

AGK/VRJ

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

WRIT PETITION NO.2222 OF 2025

VAIBHAV
RAMESH
JADHAV

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VAIBHAV RAMESH
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Date: 2025.02.24
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1 Nahalchand Laloochand Pvt. Ltd.

A Joint Stock Co., registered under the Indian Companies Act VII of 1973, functioning under the Companies Act 1956 (No. I of 1956), being the Builder and landowner as per 7/12 extract, having address at Kantilal House 14, Mama Parmanand Marg, Mumbai 400 004.

2 Rajesh Himatlal,

Aged about 67 years.

3 Wonder Estate Developers Pvt. Ltd.

Opponents Nos. 2 and 3 being the Landlords as per 7/12 extracts, having last known address at Survey No.329, 330 Hissa No. 1, CTS No. 1478, 1482, N. L. Complex, Anand Nagar, Dahisar (East), Mumbai 400 068

... Petitioners

V/s.

1 Shri Panchamrut CHS Ltd.

Having address at Survey No. 329, 330, Hissa No. 1, CTS No. 1478, 1482, N. L. Compound, Anand Nagar, Dahisar (East), Mumbai 400 068

2 The State of Maharashtra,

(Through Co-operation and Textile Department) Mumbai

3 District Deputy Registrar, Co-operative Societies, Mumbai

City (4) Competent Authority, U/s 5A of The MOFA, 1963, having their office At Bhandari Bank Building, 2nd floor, P. L. Kale Guruji

Marg, Dadar (West), Mumbai 400 028

...Respondents

Mr. Vishal Kanade with Mr. Haresh Lulia, Ms. Janvee Joshi and Mr. Mangesh Shinde for the petitioners.

Dr. Abhinav Chandrachud with Mr. Janay Jain, Mr. Amit Tungare, Karthyayani Amblimath and Akhata Katara i/by Asahi Legal for respondent No.1.

Ms. Vaishali Nimbalkar, AGP for respondent Nos.2 and 3-State.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 24, 2025

JUDGMENT.:

1. The petitioners, being aggrieved, have preferred this writ petition impugning the order dated 15th October 2024 passed by the Competent Authority, i.e., respondent No.3. By the impugned order, respondent No.3 has purported to grant unilateral deemed conveyance under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as “the MOFA Act”). The said order, it is alleged, bestows upon respondent No.1-Society the conveyance of land ad-measuring 4925.62 square metres together with undivided rights in the Recreational Ground (RG) area ad-measuring 869.23 square metres, in aggregate constituting 5794.85 square metres. The property at issue pertains to Survey No./Hissa No.330/6 corresponding to CTS Nos.1482/A/1/1 and 1482/A/1/2, and Survey No./Hissa No.330/3 corresponding to CTS No.1484 of Village Dahisar, Taluka Borivali, City Survey Office, Borivali in the Mumbai Suburban

District. The petitioners assert that the order impugned is untenable in law and deserves interference by this Court.

2. The factual matrix, culminating in the institution of the present writ petition, may briefly be delineated hereunder.

Respondent No.1-Society, representing certain allottees/flat purchasers, initiated proceedings before respondent No.3 seeking to obtain deemed conveyance in respect of the subject property under Section 11 of the MOFA Act. The petitioners herein, being the original promoters/developers, are said to have executed various agreements with the members of respondent No.1-Society under Section 4 of the MOFA Act. However, disputes emerged between the parties concerning the precise extent of the land to be conveyed and the inclusion of the RG area in the conveyance. Consequently, respondent No.1-Society pursued unilateral conveyance of the entire land in question, including the RG area, prompting the petitioners to file objections which, they submit, have been disregarded by respondent No.3 in a perfunctory manner, culminating in the impugned order.

