

Ashish

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5626 OF 2025
(Order corrected as per order dated 2nd May, 2025)**

Ashok Mohanlal Mehta and anr ... Petitioners
V/s.
Competent Officer and District Deputy
Registrar and anr ... Respondents

Mr. Naushad Engineer, Senior Counsel a/w Mr. Aman
Anand, Abir Patel, Ms. Prottyusha Thanawala i/b M/s.
Wadia Ghandy & Co for Petitioners.

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

Mr. Deepak Kushwaha for Respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : APRIL 29, 2025

P.C.:

1. Challenge in the present petition is directed against the order dated 17th March 2025 passed by the Competent Authority in exercise of powers under Section 11 of the Maharashtra Ownership of Flats (Regulation of the Promotion, Construction, Sale, Management, and Transfer) Act, 1963 (for short, "MOFA Act"). By the said order, the Competent Authority has directed execution of deemed conveyance in favour of the respondent-society in respect of an area admeasuring 30,893.66 square meters, out of the total property admeasuring 48,890.00 square meters, as mentioned in the certificate issued.

2. The learned Advocate for the petitioner, while assailing the order, submitted that the Competent Authority has grossly erred in directing conveyance of land admeasuring 30,893.66 square meters when, as per the sanctioned plan, the net plot area was only 27,950.536 square meters. It was contended that conferment of area in excess of sanctioned net plot area is legally impermissible, and would cause serious prejudice to the petitioner's proprietary rights.

3. However, a close scrutiny of the judgment of the Competent Authority dated 17th March 2025, particularly the observation extracted at page 57, reveals the following:

"In view of the above aspects, it is appropriate and necessary to carry out conveyance of 30,893.66 sq. mt. built-up area to the society."

4. The extracted portion unmistakably clarifies that what has been directed to be conveyed is not the land area simpliciter but the built-up area admeasuring 30,893.66 square meters. This distinction assumes significance. In the domain of conveyance under MOFA, it is well established that the society is entitled to a proportionate share of the entire property relatable to the built-up area constructed and conveyed to the flat purchasers.

5. Therefore, reading the certificate dated 17th March 2025 in the light of the judgment rendered by the Competent Authority, it becomes clear that the figure of 30,893.66 square meters refers to the aggregate built-up area developed on the project land, and not to the open land or net plot area per se. Thus construed, the

impugned order does not suffer from any fundamental infirmity so as to warrant interference under Article 226 of the Constitution.

6. It must also be noted that under the Government Resolution dated 22nd June 2018, the calculation of proportionate built-up area for purposes of conveyance is standardized, and the share of the society is determined accordingly. The extracted observations of the Competent Authority indicate compliance with the said Resolution. The deemed conveyance thus reflects the cumulative rights of the flat purchasers, which necessarily include rights over the proportionate undivided share in the land appurtenant to their built-up premises.

7. Nonetheless, it is equally settled that if the petitioner asserts any independent civil rights, including any grievances pertaining to surplus area, easements, or other ancillary rights not adequately addressed in the proceedings before the Competent Authority, such rights can be agitated independently by way of a civil suit. The remedy under Section 11 of the MOFA Act is limited to facilitating the execution of conveyance and does not adjudicate upon complex questions of title or civil disputes between parties. Therefore, without expressing any opinion on the merits of any civil claims that the petitioner may be entitled to pursue, it is clarified that the petitioner's civil rights, if any, are left open to be ventilated in an appropriate civil forum. The observations made by the Competent Authority, or by this Court in the present order, shall not operate as an impediment to the petitioner prosecuting such civil proceedings.

8. Accordingly, the petition is disposed of by clarifying that:

(i) The area of 30,893.66 square meters mentioned in the certificate dated 17th March 2025 shall be construed as built-up area, as reflected in the Competent Authority's judgment dated 17th March 2025.

(ii) The questions relating to the petitioner's enforcement of independent civil rights are kept expressly open to be agitated in a civil suit, if so advised. No costs.

(AMIT BORKAR, J.)