

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

WRIT PETITION NO. 8030 OF 2025

Rai Residency Pvt. Ltd.

...Petitioner

Versus

1. The Competent Authority and District
Deputy Registrar, Co-operative Societies,
Thane

2. Dwarka Nagari Co-operative Housing
Society Limited

3. Jaya Purshottam Gaikwad

4. Pratibha Dashrath Mhatre

5. Reshma Hemant Mali

6. Aarti Arvind Bhoir

7. Bharti Purshottam Gaikwad

8. Kriti Purshottam Gaikwad

9. Vajjanta Purshottam Gaikwad

10. Bhagwan Ramu Gaikwad

11. Manish Purshottam Gaikwad

12. Rahul Kishor Salvi

13. Santosh Kishor Salvi

...Respondents

Mr. Mayur Khandeparkar, a/w Mr. Bishwajeet Mukherjee, Ms.

Humera Syed and Mr. Omkar Mendarkar, for Petitioner.

Ms. Vrushali Raje, AGP for the State-Respondent No.1.

Mr. Shubham Thakur, for Respondent No.2.

CORAM: N. J. JAMADAR, J.

RESERVED ON: 30th JULY, 2025

PRONOUNCED ON: 1st OCTOBER, 2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

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SUBHASH
KULKARNI

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2. This Petition under Article 227 of the Constitution of India calls in question the legality, propriety, and correctness of an order dated 29th April, 2025, passed by the District Deputy Registrar, Co-operative Societies and the Competent Authority, thereby granting a unilateral deemed conveyance certificate in favor of Respondent No. 2 under the provisions of Section 11(4) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (“the MOFA, 1963”) and also seeks to set aside the deed of conveyance dated 20th June, 2025, executed pursuant to the said certificate.

3. The background facts necessary for the determination of this petition can be stated, in brief, as under:

3.1 The Petitioner is a company incorporated under the Companies Act, 1956. Respondent Nos.3 to 13 (“original owners”) were the owners of land being Survey No.82, Hissa No.5, admeasuring 4219.37 sq. mtrs. situated at Village Tisgaon, Taluka Kalyan, District Thane (“the larger land”). The original owners executed a registered Development Agreement dated 23rd January, 2004 in favor of the Petitioners, thereby granting development rights in regard to the larger land. Pursuant thereto, the Petitioner obtained permission from Kalyan Dombivli Municipal

Corporation ("KDMC") and proposed to develop a layout comprising of four buildings, namely Building Nos.1, 2, 3, and 4. The Petitioner purchased and loaded TDR equivalent to 1944.30 sq. meters on Buildings Nos.2, 3, and 4. Building No.1 was to be constructed at a later point in time and only permission in respect of the plinth area of the said building was granted.

3.2 Since the year 2009, the Petitioner entered into Agreements for Sale with the purchasers in accordance with the provisions of MOFA, 1963 of the flats in Buildings Nos.2, 3, and 4. The Petitioner claims the aforesaid purchasers were aware, *inter alia*, that the constructions of Building No.1 was to be carried out by the Petitioner at a later point in time and, accordingly, requisite clauses were incorporated in the Agreement for Sale.

3.3 Dwarka Nagari Co-operative Housing Society Ltd. (R2) is a registered Co-operative Society of the flat purchasers of Buildings Nos.2, 3, and 4.

3.4 Respondent No.2 filed an application under Section 11 of the MOFA, 1963 seeking a certificate of unilateral deemed conveyance. The Petitioner resisted the application contending, *inter alia*, that the layout in respect of the larger land consisted of more than one society and construction of Building No.1 was

yet incomplete. Therefore, Respondent No. 2 society was not entitled to a deemed conveyance certificate in respect of the area admeasuring 2718.51 sq. meters of land. The Petitioner contended that the larger land was affected by W.W.C. reservation to the extent of 900 sq. meters and unusable area of 400 sq. meters for FSI purposes and a further reservation for RG being 15% of the gross plot area, equivalent to 437.90 sq. meters. The Petitioner also contended that the prayer of Respondent No.2 for deemed conveyance was not in consonance with the Government Resolution dated 22nd June, 2018 issued by the State Government to regulate the grant of deemed conveyance where there were multiple societies in one layout.