3. In order to substantiate their case, respondent No.1-Society filed Deemed Conveyance Application No.76 of 2024 before the Competent Authority (respondent No.3). The basis of their claim for the deemed conveyance rested upon the agreements entered into under Section 4 of the MOFA Act and other documents evidencing their right to the conveyance. It is further averred by

respondent No.1 that, pursuant to the mandate of the statute, they had annexed all necessary documents, including, inter alia, copies of the agreement for sale executed between the promoter and one of the flat purchasers, the resolution passed in the Special General Body meeting dated 11th December 2023, and the Architect's certificate and sanctioned building plan. These documents, according to respondent No.1, adequately demonstrate their entitlement to the deemed conveyance as claimed.

4. Upon receipt of notice under Section 11 of the MOFA Act, the petitioners entered appearance and contested the said application by urging, firstly, that the application was not maintainable due to non-compliance with the requirement of notarization. The petitioners further contended that they were at all times ready and willing to execute the deed of conveyance in respect of the portion of land bearing CTS No.1482/A/1/1, ad-measuring 2996 square metres. According to the petitioners, the draft conveyance was duly prepared and communicated to respondent No.1, who, for reasons best known to them, declined to accept the same. Instead, respondent No.1 resorted to filing a false and vexatious application for unilateral conveyance. The petitioners also placed reliance on specific clauses in the agreement under Section 4 of the MOFA Act, which apparently enjoin upon the members of respondent No.1-Society not to obstruct a 9 metres wide road of access passing through the said land. The petitioners further maintain that the proposed subdivision of the larger land was duly disclosed and accepted by the members of respondent No.1-Society, who have been in exclusive

use and occupation of land bearing CTS No.1482/A/1/1, ad-measuring 2996 square metres, along with the building situate thereon. In this backdrop, the petitioners vehemently dispute respondent No.1-Society's alleged entitlement to claim proportionate rights in the RG area, contending that no such right vests in the Society and that the same is not borne out either by the agreement for sale or any statutory obligation.

5. The Competent Authority, upon a consideration of the material on record, including but not limited to the Architect's certificate and the sanctioned plan, was pleased to allow the application filed by respondent No.1 and granted unilateral conveyance in favour of respondent No.1-Society in respect of the land ad-measuring 4925.62 square metres as well as undivided rights in the RG area ad-measuring 869.23 square metres, thereby totaling 5794.85 square metres. Aggrieved by the said order, the petitioners have approached this Court invoking its writ jurisdiction.

6. At the very outset, Mr. Kanade, the learned Advocate for the petitioners, contended that the impugned order purports to convey an extent of land in excess of that which is set out in the agreement executed under Section 4 of the MOFA Act between the petitioners (as promoters) and the new purchasers, who are members of respondent No.1-Society. He submitted that the said members had expressly acknowledged and consented to the promoter's right of way, comprising a 9-metre-wide road, with the unequivocal stipulation that they would not, at any point, impede or disturb such access. Learned counsel further canvassed that the

area of Certificate No.484 does not find any mention in the agreement under Section 4, yet it has been included in the subject matter of unilateral deemed conveyance. According to him, each individual purchaser had also consented to the sub-division of the plot. He emphasized that the petitioners, with bona fide intentions, had expressed their willingness to execute the deemed conveyance in respect of land ad-measuring 2296 square metres of CTS No.1482/A/1/1, a fact which was not accorded due consideration by respondent No.1-Society or the Competent Authority.

7. The learned Advocate for the petitioners further contended that the application for deemed conveyance, as filed by respondent No.1-Society, does not rest on a proper and valid resolution of the Society, thereby rendering it procedurally and substantively unsustainable. He also pointed out that the application was not presented in the prescribed Form-7, and that pertinent documents—essential to establish the Society's claim—were conspicuously absent. Thus, in the submission of learned counsel, the application itself was not maintainable and ought to have been dismissed at the threshold.

