

Ashish

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

WRIT PETITION NO.457 OF 2025

Pranav Anil Thanawala	... Petitioner
V/s.	
Competent Authority and District Deputy Registrar and Ors	... Respondent

Mr. Rajesh S. Datar, for the Petitioner.

Smt. S.S. Bhende, AGP for State- Respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : MARCH 27, 2025

P.C.:

1. The challenge in the present Writ Petition, filed under Article 226 of the Constitution of India, is at the instance of one of the co-owners of a parcel of land, who had executed a Development Agreement in the year 1982 in favour of a developer. Pursuant thereto, the said developer entered into individual agreements for sale with flat purchasers, in terms of Section 4 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short, "MOFA"). Notwithstanding the execution of such agreements more than four decades ago, and despite the fact that a co-operative housing society of the flat purchasers was registered on 1st August 1985, no conveyance of the land has been effected by the developer in favour of the said society or any association of persons, as is

mandated under Section 11 of the MOFA.

2. In light of the inaction on the part of the developer to discharge his statutory obligation under MOFA, the Association of Purchasers initiated proceedings before the Competent Authority under Section 11 of the MOFA seeking conferment of a deemed conveyance, which came to be allowed by the impugned order.

3. The petitioner, being one of the co-owners of the land, had filed objections before the Competent Authority, opposing the application for deemed conveyance. It was contended that the building in respect of which the society is formed, is only one of the several buildings forming part of a larger layout, and hence the society can claim, at best, conveyance of the plinth area and the appurtenant land. It was further submitted that the landowners retain an undivided share in the remaining layout land. Additionally, it was urged that as per the sanction granted by the Municipal Corporation, construction was permitted only for 14 residential flats and 4 shops, whereas the proposal submitted by the applicant society indicates existence of 20 units, which according to the petitioner, affects the calculation of Floor Space Index (FSI). The petitioner emphasized that the determination of FSI consumption must necessarily be based on the sanctioned plan annexed to the agreement executed under Section 4 of MOFA and not on the as-built structure as presented by the society.

4. The Competent Authority, however, by its order dated 30th September 2024, has allowed the application for deemed conveyance in favour of the applicant society, which is now the

subject matter of challenge in the present proceedings.

5. Learned Advocate Mr. Datar, appearing on behalf of the petitioner, has drawn my attention to the various objections raised before the Competent Authority, which, according to him, have not been adequately or appropriately considered. He submitted that one of the principal contentions urged before the Competent Authority pertained to the existence of a larger layout of which the building in question was only a component, and therefore, the society could not claim conveyance beyond the plinth area. He also highlighted the discrepancy between the sanctioned plan, which permits only 18 units, and the proposal of the society which indicates 20 constructed units, thus impacting the calculation of FSI. It was therefore argued that the Competent Authority ought to have scrutinized the sanctioned layout and building plans before granting deemed conveyance.

6. Upon perusal of the impugned order, it emerges that the Competent Authority has recorded its satisfaction that the applicant society has placed on record all requisite documents as mandated under the MOFA Rules. It is an admitted position that the agreements under Section 4 of MOFA were executed as far back as in 1982, and that despite registration of the society in 1985, no conveyance was executed by the developer in compliance with his statutory obligation under Section 11. The prolonged inaction of the developer and the resulting deprivation of ownership rights to the society constitute the very mischief that MOFA was enacted to remedy.

7. The petitioner's objection as regards the existence of a larger layout and entitlement of the society only to the plinth area, is primarily founded upon the Government Resolution dated 22nd June 2018. It is the petitioner's case that the said G.R. enjoins the Competent Authority to restrict the deemed conveyance to the footprint of the building and the land appurtenant thereto in cases involving larger layouts. However, such contentions, in the context of deemed conveyance, are not determinative of the legality of the conveyance itself, but rather pertain to questions of entitlement, title and extent — all of which are civil disputes requiring adjudication on evidence.

8. Insofar as the contention regarding alleged excess area being conveyed is concerned, it is pertinent to note that the Division Bench of this Court in the case of *Zainul Abedin Yusufali Massawawala & Ors. vs. Competent Authority & Ors.* [2016 SCC OnLine Bom 6028], while dealing with a similar challenge by a landowner, has categorically held that the Competent Authority, in proceedings under Section 11 of MOFA, is empowered to transfer such right, title and interest of the developer as exists in the land and building in favour of the society or association of purchasers. If, according to the owner, an excess area has been wrongly conveyed, the appropriate remedy lies in instituting a civil suit before the competent civil court. This principle has been consistently reaffirmed in subsequent decisions of this Court.

9. In view of the aforesaid settled position of law, I am of the considered view that the petitioner has an efficacious alternative remedy in the form of a civil suit for adjudication of his civil rights,

if he is indeed aggrieved by the quantum of land being conveyed or by the interpretation of the layout. It is clarified that in the event such a suit is instituted, the concerned Civil Court shall independently consider the rival claims and decide the matter on its own merits, uninfluenced by any observations made by the Competent Authority under Section 11 of the MOFA or by this Court in the present judgment.

10. Having considered the submissions and upon examination of the impugned order in light of the statutory scheme under MOFA and judicial pronouncements governing the field, I do not find any manifest illegality, perversity or failure of jurisdiction in the order passed by the Competent Authority so as to warrant interference under Article 226 of the Constitution of India. The writ petition is therefore devoid of merit and stands dismissed with the aforesaid observations and liberty.

(AMIT BORKAR, J.)