3.5 The Competent Authority, after considering the documents and architect's certificate dated 27th September, 2024, relied upon by Respondent No.2, and the directives in the Government Resolution dated 22nd June, 2018, was persuaded to allow the application for a certificate of unilateral deemed conveyance. The Competent Authority was of the view that in accordance with the Government Resolution dated 22nd June, 2018, after the layout remained underdeveloped, then the completed buildings in the said layout would get the area as per their FSI consumption and Respondent No.2 cannot be non-suited on the

ground that it had not claimed certificate for an appropriate area and the layout was underdeveloped. The Competent Authority thus granted unilateral deemed conveyance in favour of Respondent No.2 for an area admeasuring 2751.09 sq. meters out of 4280 sq. meters area of the larger land.

3.6 Pursuant to the said certificate dated 29th April, 2025, a unilateral deed of conveyance came to be executed and registered on 20th June, 2025. By way of the amendment the Petitioner has, therefore, sought the relief of setting aside the said deed of conveyance also.

4. An affidavit-in-reply has been filed on behalf of respondent No.2 to resist the prayers in the petition.

5. I have heard Mr. Mayur Khandeparkar, the learned Counsel for the Petitioner, Mr. Shubham Thakur, the learned Counsel for Respondent No.2, and Ms. Vrushali Raje, the learned AGP for the State – Respondent No.1, at some length. The learned Counsel for the parties took the Court through the documents and material on record.

6. Mr. Khandeparkar, the learned Counsel for the Petitioner, would urge that the impugned order suffers from manifest illegality and, therefore, warrants interference in exercise of writ jurisdiction. Amplifying the submission, Mr. Khandeparkar

would urge that the Competent Authority has ignored vital documents like the sanctioned plan, which indicates the area that was available, after accounting for reservations. The Competent Authority has completely misconstrued the net area, which was available and granted deemed conveyance even for an area which was in excess of the claim of Respondent No. 2. A bare perusal of the sanctioned plan and comparing and contrasting the same with the impugned order would reveal that the area for which deemed conveyance has been granted is far in excess of the entitlement of Respondent No.2. In that process, the Competent Authority, according to Mr. Khandeparkar, completely ignored the directives issued by the State Government in the Government Resolution dated 22nd June, 2018. The Competent Authority was bound to follow the said directives. On this count alone, the impugned order deserves to be quashed and set aside.

7. Mr. Khandeparkar would further urge that the unsustainability of the impugned order can be gauged from the fact that the Competent Authority has granted deemed conveyance in favour of Respondent No.2 in respect of an area which is even in excess of the claim of Respondent No.2 in the application. Cumulatively, the impugned order suffers from such

grave infirmities as to warrant exercise of the supervisory jurisdiction. Lest, the Petitioner would suffer grave and irretrievable prejudice.

8. To bolster up the submission that the directives in the Government Resolution dated 22nd June, 2018, were binding on the Competent Authority, Mr. Khandeparkar placed a very strong reliance on the judgment of a learned Single Judge of this Court in the case of *Prestige Garden A-1 CHSL vs. State of Maharashtra*¹.

9. Per contra, Mr. Thakur, the learned Counsel for Respondent No. 2, would urge that none of the grounds sought to be canvassed by Mr. Khandeparkar, vitiates the impugned order. At best, according to Mr. Thakur, the Petitioner is raising an issue of entitlement for a particular area. The extent of the area for which a deemed conveyance is ordered to be issued, is a matter which touches upon the proprietary title of the parties. This Court has consistently held that the issue of title and the extent of the area for which a deemed conveyance can be granted are the matters within the province of the Civil Court. The Competent Authority is neither competent nor vested with the jurisdiction to decide the question of title.

¹ WP/7668/2023 dtd.28/3/2024.

10. In order to lend support to the aforesaid submission, Mr. Thakur placed a strong reliance on a judgment of a learned Single Judge of this Court in the case of *Nahalchand Laloochand Pvt. Ltd. and ors. vs. Shri Panchamrut CHS Ltd. and ors.*², wherein it was enunciated 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. Therefore, the impugned order does not warrant any interference, submitted Mr. Thakur.

11. Ms. Raje, the learned AGP for the State – Respondent No.1, supplemented the submissions of Mr. Thakur and urged that the grant of a certificate of deemed conveyance does not preclude an aggrieved party from invoking the plenary jurisdiction of the Civil Court.