8. Per contra, Mr. Chandrachud, the learned Advocate for respondent No.1, stoutly defended the impugned order. He highlighted the undisputed fact that the Occupation Certificate for the subject premises had been issued as far back as on 24th December 2004, yet the promoter had failed to convey the property to respondent No.1-Society. He submitted that this prolonged delay in seeking and securing conveyance, despite the statutory mandate under the MOFA Act, compelled the Society to

approach the Competent Authority for relief in the form of deemed conveyance. Drawing attention to the agreement entered into with a new purchaser, learned counsel pointed out that the relevant clause in the said agreement references the layout plan approved on 26th November 1996, which clearly describes the property as forming the subject matter of the agreement executed between the parties. He underscored that the agreement refers to a duly approved layout comprising an area ad-measuring 6753 square metres, whereas the impugned order granting deemed conveyance pertains to an area of 4925.62 square metres, coupled with undivided rights in the RG area ad-measuring 8659.23 square metres.

9. Learned counsel for respondent No.1 further submitted that the alleged right of way—claimed by the petitioners to be 9 metres in width—is a civil right that can only be adjudicated by a Civil Court in an independently instituted proceeding. According to him, the unilateral deemed conveyance proceedings cannot, and ought not, be the forum for litigating or resolving such disputes concerning easementary or access rights. He also referred to Clause 12 of the agreement, which purportedly entitles the developer to sub-divide the property, and contended that it does not spell out with clarity the exact area to be conveyed to the Society. In his submission, this clause, along with Clauses 16A and 16B, operates as a form of blanket consent in favour of the promoter that cannot be enforced in derogation of the statutory rights of the Society. He invited attention to the first schedule of the agreement, executed under Section 4 of the MOFA Act,

asserting that the area ad-measuring 6753 square metres, read in conjunction with Clause 5, entitles the Society to the entire 6753 square metres of land. He also adverted to a letter dated 15th March 2021, pointing out that any draft conveyance referring to CTS No.1482/A/1 (part) measuring 2988.90 square metres was non est, inasmuch as the sub-division of the plots took place only on 12th April 2023.

10. The learned counsel for respondent No.1 then adverted to the first schedule of the agreement entered into under Section 4 of the MOFA Act, reiterating that the impugned order rightly endeavours to convey in favour of the Society the area of 6753 square metres shown in the plan at Exhibit “A” to the agreement. According to him, however, by virtue of the impugned order and the Certificate issued thereunder, an area of 4925.62 square metres together with undivided rights in the RG area of 869.23 square metres is being conveyed—resulting in the Society receiving a lesser area than the one it is legitimately entitled to under the agreement. On that premise, he urged that the petitioners could not have any legitimate grievance against the impugned order and that this writ petition, being devoid of substance, merits dismissal.

11. Rival contentions of the parties, as raised hereinabove, now fall for my consideration.

12. The statutory field of the Maharashtra Ownership Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963 (“MOFA”) imposes a threefold obligation upon the promoter: (i) to execute and register agreements under

Section 4; (ii) to facilitate the formation of a legal entity or society of flat purchasers under Section 10; and (iii) to execute a conveyance of title within the stipulated timeline contemplated under Section 11. The regulatory framework is further fortified by Rule 8(1) of the Maharashtra Ownership Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Rules, 1964 (“the MOFA Rules”), which requires that a conveyance be executed within four months of the formation of the society. Upon failure by the promoter to comply, the Competent Authority is empowered under Section 11(4) of the Act to grant a “deemed conveyance.” This legislative intervention was introduced to address the systemic defaults of errant promoters, who often failed to fulfill their contractual and statutory obligations, leaving flat purchasers perpetually deprived of proprietary rights in the land and building.

13. However, it cannot be gainsaid that the Competent Authority’s functions under Section 11 are not unfettered. They are circumscribed by fundamental norms of procedural fairness, which include:

- (i) verification of the authenticity of the agreements and consents under Section 7 of MOFA;
- (ii) affording the promoter a reasonable opportunity to contest the application under Rule 9(3) of the MOFA Rules; and
- (iii) ensuring that the society’s claim aligns with the sanctioned plan and the registered agreements.

14. The role of the Competent Authority, therefore, is quasi-judicial in nature, being limited to effectuating the promoter’s pre-

existing obligations under the statute and the agreements executed under Section 4.

