

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12257 OF 2024

Rashesh Co-operative Housing Society Limited ... Petitioner
V/s.
State of Maharashtra and ors. ... Respondents

Mr. Bhavin Gada with **Mr. Deepak Shukla** i/by **BNS Legal, Advocates** for
the Petitioner.

Mr. Atul Damle, Senior Advocate i/by **Mr. R. D. Suryawanshi**, Advocates for
the Respondents No.3 to 7.

Mr. J. P. Patil, AGP for the State.

Mr. Nimesh Bhatt, Advocate for the Respondent No.8.

CORAM : SANDEEP V. MARNE, J.

Dated : 11 February, 2025.

P.C. :

1. The Petition challenges order dated 11th October, 2023 passed by District Deputy Registrar and Competent Authority under Section 11 of Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**MOFA**) granting unilateral deemed conveyance of land admeasuring 1151.26 sq. meters in favour of the Petitioner-Society. The Petitioner-Society is aggrieved by conveyance of lesser area than its entitlement and has accordingly filed the present petition.

2. I have heard Mr. Gada, learned Advocate for the Petitioner. Mr. Damle, learned Senior Advocate appearing for the Respondents N.3 to 7 and Mr. Bhatt, learned Advocate appearing for Respondent No.8, Mr. J.P. Patil, learned AGP for the State.

3. Perusal of the order dated 11th October, 2023 passed by the Competent Authority would indicate that what is conveyed in favour of the Society is only the plinth area of 1151.26 sq. meters. This is done by the Competent Authority by recording of finding that the development is undertaken in respect of a layout and the construction is being carried out on the basis of global FSI and TDR. Government Resolution dated 22nd June, 2018 provides for guidelines for the Competent Authorities while deciding Applications under Section 11 of MOFA. Under Guideline No.(iv) (2), where development is carried out by utilizing Transferable Development Rights (TDR), the conveyance is to be granted in respect of plinth area and appurtenant area. It appears that while granting conveyance of plinth area ad-measuring 1151.26 sq. meters, the Competent Authority has not taken into consideration the factor of appurtenant area as per Guideline No.(iv)(2). This apparently has happened on account of the Certificate of Architect produced by the Petitioner-Society being silent in respect of the appurtenant area of Society's building.

4. Mr. Gada would submit that an opportunity be granted to the Petitioner-Society to produce fresh Certificate of Architect indicating the appurtenant area in respect of building of the Petitioner-Society. Mr. Gada would submit that in a remanded proceedings, the Society's claim would essentially restricted in respect of apparent area as per Guideline No.(iv)

(2) of the Government Resolution dated 22nd June, 2018. Mr. Gada would further submit that Petitioner-Society be permitted to urge before the Competent Authority that the appurtenant area of the building would also include proportionate share in the recreational ground.

5. Mr. Damle would submit that the Respondent-Developer be also granted opportunity to rely upon their own Architect's Certificate in respect of the appurtenant area.

6. In my view therefore, failure on the part of Competent Authority to grant conveyance in respect of appurtenant area appears to be contrary to the guidelines in the Government Resolution dated 22nd June, 2018. The proceedings therefore, deserve to be remanded for being decided afresh in accordance with the said guidelines.

7. I accordingly proceed to pass the following order :

(i) Order dated 11th October, 2023 passed by the Competent Authority is set aside.

(ii) The application preferred by the Petitioner-Society shall stand restored on the file of the Competent Authority who shall grant an opportunity to Petitioner as well as Respondent-Developer to produce fresh Certificates of Architect indicating both plinth area and appurtenant area in respect of building of the Petitioner-Society.

(iii) The Competent Authority shall accordingly pass a fresh order keeping in mind the guidelines issued vide Government Resolution dated 22nd June, 2018.

8. With the above directions, the Petition is partly allowed and disposed of. There shall be no order as to costs.

9. All rights and contentions of the parties *qua* the entitlement of the Petitioner-Society for conveyance of plinth and appurtenant area are expressly kept open.

(SANDEEP V. MARNE, J.)