

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

WRIT PETITION NO. 14107 OF 2024

The Nook Cooperative Housing

Society Ltd Thr Its Chairman

... Petitioner

Versus

Pyramid Developers Thr Its Partner

Khemchand Uttamchand Bhojwani And Ors

... Respondents

Mr. Sugandh Deshmukh a/w *Irvin D'souza, Mr. Aniket Kanawade, Mr. Vaibhav Thorave & Ms. Karishma Shinde for the Petitioner.*

Dr. Abhinav Chandrachud, i/ *Mr. Pavan Patil a/w Mr. Shubham Saraf for Respondent No.1.*

Mr. Hamid Mulla, *AGP for Respondent-State.*

Mr. Rahul Kate *for Respondent Nos. 2 to 4.*

CORAM : SANDEEP V. MARNE, J.

DATE : 27 FEBRUARY 2025.

P.C. :

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

2) The Petition challenges order dated 19 July 2024 passed by the Competent Authority and Deputy District Registrar Co-

operative Societies, Pune (Competent Authority) issuing certificate of unilateral of deemed conveyance of land admeasuring 1504.81 sq.mtrs. (ground coverage) and constructed portion admeasuring 17433.39 sq.mtrs in favor of the Petitioner-Society. The Petition is filed by the Society to the extent of denial of proportionate land area corresponding to the built-up area consumed for three buildings of the Society.

3) I have heard Mr. Deshmukh the learned counsel appearing for Petitioner, Dr. Chandrachud, the learned counsel appearing for Respondent Nos. 1 and 1a, Mr. Kate the learned counsel appearing for Respondent Nos. 2 to 4 and the learned AGP appearing for Respondent No.5-State.

4) After having considered the submissions canvassed by the learned counsel appearing for parties, it is seen that the Competent Authority has conveyed only ground coverage/plinth area of 1504.81 sq. mtrs of land in favour of the Petitioner-Society out of the total plot admeasuring 25344.64 sq.mtrs. This is apparently done by the Competent Authority on account of pendency of suit (Special Civil Suit No. 1520 of 2021) filed by Respondent Nos. 2 to 4 (land owners) against the promoter (Respondent Nos. 1 and 1a). It appears that the original landowners have dispute with the promoter with regard to non-fulfillment of obligations under the Development Agreement where the landowners demanded that they have not been paid the due amount of consideration in the form of constructed units in the buildings. With that grouse, the landowners have instituted Special Civil Suit No.1520 of 2021 in which they sought temporary injunction to restrain the promoter from creating any further third-party rights in respect of the suit properties. By an ad-interim order dated 5 October 2021 passed on Exhibit-5, the

Trial Court restrained the promoter from creating third party interests in the suit properties until their appearance and filing of the say. The Society felt that the ad-interim order dated 5 October 2021 was coming in the way the Competent Authority deciding the application for deemed conveyance and accordingly, filed an application at Exhibit-34 in Special Civil Suit No. 1520 of 2021 for vacating the ad-interim injunction to the extent of portion of the land in which buildings of the society are situated alongwith the proportionate area of the land. The application filed by the Petitioner-Society was allowed by the Trial Court by order dated 13 September 2023 by passing following order:

ORDER

- 1) Application is allowed.
- 2) Order below Exh.5 dtd. 05.10.2021 is hereby vacated to the extent of the portion of the property wherein the buildings of the society are standing.
- 3) The Competent Authority has apparently interpreted the order dated 13 September 2024 to mean as if it could not convey anything more than the plinth area of the buildings of the society and accordingly has directed conveyance of only plinth area of 1504.81 sq.mtrs. and constructed portion of buildings in favour of the Petitioner-Society.
- 4) The Petitioner-Society had relied upon certificate of the Architect in which the following area calculations were made:

Architectural Details as per Layout Plan bearing No.BP/Layout/Tathawade/11/2012:-

Plot Area	25344.64 sq. meters
Net Plot Area	24620.64 sq. meters
Total Built up area	18372.42 sq. meters
Existing Residential FSI for ABC wing of 282 units	17433.39 sq. meters
Exixting Commercial FSI for commercial wing	939.03 sq. meters

Proportionate Area convey to the 23362.259 sq. meters Society

5) Thus the society's architect, after considering the sanctioned layout, concluded that the total built-up area consumed for construction of buildings A, B and C, wings comprising of 282 units was 17433.39 sq.mtrs. It appears that the construction of the fourth commercial buildings is yet to be completed and as per the sanctioned plan, the built-up area to be consumed for construction of the commercial building is 939.03 sq.mtrs. The architect accordingly divided the net plot area of 24620.64 sq.mtrs. proportionate to the built-up area consumed in respect of Society's three building and the fourth commercial building. Accordingly the Architect recommended conveyance of land admeasuring 23362.259 sq.mtrs. in favour of the Petitioner-Society.