15. In *Mazda Construction Company v. Sultanabad Darshan CHS Ltd.* (2012 SCC OnLine Bom 1266), the learned Single Judge provided an instructive exposition of the legislative intent behind the insertion of Sections 5A and 11 of MOFA. It was held that Section 11 clothes the Competent Authority with a quasi-judicial jurisdiction to enforce the promoter's duty to convey the land and building in accordance with the sanctioned plan and the agreements duly registered under Section 4. The Court explained that the Competent Authority effectively acts as a statutory surrogate for a defaulting promoter, ensuring that flat purchasers, who have already paid the agreed consideration and are in possession, are not left remediless. Significantly, the Court stressed that a deemed conveyance under Section 11(1) only transfers the promoter's existing rights—no more, no less—as crystallized in the original agreements. The Competent Authority cannot, through its order, expand or alter proprietary rights that were never contracted or agreed upon. Safeguards embedded in Section 11(3), such as the mandatory verification of registered agreements and compliance with the sanctioned plan, alongside rules of natural justice like notice and hearing, provide robust checks against any potential overreach.

16. The Division Bench in *Zainul Abedin Yusufali Massawala & Ors. v. Competent Authority* (2016 SCC OnLine Bom 6028) reaffirmed the limited scope of proceedings under Section 11, emphasizing that the Competent Authority merely enforces the

conveyance obligation and is not equipped to decide complex questions of title or ownership. If the promoter contends that the society's application pertains to a "larger property" than what the sanctioned plan or the registered agreements allow, then, under well-established jurisprudence, the remedy lies in a civil suit under Section 9 of the Code of Civil Procedure, 1908, rather than a collateral challenge under Article 226. The Bench underscored that civil courts enjoy plenary jurisdiction to examine ownership issues through a full-fledged trial, free from any presumptive influence of administrative or summary determinations by the Competent Authority. This aligns with the settled principle that administrative or executive orders cannot preclude the courts of plenary jurisdiction from independently inquiring into substantive property rights.

17. Similarly, in *Mehboob Ali Humza & Ors. v. District Sub-Registrar (3), Mumbai/Competent Authority & Ors. (Writ Petition No. 1170 of 2014, decided on 24th June 2016)*, the Division Bench faced a situation where the developer argued that a particular triangular parcel of land was wrongly included in the deemed conveyance, contrary to previously agreed consent terms. The Court refused to entertain these title-based objections in a writ petition, emphasizing that adjudication of specific proprietary rights or demarcation of parcels falls squarely within the civil courts' domain. The Bench held that the summary procedure under MOFA is not a substitute for comprehensive evidentiary analysis, reinforcing the doctrine that an administrative finding by the Competent Authority cannot override substantive property rights

that have yet to be formally adjudicated by a competent forum.

18. The principal issue hinges upon the exact extent and description of the property that is required to be conveyed under the Agreement executed with the flat purchasers, who are members of respondent No.1-Society, under Section 4 of the MOFA Act.

19. The petitioners have challenged the impugned order primarily on the ground that it conveys an area beyond what is stipulated in the Agreement under Section 4. To address this contention, it becomes imperative to examine the relevant clauses of the said Agreement. From the record, it transpires that the Agreement refers to “Plot B” in the layout approved under No. CHE/1735/LOR, said to comprise an area of 6753 square metres, as shown in the plan annexed at Exhibit “A.” Clause relevant to the identification of the area to be conveyed reads as follows:

“AND WHEREAS Plot B of the Lay-out approved under No.CHE/1735/LOR (hereinafter referred to as ‘the said Plot ‘B’’) comprises an area of 6753 sq. meters. The said Plot ‘B’ is shown in the plan hereto annexed and marked Ex. ‘A’ and is more particularly described in the First Schedule hereunder written.”

20. This clause, which lies at the heart of the controversy, explicitly identifies Plot B as the portion intended for conveyance, subject to any deductions explicitly contemplated under the Agreement.