12. The aforesaid submissions now fall for consideration.

13. To begin with, it is necessary to note that there is not much controversy over the character of the contesting parties, and their rights and liabilities under the regime enshrined by MOFA, 1963. It is not controverted that the Petitioner is, “a promoter” within the meaning of Section 2(c) of the MOFA, 1963.

² WP/2222/2025, dtd.24/2/2025.

Nor there is a dispute over the fact that the Petitioner had sold the flats in Building Nos.2, 3 and 4 to various persons, who joined together to form Respondent No.2 Society. Thus, the jural relationship between the Petitioner, as the promoter, and Respondent No.2 as the co-operative Society of the flat purchasers, in the context of the rights and liabilities under MOFA, 1963, is rather incontrovertible.

14. In addition to the general liabilities of the promoter, under Section 4(1) of the MOFA, 1963, the promoter is enjoined to execute a registered Agreement for Sale in favour of the flat purchasers in the form prescribed under MOFA, 1963. Under Section 10 of the MOFA, 1963, it is the obligation of the promoter to form a cooperative society or a company representing the flat purchasers. If the promoter fails to take steps to register the society, the Competent Authority constituted under Section 5A of MOFA, 1963, upon an application from the flat purchasers is empowered to direct the Registrar, Cooperative Societies to register the society.

15. Then comes Section 11 of the MOFA, 1963, which enjoins the promoter to take steps to complete his title and convey to the Society or the Company or the Association of flat takers, *his* right, title and interest in the land and building and execute all

requisite documents in accordance with the agreement executed under Section 4 of the MOFA, 1963. If no period for the execution of the conveyance is agreed upon, the promoter shall execute the conveyance within the prescribed period. Rule 9 of the MOFA, 1963 provides that if no period for conveying the title is agreed upon, the promoter shall execute the conveyance within four months from the date on which the Society or Company is registered or the Association of flat takers is duly constituted.

16. The salience of the provisions contained in Section 11 of the MOFA, 1963 lies in the legislative redressal in the event of default on the part of the promoter to convey his right, title and interest in the land and building to the society. As the promoters did not convey their right, title, and interest in the land and building and resorted to various subterfuges thereby defeating the rights of the flat purchasers, the legislature introduced the device of deemed conveyance. The justification for the same stems from the fact that the promoter has already received the consideration and transferred his right and interest in the flats and what remained to be executed was a conveyance. Thus, the Competent Authority has been invested with the power to issue a certificate to the Registrar of Assurances certifying that it was

a fit case for enforcing unilateral execution of conveyance deed conveying the right, title and interest of the promoter in the land and building in favor of the Society/Company as a deemed conveyance.

17. Sub-section (4) of Section 11 is required to be read in conjunction with sub-section (1) of Section 11 as the very obligation cast on the promoter under sub-section (1) of Section 11, namely, to convey *his* right, title and interest in the land and building is to be enforced by executing a unilateral deed of conveyance, nothing more and nothing less. Under sub-section (5) of Section 11 the Registrar of Assurances, after issuing summons to the promoter to show cause why such unilateral instrument should not be registered as deemed conveyance and providing a reasonable opportunity of hearing to the promoter and the Society/Company may register the instrument as “deemed conveyance”.

18. The MOFA, 1963 and the Rules, 1964 also contain provisions to regulate the manner of hearing and the decision-making process so as to bring it in conformity with fundamental principles of judicial process. The competent authority thus discharges quasi-judicial function. In the case at hand, there is no qualm over the fact that an efficacious opportunity of

hearing was given to the parties by the Competent Authority. The challenge to the impugned order essentially revolves around the determination of the area, to which Respondent No.2 was entitled to.

19. That brings to the fore the nature of the power exercised by the Competent Authority under Section 11 of MOFA, 1963. In a line of decisions commencing from a judgment of a learned Single Judge in the case of *Mazda Construction Company and others vs. Sultanabad Darshan CHS Ltd. and ors.*³ this Court has consistently held that what has to be conveyed, even by a deemed conveyance, is the right, title and interest of the promoter in the land and building. The Competent Authority, in effect, performs the duty, which was to be discharged by the promoter. The Competent Authority does not decide the question of title. The issue of certificate of unilateral deemed conveyance does not preclude an aggrieved party from instituting a suit to establish the title or demonstrate that the Society is not entitled to the area for which an unilateral deemed conveyance has been ordered.

