

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

WRIT PETITION NO.8433 OF 2024

Rupali Diwakar Mhatre
V/S

....Petitioner

Leela Kenare Co-op. Housing Society & Ors.

....Respondents

Mr. Rajendra K. Vaingankar *for the Petitioner.*

Mr. Shubham Mishra i/b M/s. Shah & Furia Associates *for Respondent No.1.*

Ms. Snehal S. Jadhav, AGP *for Respondent.*

**CORAM: SANDEEP V. MARNE, J.
DATE : 17 FEBRUARY 2025.**

P.C.:

1. The Petition challenges order dated 29 February 2024 passed by the District Deputy Registrar and Competent Authority granting certificate of unilateral deemed conveyance of land and building in favour of Respondent No.1-Society.

2. Petitioner essentially has three objections to unilateral deemed conveyance of the land and the building. Firstly, he submits that he has not been paid due consideration arising out of the Development Agreement, which according to him is not even registered. Secondly, the Petitioner submits that the building does not have full occupancy certificate. Thirdly it is

contended that though Petitioner also owns a flat in Society's Building, the Society has refused to issue share certificate in his name.

3. So far as Petitioner's contention about the developer not securing development right out of the Development Agreement and Petitioner not receiving due amount of consideration payable under the said Development Agreement are concerned, the same are irrelevant for the purpose of conduct of enquiry under Section 11 of the Maharashtra Ownership Flats Act, 1963 (**MOFA**). Petitioner will have to file a suit either seeking specific performance of the Development Agreement or challenging the conveyance of land in favour of the Respondent No.1-Society.

4. So far as non-issuance of occupancy certificate in respect of entire portion of the building is concerned, this Court has already taken a view in ***ALJ Residency Co-operative Housing Society Ltd. vs. State of Maharashtra and others***, 2024 SCC OnLine Bom. 3638, that there is no fetter for the Competent Authority in entertaining and deciding application for deemed conveyance in absence of occupancy certificate for Society's building.

5. So far as the grievance of the Petitioner about refusal on the part of the Society to issue share certificate is concerned,

Petitioner will have to exercise appropriate remedy in that regard.

6. I therefore do not find any reason to interfere in the impugned order dated 29 February 2024. Reserving the liberty to the Petitioner to exercise appropriate remedies *qua* his grievances, the Petition is **rejected**. No order as to costs.

(SANDEEP V. MARNE, J.)

Digitally signed
by
SUDARSHAN
RAJALINGAM
KATKAM
Date:
2025.02.21
10:20:12 +0530