21. From perusal of page 43 of the petition, it appears that an area ad-measuring 1600 square metres out of Plot B, shown in the plan at Exhibit “A,” had been sold to Tata Electric Company Ltd., and was, therefore, excluded from the scope of the Agreement under Section 4 of the MOFA Act. In addition, there is a specific mention of a 9-metre-wide portion within Plot B being reserved for right of access to CTS Nos. 1479, 1481, 1484, 1486, and 1488. The clause creating rights in favor of the Society for the purpose of obtaining the conveyance provides:

“AND WHEREAS the Developers have agreed that on the formation of a Co-operative Housing Society Ltd., the Purchaser/s of all the flats/shops/stilt parking places/open parking places in the said proposed new building and shopping complex and on receipt by the Developers of the full payments and consideration moneys of all the amounts due to the Developers from all such Purchaser/s ... the Developers shall get executed a proper Conveyance of the balance area of ‘the said Plot ‘B” including the said proposed new building ... in favour of the said Co-operative Housing Society Ltd. ... subject to the terms, conditions, covenants ...”

22. This contractual stipulation underscores that the conveyance to be executed in favor of the Society is of the “balance area of Plot B,” after carving out any portion already alienated (such as the 1600 square metres sold to Tata Electric Company Ltd.) and the area identified for access.

23. Clause 12 of the Agreement entitles the developer to subdivide Plot B. However, the Agreement does not detail the precise mode or dimensions of such proposed subdivision. The First Schedule annexed to the Agreement is crucial, since it delineates the area actually intended for conveyance in favor of the Society. The First Schedule reads thus:

*“THE FIRST SCHEDULE ABOVE REFERRED TO ...
admeasuring 6753 square meters or thereabouts and
bounded as follows:*

On the North by property bearing CTS No. 1483

On the South by property bearing CTS No. 1478

*On the West by property bearing CTS No. 1479, 1480 and
1481*

On the East by D.P. Road.”

24. On a plain reading, this description confirms that the land agreed to be conveyed is effectively the 6753 square metres—subject to any deductions arising from earlier conveyances or reservations specified in the Agreement—bounded by the properties enumerated therein.

25. A conjoint reading of the above clauses makes it apparent that the Agreement contemplates that “Plot B,” demarcated in Exhibit “A” and further described in the First Schedule, is to be conveyed to the Society, subject to the conditions set forth (including the full payment of consideration). The expression “balance area of Plot B” in the Agreement must be interpreted in light of the specific deduction of 1600 square metres sold to Tata

Electric Company Ltd. and other rights-of-way. Therefore, the net area to be conveyed would be the remainder of Plot B after deducting those recognized carve-outs.

26. The learned counsel for the petitioners vehemently argued that the First Schedule refers to CTS No. 1482 (part), whereas the impugned order grants conveyance of part of CTS No. 1484, a survey number not mentioned in the First Schedule. However, for proper adjudication of this grievance, one must scrutinize not only the numerical CTS references but also the boundaries described in the First Schedule.

27. It is a well-settled principle of property law that in the event of a conflict between a boundary description and a survey number, the former (i.e., the boundary description) ordinarily prevails. This rule stems from the overarching legal tenet that the intention of the parties, as discernible from the more specific or definitive property description, must be given primacy. When exact boundaries are explicitly set out—identifying the land in a clear and unambiguous manner—any incidental discrepancy in the mention of survey numbers or total area measurement is generally treated as secondary or corrective in nature.

28. Where there is an apparent conflict between the boundary description and other recitals (such as survey numbers, extent, or area), the boundary references are of paramount importance in determining the identity of the property intended to be conveyed. The rationale is that boundaries, being ascertainable on the ground, offer a more precise and reliable basis for identifying the

land as opposed to mere numerical classifications or approximate measurements.

29. The best evidence of the intention of parties lies in the description of the boundaries, since boundaries are seldom prone to clerical or typographical errors, whereas survey numbers or area dimensions might be misstated or evolve over time due to re-surveys, subdivision, or inadvertence. Therefore, it is the settled position of law that once the boundaries are established beyond doubt—whether by reference to physical landmarks, adjacent plots, or other definitive points on the ground—such boundaries will govern the extent of the property conveyed, even if they diverge from the survey number or the numerical extent recited in the deed.