20. In the case of *Arunkumar H. Shah HUF vs Avon Arcade Premises Co-operative Society Limited and ors.*⁴, the Supreme

3 2012 SCC Online Bom. 1266.

4 2025 SCC online SC 828.

Court gave its imprimatur to the aforesaid line of decisions in observing that, the Competent Authority cannot conclusively and finally decide the question of title. Therefore, notwithstanding the order under sub-section (4) of Section 11, the aggrieved parties can always maintain a civil suit for establishing their rights.

21. It is this well recognized principle, which was the fulcrum of the submission of Mr. Thakur that, the real challenge to the impugned order is in regard to the extent of area of land to which respondent No.2 Society is entitled to, and, therefore, the petition does not deserve to be countenanced.

22. There can be no duality of opinion on the proposition that the Competent Authority does not decide the question of title and if any person is aggrieved by a determination by the Competent Authority, which impinges upon his propriety rights, the appropriate remedy is to approach the Civil Court for substantive reliefs. However, the question as to whether the Competent Authority has ordered the issue of certificate for execution of unilateral deed of conveyance with regard to the very obligation of the promoter, namely, *his* right, title and interest in the land and building, can be legitimately questioned and inquired into.

23. On the aforesaid anvil readverting to the facts of the case, it is pertinent to note that, the parties are not at issue over the total area of the subject plot, i.e. 4219.37 sq. meters. Out of the said total area of 4219.37 sq. meters, area under W.W.C. was 900 sq. meters and the area not used for FSI was 400 sq. meters. Thus, the net plot area in the sanctioned building plan, (exhibit B-1 Page 35A) is shown 2919.37 sq. meters. It is also imperative to note, out of the said area, 15% area equivalent to 437.90 sq. meters, was earmarked for RG, and, thus, the net permissible built-up area shown in the sanctioned building plan is 2481.47 sq. meters.

24. Indubitably, four buildings were to be developed. There does not seem to be controversy as to the plinth area of Building No.1, which was yet to be completed, i.e. 261.49 sq. meters. (Paragraph 4 of the Rejoinder filed on behalf of respondent No.2 before the Competent Authority, and the Architect's Area Certificate (Exhibit-I) to the petition.) The situation which thus emerges is that, the Petitioner and Respondent No.2 were in unison on the net plot area that is 2919.37 sq. meters, the addition for FSI purpose (TDR) i.e. 1592.03 sq. meters and the plinth area of Building No.1 i.e. 261.49 sq. meters.

25. At this juncture, a reference to the Government Resolution dated 22nd June, 2018 becomes necessary. In the context of the procedure to be followed by the Competent Authority where there are more than one societies, in a layout, and the conveyance is sought by one of the societies, the relevant clauses of the Government Resolution dated 22nd June, 2018 read as under:

“(B) A procedure to be adopted in respect of issuing Deemed Conveyance Certificate by the District Dy. Registrar, Co-operative Societies/Jt. Registrar, Co-operative Societies (CIDCO) and Competent Authority:

.....

(iv) While passing Deemed Conveyance Order and Certificate, District Dy. Registrar, Co-operative Societies/Jr. Registrar, Co-operatives (CIDCO) and Competent Authority should consider following matter and then pass the order:

(1) If there are many buildings on one plot and have a separate co-operative society of each building and if construction of some of them is incomplete then while making deemed conveyance of completed building, undivided share of occupancy right in the proportion of construction on the proportionate area of the construction of the building of such society or ground coverage or plinth area, similarly open space, common services and facilities, roads should be given.

(2) While making deemed conveyance in respect of the buildings in the layout where T.D.R. is utilized, their conveyance should be made according to plinth and appurtenant area.

(3) If there is more than one society in one layout and out of them only one society has made such application, similarly other societies are not cooperating for conducting measurement of the land of the applicant society then the District Deputy Registrar, Co-operative Societies, and Competent Authority shall suggest the applicant society to conduct the measurement according to the approved plan from the Architect on the panel of the Competent Authority who approved the constructions plans of the concerned society and submit the report regarding area of the society.”

26. In the case of *Prestige Garden* (supra), a learned Single Judge of this Court construed the purpose and import of the aforesaid directives in the following words.

