

Santosh

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

WRIT PETITION NO. 6936 OF 2025

M/s. Ajit Developers Pvt. Ltd.

...Petitioner

Versus

Shiv Siddhi Vinayak Co-Operative Housing
Society Ltd. And Ors.

...Respondents

SANTOSH
SUBHASH
KULKARNI

Mr. Rajesh Kachare, for the Petitioner.
Mr. A. C. Bhadang, for the State.

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SANTOSH SUBHASH
KULKARNI
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CORAM: N. J. JAMADAR, J.
DATED: 8th DECEMBER, 2025

Oral Order:-

1. Heard the learned Counsel for the petitioner.
2. The challenge in this petition is to an order dated 26th April, 2022 passed by the Deputy Registrar – Competent Authority under Section 11(4) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, (“the MOFA”), thereby granting a certificate of unilateral deemed conveyance in favour of respondent No.1 Society in respect of an area admeasuring 1072.21 sq. mtrs. situated at Survey No.31, Hissa No.21, New Survey No.21A and New Survey No.31, Hissa No.21B, CTS No.323 situated at Vileparle, Taluka Andheri.

3. The learned Counsel for the petitioner invited the attention of the Court to the agreement under Section 4 of the MOFA which indicates that the petitioner has sold the flat in a building constructed on the land admeasuring 1072.21 sq. mtrs. Emphasis was laid on Clause 55 of the said agreement, wherein it was recorded that the purchasers shall not object 'the right of way' of required width as per the sanctioned plan dated 20th February, 2007 from the open space to adjoining property/ properties bearing Survey No.32, Hissa No.2, CTS No.322, 322/1 to 34 and [Survey No.31, Hissa No.16(B)], [Survey No.31, Hissa No.13, CTS No.327], [CTS No.338], [Survey No.31, Hissa No.20], [Survey No.31, Hissa No.17]. It was further submitted that the petitioner has right to construct 6th floor on the subject premises and utilize the FSI.

4. Mr. Bhadang, the learned AGP, invited the attention of the Court to the fact that the petitioner has already instituted a suit, being Civil Suit No.2769 of 2023, before the City Civil Court. Therefore, the petition does not deserve to be entertained.

5. It is trite that grant of certificate of unilateral deemed conveyance does not preclude a party therein from instituting a suit before the Competent Civil Court as the Competent

Authority is neither competent nor expected to determine the questions of title. [*Arunkumar H Shah HUF vs Avon Arcade Premises Co-operative Society Limited and ors.*¹.]

6. If the petitioner's 'right of way' flows from the MOFA Agreement, the petitioner would be entitled to enforce the same in accordance with law in the event the said 'right of way' is constructed. Thus, the issues raised by the petitioner can be legitimately raised and adjudicated in the civil suit instituted by the petitioner.

7. In view of the above, at this juncture, especially when the petitioner has instituted a suit, before the City Civil Court, there is no propriety in entertaining this petition.

8. With the liberty to agitate the issues before the Civil Court, the petition stands disposed.

[N. J. JAMADAR, J.]

¹ (2025) 7 SCC 249.