

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

WRIT PETITION NO.6633 OF 2024

Om Kalpataru Co-operative
Housing Society Ltd.

....Petitioner

V/S

M/s. N.K.T. Builders Pvt. Ltd. & Ors.

....Respondents

Mr. Kishor Patil i/b Mr. Pratik Rahade *for the Petitioner.*

Mr. Rajesh Dubey i/b Ms. Shradha Agrawal *for Respondent Nos.1 and 2.*

Ms. Dhruti Kapadia, AGP *for Respondent Nos.3 / State.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 7 APRIL 2025.**

P.C.:

1. **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, the Petition is taken up for hearing and final disposal.

2. The Petition challenges order dated 20 February 2024 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies, Thane, granting unilateral deemed conveyance of land admeasuring 3558.92 square meters out of total land admeasuring 5360.03 square meters in favour of the Petitioner-Society. The Petition is filed to the limited extent

of denial of proportionate share in land reserved for recreational ground and internal roads.

3. I have heard Mr. Patil, the learned counsel appearing for Petitioner, Mr. Dubey, the learned counsel appearing for Respondent Nos.1 and 2 and Mr. Kapadia, the learned AGP appearing for Respondent No.3/State.

4. After having considered the submissions canvassed by the learned counsel appearing for parties, it appears that the total area of land taken up for development is 5360 square meters. There are two buildings on the said land. In respect of one building, Petitioner-Society has been formed and in respect of other structure, there are apparently occupiers claiming the status of tenancy (tenanted structure) . The Society's Architect has made calculations about FSI consumed for construction of both the buildings. As per the Architect Certificate, out of land admeasuring 5360 square meters, land admeasuring 378.25 square meters is utilised in internal roads whereas land admeasuring 804.00 square meters is reserved for Recreational Ground (**RG**). Thus the balance plot area is 4177.75 square meters, on which the total permissible built-up area is 4177.55 square meters with 1.00 FSI. The Architect has considered the built-up of area of tenanted structure as 604 square meters whereas built-up area of building of the Petitioner-Society as 3558.80 square meters. The Architect has thereafter divided the

land in proportion to the built-up area consumed for construction of both the structures. The Society will have share of 85.5% in the land whereas the Respondent Nos.1 and 2 shall continue to own land representing 14.5% in the layout. The Architect has thereafter divided the balance plot area 4177.75 square meters corresponding to the utilisation of built-up area and held that Petitioner-Society would be entitled to conveyance of land admeasuring 3571.58 square meters whereas Respondent Nos.1 and 2 shall be entitled to retain balance land of 606.17 square meters in respect of the tenanted structure. The Architect has thereafter divided the land utilised for internal roads and RG. Petitioner-Society's entitlement in land utilised for internal road is 325.3 square meters and for RG is 687.34 square meters.

5. The Petitioner-Society does not claim any rights in respect of land admeasuring 606.17 square meters left in the balance plot area for the tenanted structure. It similarly does not have any objection for grant of proportionate area in RG and internal roads to the tenanted structure corresponding to consumption of built-up area for its construction.

6. The Competent Authority has committed an error in not conveying proportionate share of Petitioner-Society in land utilised for internal roads and RG on the ground of pendency of Suit filed by Respondent Nos.1 and 2 against the occupiers, who

are claiming status as tenants. In my view, pendency of such Suit cannot come in the way of Petitioner-Society securing proportionate area in land utilized for internal roads and RG. The Competent Authority ought to have conveyed in favour of the Petitioner-Society, proportionate share of 687.34 square meters in RG area and 323.37 square meters in internal roads area in favour of the Petitioner-Society. In my view therefore, the proceedings deserve to be remanded to the Competent Authority for issuance of modified certificate of unilateral deemed conveyance.

7. The Petition succeeds accordingly. Order dated 20 February 2024 passed by the Competent Authority is set aside. Application No.655 of 2023 is remanded on the file of Competent Authority for limited purpose of issuance of modified certificate of unilateral deemed conveying land admeasuring 3571 square meters in balance plot area in addition to proportionate share of 687.34 square meters in RG area and 323.37 square meters in internal roads area. The Competent Authority shall issue the modified certificate of unilateral deemed conveyance in an expeditious manner preferably within a period of eight weeks.

8. With the above directions, the Petition is partly allowed and **disposed of**. Rule is made partly absolute.

(SANDEEP V. MARNE, J.)