“34. The guidelines specifically deal with the situation where there are many buildings on one plot and have separate cooperative societies and when the construction of some of them is incomplete. The purport is to grant conveyance of the land required to sustain the constructed structure along with the proportionate area in common amenities is required to be conveyed. Apart from the Petitioner Society, the layout consists of other independent societies. The guidelines prescribe that in event there are more than one society and other societies are not co-operating for conducting the measurement of land of applicant society, then the Competent Authority can get the measurements carried out from an architect on the panel of Competent Authority and can get the report submitted regarding the area of the applicant society. The Competent Authority is bound by the guidelines issued by the G.R of 22nd June, 2018, which guidelines have not been followed in the present case.”

27. Evidently, in the case at hand, the Competent Authority, didn't follow the directives to conduct the measurement according to the approved plan from the Architect on the panel of the Competent Authority and obtain a report regarding the area of the society. Since, Buildings No.2, 3 and 4 of respondent No.2 Society were constructed by utilizing the TDR, the ascertainment of the plinth and appurtenant area of Building Nos.2, 3 and 4 was also imperative under clause (2) extracted above.

28. It is necessary to note how the Competent Authority approached the issue. In the impugned order, the Competent Au-

thority has referred to the aforesaid Government Resolution, and observed that if the layout is underdeveloped, then the completed buildings in the same layout will get the area as per their FSI consumption and, thus, the applicant society was entitled to get area on pro-rata basis. No other reason is evincible from the impugned order.

29. It would be contextually relevant to note the manner in which Respondent No.2 Society had fashioned its claim. In paragraph 4 of the rejoinder, the respondent No.2 asserted that if out of the total plot area of 4280 sq. meters., the area of W.W.C. 900 sq. meters and unusable area of 400 sq. meters, for FSI purpose, and the plinth area of Building No.1 i.e. 261.49 sq. meters were deducted, the Respondent No.2 would be entitled to 2718.51 sq. meters area and that was the precise area for which the application for deemed conveyance was filed.

30. The aforesaid claim of Respondent No.2 Society is *ex facie* erroneous. Though W.W.C. reservation of 900 sq. meters and unusable FSI area of 400 sq. meteres have been accounted for, the Respondent No.2 Society failed to deduct for 15% RG out of the net plot area of 2919.37 sq. meters.

31. The fallacy in the impugned order becomes explicitly clear if these deducted areas are added to the area i.e. 2751.09 sq.

meters, for which unilateral deed of conveyance has been executed. If W.W.C. reservation of 900 sq. meters, non-usable FSI of 400 sq. meters and the plinth area of Building No.1 i.e. 261.49 sq. meters are added to the conveyed area i.e. 2751.09 sq. meters, the aggregate area comes to 4312.58 sq. meters, far in excess of the agreed plot area of 4219.37 sq. meters. In addition RG of 437.90 sq. meters will be required to be accounted for. Consequently, Building No.1, with a plinth area of 261.49 sq. meters, will be left with no land to sustain it as an independent building/society.

32. In the aforesaid view of the matter, the impugned order passed by the Competent Authority appears to be manifestly illegal. As the Competent Authority did not follow the directives contained in the Government Resolution dated 22nd June, 2018 and was, thus, deprived of the benefit of the opinion of the Architect, in the context of the controversy between the parties, and went on to grant a certificate for unilateral deemed conveyance in excess of the entitlement of Respondent No.2 Society, the impugned order cannot be sustained. Therefore, the impugned order deserves to be quashed and set aside and consequently the Deed of Conveyance is also required to be cancelled

and the application remitted to the Competent Authority for afresh determination.

33. Hence, the following order:

: O R D E R :

- (i)** The petition stands partly allowed.
- (ii)** The impugned order granting certificate of unilateral deemed conveyance and the certificate of deemed conveyance dated 29th April, 2025 issued by the Competent Authority, stand quashed and set aside.
- (iii)** Deed of unilateral deemed conveyance dated 20th June, 2025 also stands cancelled.
- (iv)** Application No.722 of 2024 under Section 11 of the MOFA, 1963 is remitted back to the Competent Authority (R1) for afresh decision, in the light of the directives in the Government Resolution dated 22nd June, 2018 and aforesaid observations.
- (v)** The parties shall appear before the Competent Authority on 15th October, 2025.
- (vii)** The Competent Authority shall provide an opportunity to the parties to file further affidavits/documents and advance submissions, and decide the application as expeditiously as possible.
- (vi)** Rule made absolute in the aforesaid terms.

No costs.

[N. J. JAMADAR, J.]