

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

WRIT PETITION NO.18628 OF 2024

Tulsi Apartment Co-op. Hsg. Society.	Petitioner
V/S	
The Chairman, Kalaram Trust & Ors.	Respondents

Mr. Anuj Tiwari *for the Petitioner.*
Mr. Satyajeet P. Dighe *for Respondent No.1.*
Mr. S.D. Rayrikar, AGP *for Respondent No.5 / State.*

CORAM: SANDEEP V. MARNE, J.
DATE : 05 MAY 2025.

P.C.:

1. The Petitioner-Society has filed this Petition challenging order dated 23 August 2023 passed by Competent Authority and District Deputy Registrar, Co-operative Societies, Nashik, rejecting its application for unilateral deemed conveyance of land and building.

2. I have heard Mr. Tiwari, the learned counsel appearing for Petitioner, Mr. Dighe, the learned counsel appearing for Respondent No.1 and Mr. Rayrikar, the learned AGP appearing for Respondent No.5/State.

3. The only reason for rejection of Petitioner-Society's application for deemed conveyance appears to be execution of lease by Respondent No.1 in favour of Respondent No.2, who has created a sub-lease in favour of Respondent No.3. Respondent No.4 is the Promoter who has constructed the building after securing rights from Respondent No.3. The learned counsel for the Petitioner clarifies that Petitioner-Society would be content with assignment of leasehold rights in respect of the land in question for the remainder tenure of lease executed by Respondent No.1 in favour of Respondent No.2. He would clarify that Petitioner-Society is not insisting on conveyance of land on ownership basis. The Petition is however opposed by the learned counsel appearing for the first Respondent-Trust.

4. Under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**MOFA**), the Promoter is under statutory obligation to transfer his right, title and interest in the land and building in favour of Association of flat purchasers. Thus if the Promoter is a lessee or sub-lessee, what can be assigned in favour of the Society is the leasehold rights. Thus in exercise of jurisdiction under Section 11 of the MOFA, it is lawful for Competent Authority to assign leasehold rights in respect of the land in question in favour of the Petitioner-Society. In my view therefore, the Competent Authority has erred in rejecting Petitioner-Society's application for deemed conveyance.

The finding recorded by the Competent Authority that it does not have jurisdiction to assign on ownership basis leased land is totally misplaced. The Competent Authority ought to have granted leasehold rights in respect of the land in favour of the Petitioner-Society.

5. I accordingly proceed to pass the following order:

i) Order dated 23 August 2023 passed by the Competent Authority is set aside.

ii) Application No.68 of 2022 is remanded to the Competent Authority for the limited purpose of issuance of certificate of unilateral deemed conveyance assigning leasehold rights in respect of area land to which the Petitioner-Society is entitled.

iii) The limited enquiry that the Competent Authority would conduct in the remanded proceedings is with respect to the exact area of land in which lease-hold rights can be assigned in favour of the Petitioner-Society.

iv) The Competent Authority shall decide the remanded proceedings in expeditious manner preferably within a period of four months. Parties shall appear before the Competent

Authority on 19 May 2025 and obtain further directions for fixation of date(s) of hearing in the remanded proceedings.

6. With the above directions, the Petition is partly allowed and **disposed of**.

(SANDEEP V. MARNE, J.)

SUDARSHAN
RAJALINGAM
KATKAM

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by SUDARSHAN
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