

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.13076 OF 2024

M/s. Saqib Constructions

...Petitioner

V/s.

Continental Towers Co-op Housing
Society Ltd (Building B) and Ors.

...Respondents

Mr. Yashodeep Deshmukh with *Mr. Arun Ivaturi* for the
Petitioner.

Mr. Mayur Khandeparkar with *Ms. Kiran Saha i/b. M/s. One
Point Legal Solutions* for Respondent No.1.

Ms. V.R. Raje, AGP for Respondent-State.

CORAM : SANDEEP V. MARNE, J.

Dated : 18 February 2025.

P.C. :

1) Petition challenges order dated 8 February 2024 passed by the District Deputy Registrar, Co-operative Societies, Mumbai City (3) and Competent Authority conveying land admeasuring 3191.12 sq.mtrs as well as the building constructed thereon in favour of Respondent No.1-Society.

2) I have heard Mr. Deshmukh, the learned counsel appearing for the Petitioner, Mr. Khandeparkar, the learned

counsel appearing for Respondent No.1 -Society and Ms. Raje, the learned AGP appearing for Respondent-State.

3) First objection raised by Mr. Deshmukh is rejection of earlier Application No.125 of 2021 for deemed conveyance by order dated 18 May 2022. According to Mr. Deshmukh the Competent Authority had rejected the earlier application by observing that the Developer is yet to complete construction of Building- 'C' wing (Triveni) and that therefore second application for deemed conveyance of the land could not be entertained. He would submit that the liberty granted by the Competent Authority to file fresh application by order dated 18 May 2022 was only after completion of the entire construction on the layout. He would therefore submit that filing of fresh application for deemed conveyance of land was clearly not maintainable. It appears that order dated 18 May 2022 was passed rejecting the first application since the Society applied for conveyance for land admeasuring 3761.31 sq.mtrs, which would have put construction of building 'C'- Triveni in jeopardy. This appears to be the reason why Competent Authority did not allow Application No.125 of 2021 and granted liberty to the Respondent No.1-Society to apply afresh for issuance of certificate of unilateral deemed conveyance.

4) In the fresh Application No.89 of 2022, the Society relied upon certificate of the Architect dated 12 February 2022 and claimed area of only 3191.12 sq.mtrs leaving aside area of 668.79

sq.mtrs for construction of building 'C' (Triveni). In my view therefore objection of *res judicata* would not be applicable in respect of fresh Application No.89 of 2022 filed by Respondent No.1-Society.

5) So far as the area conveyed in favour of Respondent No.1-Society vide Certificate dated 8 February 2024 is concerned, the same is in accordance with the Architect's certificate dated 12 February 2022. The Architect has considered the net plot area to be sub-divided in respect of buildings – 'A', 'B' and 'C' is 5005.50 sq.mtrs. Architect has thereafter taken into consideration the approved plan of 26 May 2024, in accordance with which, Petitioner -Promoter proposed to carry out construction of buildings 'A', 'B' and 'C' on the said plot admeasuring 5005.50 sq.mtrs. As per the 'Proforma A' in the approved plan dated 26 May 2014, the total built up area in respect of the buildings 'A', 'B' and 'C' has been indicated as under:-

Description	Area as per approved plan Sq.meters
Total Built up area of "Building A"	1815.19
Total Built up area of "Building B"	5056.30
Total Built up area of "Building C"	1059.71

6) The Architect has copied the above built up area in respect of buildings 'A', 'B' and 'C' from the approved plan dated 26 May 2024 in his own certificate dated 12 February 2022. The Architect has thereafter computed the land entitlement in

respect of the buildings 'A', 'B' and 'C' corresponding to the built up area sanctioned in the approved plan dated 26 May 2024 and has recommended that for Building- 'A' the land entitlement would be 1145.59 sq.mtrs., for Building-'B' the land entitlement would be 3191.12 sq.mtrs. and for building 'C' the land entitlement would be 668.79 sq.mtrs. Thus, for construction of proposed Building- 'C' with the sanctioned built up area admeasuring 1059.71 sq.mtrs, land admeasuring 668.79 sq.mtrs has been left out after issuance of certificate dated 8 February 2024. It appears that so far as Building – 'A' is concerned, a separate society (Respondent No.3) has already formed and certificate of unilateral deemed conveyance of land admeasuring 1145.59 sq. mtrs has already been issued in favour of Respondent No.3-Society. Petitioner did not challenge conveyance of land admeasuring 1145.59 sq.mtrs in favour of Respondent No.3-Society. I therefore, do not find any reason why Petitioner can question conveyance of land admeasuring 3191.12 sq.mts. to Respondent No.1-Society.

7) In my view, the Competent Authority has correctly passed order dated 8 February 2024 by proportionately dividing the total plot area corresponding to the built up area utilised in respect of each of the Buildings. Such an exercise has been rightly carried out by the Competent Authority in accordance with the Government Resolution dated 22 June 2018. I therefore, do not see any palpable error in order dated 8 February 2024 passed by the Competent Authority. Impugned

certificate does not put any fetter on the Petitioner in carrying out construction of Building- 'C' (Triveni) so long as it does not exceed the built up area of 1059.71 sq. mtrs and land admeasuring 668.79 sq.mtrs. If the Petitioner believes that it is entitled to construct in addition to 1059.71 sq.mts built up area for C wing Building, Petitioner would be free to file a Civil Suit questioning the land conveyed in favour of Respondent Nos.1 and 3-Societies.

8) Writ Petition is accordingly rejected.

[SANDEEP V. MARNE, J.]