view. Therefore, no manifest illegality is traced in the impugned order passed by the Competent Authority on 27 September 2023. The Apex Court in its recent decision in ***Arunkumar H. Shah Vs. Avon Arcade Premises Co-operative Society Limited & Ors.***¹ has held in paragraphs 35 and 37 as under:

35. The MOFA is a beneficial legislation enacted to protect home buyers, considering the ever-increasing housing shortage in urban areas. The Legislature has noted the increasing malpractices by the developers. The provisions of Section 11 are for the benefit of the flat purchasers. In writ jurisdiction, the Court should not interfere with the order granting deemed conveyance under Section 11 (4), unless the order is manifestly illegal. The writ court should generally be slow in interfering with such orders. The reason is that, notwithstanding the order under Section 11(4), the remedy of aggrieved parties to file a civil suit remains open. In this case, substantial justice has been done by protecting the appellant's rights as a perpetual lessee with a right to develop the Arun plot. Therefore, interference in writ jurisdiction was not warranted.

37. Our conclusions on the interpretation of subsections (4) and (5) of Section 11 of the MOFA are as under:

i. It is no doubt true that quasi-judicial powers have been conferred on the competent authority while dealing with applications under Section 11(3) of the MOFA. However, proceedings before the competent authority under Section 11(3) are of a summary nature, as can be seen from the MOFA Rules. Therefore, the competent authority, while passing the final order, must record reasons;

ii. The competent authority, while following the summary procedure, cannot conclusively and finally decide the question of title. Therefore, notwithstanding the order under sub-section (4) of Section 11, the aggrieved parties can always maintain a civil suit for establishing their rights;

iii. The provisions of Section 11 are for the benefit of the flat purchasers. In writ jurisdiction, the Court should not interfere with the order granting deemed conveyance unless the same is manifestly illegal. The writ court should generally be slow in interfering with such orders. The reason is that, notwithstanding

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

the order under Section 11(4), the remedy of aggrieved parties to file a civil suit remains open; and

iv. The registering officer has no power to sit in appeal over the order of the competent authority while exercising the power under Section 11(5). He can refuse registration only on the grounds indicated in paragraph 23 above and not beyond. Thus, the scope of the powers conferred on the registering officer is limited.

9) The view taken by the Competent Authority in the order dated 27 September 2023 being plausible view, I am not inclined to interfere in the impugned order. The Petitioner would ofcourse be at liberty to file a declaratory suit in the event it believes that it is entitled to ownership of land in excess of what is reserved for it by the Competent Authority in the impugned order. Reserving the liberty as observed above, the Petition is accordingly **rejected**.

[SANDEEP V. MARNE, J.]