6) In my view, the impugned order passed by the Competent Authority appears to be heavily guided by orders passed by the Civil Court in Special Civil Suit No. 1520 of 2021. The said suit is filed by the owners against the promoter alleging non-fulfillment of obligations under the development agreement and the same cannot come in the way of the Competent Authority exercising jurisdiction under Section 11 of the Maharashtra Ownership Flats Act (Regulation of the promotion of construction, sale, management

and transfer) Act, 1963 (**MOFA Act**). In any case, certificate of deemed conveyance is not determinative of final rights and entitlements in whose favour the land is deemed to have conveyed and the same is always subject to a decree of the Civil Court. In that view of the matter, mere pendency of a suit between the landowners and promoter could not have been a reason the Competent Authority not to convey the proportionate land area in favour of the Petitioner-Society.

7) Under the Government Resolution dated 22 June 2018, the Competent Authority can either convey proportionate area or ground coverage/plinth area together with undivided share in the common amenities in case where construction of one or more building in the layout is incomplete. It would be apposite to reproduce the relevant paragraph of the GR are as under:

(1) एका भूखंडावर अनेक इमारती असतील व प्रत्येक इमारतीची स्वतंत्र सहकारी गृहनिर्माण संस्था असेल आणि त्यापैकी काही इमारतीचे बांधकाम अपूर्ण असल्यास, पूर्ण झालेल्या इमारतीचे मानीव अभिहस्तांतरण करताना अशा संस्थेच्या इमारतीच्या बांधकामाच्या प्रमाणात जागेचे क्षेत्रफळ (Proportionate area) किंवा Ground Coverage किंवा Plinth area, तसेच मोकळी जागा, सामुदायिक सेवा सुविधा, रस्ते यांचेवर बांधकामाच्या प्रमाणात अविभक्त हिस्सा (Undivided share) वहिवाटीचा हक्क द्यावा.

8) In my view, the Competent Authority ought to have granted either the land proportionate to the built-up area consumed in construction of society's buildings or plinth area in addition to proportionate undivided share in the balance area of the land. In the present case, the sanctioned layout plan does not indicate use of TDR or incentive FSI and therefore sub-division of land proportionate to the built-up area consumed for construction of the four buildings appears to be quite easily possible. In that view of the

matter, the Competent Authority ought to have considered the built-up area to be consumed for construction of the four buildings on the plot and it ought to have sub-divided the plot area corresponding to the built-up area consumed for construction of each building. In my view, therefore the proceedings deserve to be remanded before the Competent Authority for conveyance of the land in favour of Petitioner-Society in proportion to the built-up area consumed for construction of its buildings.

- 9) I accordingly proceed to pass the following order:
- i) Order dated 19 July 2024 passed by the Competent Authority is set aside and Application No. 360 of 2021 is restored on the file of the Competent Authority for being decided afresh.
 - ii) The Competent Authority shall convey in favour of the Petitioner-Society, the land proportionate to the built-up area consumed for construction of society's buildings.
 - iii) For determination of such land proportionate to the built-up area utilized in construction of society's buildings, both Petitioner-Society as well as Respondent No.1-Promoter shall be entitled to produce before the Competent Authority their respective architect certificates.
 - iv) After considering such architect certificates, the Competent Authority shall ascertain the exact land which can be conveyed in favour of the Petitioner-Society and shall

accordingly issue a fresh certificate of unilateral deemed conveyance in favour the Petitioner-Society.

- v) It is expressly clarified that the proceedings are remanded only for the purpose of ascertainment of land proportionate to the built-up area consumed in construction of buildings of the society and in the remanded proceedings, the Competent Authority shall not entertain any other objection.

- 10) With the above directions, the Writ Petition is **partly allowed**. Rule is made absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]