

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 17874 OF 2024

M/s. Mangal Corporation

...Petitioner

V/s.

A Wing Mangal Orchid Cooperative
Housing Society Limited and Ors.

...Respondents

WITH
WRIT PETITION NO. 18749 OF 2024

M/s. Mangal Corporation

...Petitioner

V/s.

Mangal Orchid Cooperative Housing
Society Limited and Ors.

...Respondents

Mr. Amrut Joshi with *Ms. Faiza A. Dhanani, Mr. Yazad Udwadai, Mr. Manal Dhanani i/b. M/s. CUE Legal for the Petitioner in both the Writ Petitions.*

Mr. Tushar Gujjar with *Mr. Deep Madnani i/b. M/s. S.L. Partners for Respondent Nos.1 and 3-Society.*

Ms. Dhruti Kapadia, AGP for Respondent -State in WP/17874/2024.

Ms. Sulbha D. Chipade, AGP for Respondent-State in WP/18749/ 2024.

CORAM : SANDEEP V. MARNE, J.

Dated : 14 February 2025.

P.C. :

1) The Petitions challenge certificates of unilateral deemed conveyance issued by the District Deputy Registrar, Co-operative Societies, Mumbai City (3) and Competent Authority vide orders dated 2 September 2024 conveying the land and buildings in favour of Respondent-Society.

2) The main objection of the Petitioners is to the consideration of total plot area of 11713.40 sq. mtrs by the Competent Authority and according to Petitioners, the actual area taken up for development was only 11464.32 sq.mtrs. It appears that the total plot area of 11713.40 sq. mtrs is considered by the Society's Architect in his certificate dated 24 April 2024. It is pointed out that the Architect erroneously took into consideration the unapproved building plan submitted by the Petitioners to MCGM on 18 August 2004. It is submitted that as per the approved plan of 1982, area of the plot is 11464.32 sq.mtrs and that therefore the impugned order of Deemed Conveyance based on Architect's certificate dated 24 April 2024 suffers from an obvious error.

3) Fortunately, there is a resolution about this dispute between the parties. Mr. Gujar, the learned counsel appearing for the Respondent-Society after perusing the approved plan fairly admits that the area taken up for development in the approved plan is 11464.32 sq.mtrs. and not 11713.40 sq.mtrs.

Mr. Gujjar, on taking instructions, makes a statement that Respondent -Society is agreeable for remand of the proceedings only for correction of the obvious error in indicating the area of the plot as 11713.40 sq.mtrs and that a fresh certificate of Architect would be submitted before the Competent Authority based on the area of the plot as per the approved plan as 11464.32 sq.mtrs.

4) However *qua* other points, there is no consensus between the parties. Mr. Joshi, the learned counsel appearing for the Petitioners would rely upon consent terms executed between Petitioners and the Society, under which, according to him, the Society had agreed to permit Petitioners to use the balance available FSI as well as to bring outside TDR for carrying out additional construction. In my view, the consent terms did not form part of agreement executed under Section 4 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management, and Transfer) Act, 1963 (**MOFA**) and that therefore could not have been the basis for deciding application of the Society under Section 11 of the MOFA. Faced with this situation, Mr. Joshi would rely upon Clause 8 of the Flat Purchase Agreement, under which entitlement of the Petitioner to carry out additional construction based on benefit of additional FSI was specifically protected. In my view existence of a covenant in agreement executed under Section 4 of the MOFA permitting a developer to use future additional FSI cannot be a ground for not entertaining an

Application under Section 11 of the MOFA. By that standard, no promoter would ever convey the land as additional FSI is bound to be made available with passage of each day. If the Petitioner - Developer believes that it has any right to utilise additional FSI or to load TDR either in terms of clause 8 of the Flat Purchase Agreement or as per the consent terms, it will have to file a civil suit to claim a declaration in that regard. In the limited remit of enquiry under the provisions of Section 11 of MOFA, the Competent Authority cannot determine the complex issue of alleged entitlement of developer to carry out additional construction based on future FSI or TDR.

5) Accordingly, I proceed to pass the following order:

- (i) Orders dated 2 September 2024 passed by the Competent Authority are set aside and Application Nos.106 of 2024 and 92 of 2024 are remanded before the Competent Authority for correcting the area to be conveyed in favour of Respondent -Society by taking into consideration the total plot area at 11464.32 sq.mtrs.
- (ii) Both the Respondent-Societies shall submit a fresh certificates of Architect indicating the exact area of land, which can be conveyed to them out of plot area of 11464.32 sq.mtrs.
- (iii) It is clarified that the remand of proceedings to the Competent Authority is only on account of error in

consideration of total plot area as 11713.40 sq.mtrs. and therefore, the Petitioner-Developer shall not be entitled to re-agitate any further points before the Competent Authority.

- (iv) Remanded proceedings shall be decided by the Competent Authority in an expeditious manner.
- (v) Petitioners would be at liberty to file Suit either challenging the area of land conveyed in favour of Respondent-Societies or to seek any additional construction based on additional FSI/TDR.
- (vi) All rights and contentions of parties, to be raised in such Suit, are expressly kept open and issuance of certificate of unilateral deemed conveyance by the Competent Authority conveying the total plot admeasuring 11464.32 sq. mtrs shall not come in the way of Petitioner-Developer from prosecuting its suit.

- 6) With the above directions, both the Petitions are disposed of.

[SANDEEP V. MARNE, J.]