

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

**WRIT PETITION NO.5292 OF 2024**

M/s. Arihant Developers & Anr.

....Petitioners

V/S

State of Maharashtra & Ors.

....Respondents

**WITH  
WRIT PETITION NO.5126 OF 2024**

M/s. Arihant Developers & Anr.

....Petitioners

V/S

State of Maharashtra & Ors.

....Respondents

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**Mr. Shailendra S. Kanetkar** *for the Petitioners.*

**Ms. V.S. Nimbalkar, AGP** *for Respondent / State in WP 5292 of 2024.*

**Ms. M.S. Bane, AGP** *for Respondent / State in WP 5126 of 2024.*

**Mr. Rajesh More** *for Respondent No.3 in WP 5292 of 2024.*

**Mr. Gurunath B. Walawalkar** *i/b Mr. Shankar P. Thorat for Respondent No.3 in WP 5126 of 2024.*

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**CORAM: SANDEEP V. MARNE, J.  
DATE : 29 APRIL 2025.**

**P.C.:**

1. Writ Petition No.5292 of 2024 is filed challenging the order dated 30 May 2022 passed by Competent Authority and District Deputy Registrar, Co-operative Societies, Pune City, granting unilateral deemed conveyance of land admeasuring 1200 square

meters and construction admeasuring 1075.93 square meters in favour of third Respondent-Society.

2. Writ Petition No.5126 of 2024 is filed challenging order dated 28 August 2023 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Pune City, granting unilateral deemed conveyance of land admeasuring 732.60 square meters and construction admeasuring 657.75 square meters in favour of the third Respondent-Society therein.

3. I have heard Mr. Kanetkar, the learned counsel appearing for Petitioners in both the Petitions. I have also heard Mr. More, the learned counsel appearing for the third Respondent-Society in Writ Petition No.5292 of 2024 and Mr. Walawalkar, the learned counsel appearing for the third Respondent-Society in Writ Petition No.5126 of 2024.

4. The first objection to the impugned orders of deemed conveyance raised by Mr. Kanetkar is the lay-out development undertaken by the Petitioner-Developer. Referring to the relevant clauses of agreements executed under Section 4 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**MOFA**), Mr. Kanetkar would submit that it was agreed between the parties that an Association of Apartments would be formed

by the flat purchasers and conveyance of the entire land in the lay-out shall be made in favour of Federation of such Association. He would submit that the flat purchasers of Buildings A and B have illegally formed Co-operative Housing Societies. However he would fairly admit that no challenge is set up by the Petitioner-Developer to formation of Co-operative Housing Societies by flat purchasers of Buildings A and B.

5. In fact Mr. More would point out that the clause for formation of the federal society is against the provisions of Section 2(13) of the Maharashtra Co-operative Societies Act, 1960 which requires minimum of five Co-operative Societies coming together for forming of a federal society. So far only three buildings are constructed/being constructed in the lay-out and it is otherwise inconceivable as to how a federal society could otherwise have been formed.

6. So far as the contention of Mr. Kanetkar about impermissibility to grant deemed conveyance in favour of the Societies of Buildings A and B in the light of incomplete development of the lay-out is concerned, the provisions of Government Resolution dated 22 June 2018 are clear. Under that Government Resolution, it is permissible for Society to apply for deemed conveyance of the land upon completion of construction of the building and issuance of occupancy certificate, notwithstanding the fact that the development of the

entire lay-out is still incomplete. Thus by now it is well settled position of law that mere non-completion of development of the lay-out cannot be a ground for non-conveyance of proportionate land in favour of the Society.

7. Therefore the objection about impermissibility to convey the lands in the lay-out in favour of the two Societies involved in both the Petitions deserves to be rejected.

8. So far as Writ Petition No.5292 of 2024 is concerned, it appears that construction of Building A was undertaken on plot admeasuring 00 H. 12 R i.e. 1200 square meters, which is described as 'plot' under Schedule-I to the flat purchase agreement. The Competent Authority has accordingly directed conveyance of the entire land admeasuring 1200 square meters in favour of Arihant Aastha Co-operative Housing Society Limited (formed in respect of Building A). It appears that Petitioner failed to remain present in proceedings before the Competent Authority despite receipt of notice. No material is produced before this Court to demonstrate as to how the said Society is not entitled to the land admeasuring 1200 square meters in the lay-out. I am therefore unable to trace any patent illegality in the order dated 30 May 2022 passed by the Competent Authority, which is subject matter of challenge in Writ Petition No.5292 of 2024.

9. So far as Writ Petition No.5126 of 2024 is concerned, the sanctioned plan dated 14 December 2015 would indicate that construction of two Buildings named Wing B and Wing C has been undertaken on land admeasuring 1795 square meters. Arihant Aastha Wing-B Co-operative Housing Society Limited relied upon certificate of the Architect dated 19 October 2022 certifying that the total built-up area consumed for Building Wing B is 657.75 square meters. Accordingly the Architect recommended conveyance of proportionate land admeasuring 732.60 square meters in favour of the Society. Petitioner has not produced any material to contradict the said certificate of the Architect. Certificate dated 24 April 2023 of Jay Aeram relied upon by the Petitioner at Exhibit-H to the Petition does not carry out the exercise of proportionate division of the land in proportion to the built-up area of buildings constructed in the lay-out. Therefore the said certificate cannot be relied upon for the purpose of finding any fault in the calculations made by Society's Architect by dividing the land as per built-up area permitted in the sanctioned plan dated 14 December 2015. I am therefore, unable to trace any patent error even in the impugned order dated 28 August 2023 passed by the Competent Authority which is subject matter of challenge in Writ Petition No.5126 of 2024.

10. Before parting, a reference needs to be made to the recent judgment of the Apex Court in ***Arunkumar H. Shah HUF vs. Avon Arcade Premises Co-operate Housing Society Limited***

**and Others.** (Civil Appeal No.5377 of 2025, decided on 21 April 2025). The Apex Court has held that High Court cannot interfere in the order granting unilateral deemed conveyance unless the order is manifestly illegal. The Apex Court 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.

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37. Our conclusions on the interpretation of sub- sections (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 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.

11. I am unable to locate any manifest illegality in the orders which are impugned in the present Petitions. Therefore there is no warrant for interference in the impugned orders. If the Petitioner believes that the land conveyed in favour of the Respondent-Societies is excessive, Petitioner would be at liberty to seek a declaration by filing a Civil Suit. The Writ Petitions are accordingly **rejected**.

**(SANDEEP V. MARNE, J.)**

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