30. This well-recognized principle ensures certainty in land transactions and prevents technical inconsistencies from defeating the substantive intention of the parties. Courts, in furtherance of this principle, have consistently endeavored to give effect to the most accurate and specific identifiers of the subject property, thereby safeguarding the equities of all concerned parties.

31. Examining the boundaries outlined in the First Schedule, it emerges that CTS No. 1483 is located to the north, which, in turn, lies adjacent to CTS No. 1484 further north. The net area agreed to be conveyed is 6753 square metres, whereas the impugned conveyance directs transfer of 4925.62 square metres plus an undivided right in the RG area ad-measuring 869.23 square metres. In my considered opinion, the mere reference to CTS No.

1484 in the impugned order, despite not being explicitly cited in the First Schedule, does not substantially affect the essence or legality of the conveyance, given that the boundaries match the net area intended to be transferred to the Society. In circumstances where boundary references align with the property intended, the mention of an adjacent CTS number does not, by itself, vitiate the conveyance—particularly if the net area conveyed remains within the scope contemplated by the Agreement.

32. In the result, the principle that the boundaries prevail must guide the interpretation of the area to be conveyed. The Society is in receipt of a portion of land consistent with the overall layout, deductions, and boundaries enumerated in the Agreement. The fact that the final layout or sub-division may reflect a portion mapped under CTS No. 1484 does not defeat the Society's rights, nor does it confer on the Society more area than what was originally agreed, especially when the impugned order's measurement is less (4925.62 sq. m. plus 869.23 sq. m. RG) than the total 6753 sq. m. described in the First Schedule (before the deduction of areas already sold or reserved).

33. It was next submitted by the petitioners that the developer intended to sub-divide the plot described in the First Schedule, allegedly with the purchasers' consent under Clause No.12 of the agreement. However, a perusal of this clause indicates that while the developer does retain the right to sub-divide, the specific extent, configuration, or boundaries of the sub-divided parcel were never clearly demarcated at the time of executing the agreement. Therefore, the fact that some form of sub-division might have been

agreed to in principle cannot be a legitimate ground to deny the Society its statutory entitlement to a unilateral deemed conveyance.

34. Moreover, it is the consistent judicial view of this Court that if the area ultimately conveyed under a deemed conveyance allegedly exceeds what was stipulated in the agreements or the sanctioned plan, the promoter's recourse is to file a civil suit. This holds true even in respect of common areas such as the 869.23 square metres of RG (Recreational Ground) area being claimed by the Society. In *Nahalchand Laloochand Pvt. Ltd. v. Panchali Co-operative Housing Society*, (2010) 9 SCC 536, the Hon'ble Supreme Court underscored that the rights of flat purchasers in common areas and amenities have statutory underpinnings, and any dispute as to the quantum or classification of such areas requires a full factual inquiry suitable only in a civil forum.

35. In that light, the adjudication rendered by the Competent Authority under Section 11 of MOFA cannot and does not foreclose any substantive civil rights that the petitioners may legitimately assert—whether pertaining to the alleged 9-metre-wide access road or any other easementary or proprietary claim. Should the petitioners deem themselves aggrieved by the determination that they consider to exceed the scope of the original agreements, their remedy lies in approaching the civil court, where issues of title, possession, and boundary demarcation can be subjected to rigorous evidentiary scrutiny.

36. Accordingly, with these clarifications, the writ petition stands dismissed, as no substantial ground for interference with the impugned order of the Competent Authority has been made out under Article 226 of the Constitution of India. Nevertheless, the petitioners retain the liberty to agitate their rights before the civil court, including any claims regarding sub-division, right of way, or alleged excess area in the deemed conveyance. There shall be no order as to costs.

37. For the foregoing reasons and in light of the clarifications afforded to the petitioners, this Court is of the considered view that no case for interference with the impugned order is made out. The Writ Petition, accordingly, stands dismissed with liberty granted to the petitioners to pursue their civil remedies, if any, in respect of the disputed rights. There shall be no order as to costs.

38. Pending interlocutory application(s), if any, stand disposed of.

(AMIT BORKAR, J.)