

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8864 OF 2024

Ganesh Perna Co-operative Housing
Society Ltd.

....Petitioner

: *Versus* :

The Competent Authority and District
Deputy Registrar, Co-op. Soc. Thane & Ors.

....Respondents

ALONGWITH
WRIT PETITION NO. 8867 OF 2024

Vandana Co-operative Housing Society Ltd.

....Petitioner

: *Versus* :

The Competent Authority and District
Deputy Registrar, Co-op. Soc. Thane & Ors.

....Respondents

ALONGWITH
WRIT PETITION NO. 8868 OF 2024

Upasana Co-operative Housing Society Ltd.

....Petitioner

: *Versus* :

The Competent Authority and District
Deputy Registrar, Co-op. Soc. Thane & Ors.

....Respondents

ALONGWITH
WRIT PETITION NO. 9076 OF 2024

Ganesh Prarthana Co-operative Housing Society Ltd.Petitioner

: *Versus* :

The Competent Authority and District
Deputy Registrar, Co-op. Soc. Thane & Ors.

....*Respondents*

Mr. Bishwajeet Mukherjee *with Ms. Humara Syed and Mr. Pranav Nair, for the Petitioners.*

Mr. Aseem Naphade, *with Ms. Rajshree Dhole i/by. Samatva Legal Associates, for Respondent No.3.*

Mr. R.S. Pawar, *AGP for State in WP-8864-2024.*

Mrs. Vaishali S. Nimbalkar, *AGP for State in WP-8867-2024.*

Mrs. M.S. Shrivastava, *AGP for State in WP-8868-2024.*

Ms. A.A. Nadkarni, *AGP for State in WP-9076-2024.*

CORAM : SANDEEP V. MARNE, J.

Dated : 20 March 2025.

P.C. :

1) The present petitions challenge the orders dated 28 March 2024 passed by the District Deputy Registrar, Co-operative Societies, Thane and Competent Authority rejecting the applications filed by the Petitioner-Societies under the provisions of Section 11 of Maharashtra Ownership Flats (Regulation of Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**MOFA**) for grant of unilateral deemed conveyance.

2) I have heard Mr. Mukherjee, learned counsel appearing for the Petitioner-Societies and Mr. Naphade, learned counsel appearing for Respondent No.3.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, and after going through the orders passed by the Competent Authority, it appears that one of the reasons why the Competent Authority has refused to exercise jurisdiction vested in it under Section 11 of MOFA, is incomplete development of the layout. The Competent Authority has held that the applications preferred by the Petitioner-Societies could not be decided at that stage as the same were premature. In my view, merely because development in a layout is incomplete, the same cannot be a reason for not deciding the applications for deemed conveyance. Once Occupancy Certificate is issued in respect of a building constructed in a layout and Co-operative Housing Society is formed by the flat purchasers, the Society can file an application for unilateral deemed conveyance of land and building under Section 11 of MOFA. The Government Resolution dated 22 June 2018 clearly contemplates grant of unilateral deemed conveyance of land and building where several buildings are being constructed on one plot and construction of all buildings is yet to be completed. In this regard, it would be relevant to reproduce para-vi(1) and (2) of the G.R. which reads thus :

(vi) While passing Order and Certificate in respect of Deemed Conveyance, the District Deputy Registrar, Co-operative Societies/Joint Sub-Registrar, Co-operative Societies (CIDCO) & Competent Authority shall pass order after taking into account the facts narrated hereunder :-

(1) If several buildings are lying on one plot and an independent Co-operative Housing Society is existing for every building and out of that construction work of some of the buildings is incomplete, then in case of granting Deemed Conveyance in favour of the completed building, an area in proportion to the total constructed area, ground coverage or plinth area, similarly undivided share in open

spaces, common areas and facilities, internal road should be granted in proportion to the constructed area.

(2) In case of Deemed Conveyance matter in respect of buildings constructed by utilising TDR in a layout, the conveyance should be granted in accordance with the plinth and appurtenant area.

4) Another reason recorded by the Competent Authority is about failure on the part of the Petitioner-Societies to produce legible copy of the sanctioned plan. This infirmity, in my view, could have been cured by directing the Societies to file on record legible copy of the sanctioned plan.

5) The next reason for rejection of application for Deemed conveyance is alleged mismatch of area in the Certificate of the Architect. In my view, an opportunity needs to be granted to the Petitioner-Societies to produce a fresh Architect Certificate indicating the area of land which can be conveyed in their favour. Even the Respondent-Developer can be permitted to produce its own Architect Certificate indicating therein the area of land that could be conveyed in favour of the respective Societies. In my view, therefore the proceedings need to be remanded before the Competent Authority for being decided afresh.

6) The petitions **partly succeed**. The impugned orders dated 28 March 2024 passed by the Competent Authority are set aside. Applications filed by Petitioner-Societies are restored on the file of the Competent Authority who shall proceed to decide the same in accordance with the G.R. dated 22 June 2018.

7) The Competent Authority shall grant opportunity, both to Petitioner-Societies, as well as to Respondent-Developer to rely upon all

necessary documents including fresh Architect Certificates in support of their respective claims. The remanded proceedings shall be decided by the Competent Authority on its own merits without being influenced by any of the findings recorded in the orders dated 28 March 2024 or in the present order.

NEETA
SHAILESH
SAWANT

Digitally
signed by
NEETA
SHAILESH
SAWANT
Date:
2025.03.21
10:45:01
+0530

[SANDEEP V. MARNE, J.]