

Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1845 OF 2025

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Qureshi Construct, through its partner
Zahir Ahmad Abdul Hamid Qureshi
& Another ... Petitioners

V/s.

District Deputy Registrar, Cooperative
Societies & Competent Authority & Anr. ... Respondents

WITH
INTERIM APPLICATION NO.2 OF 2026
IN
WRIT PETITION NO.1845 OF 2025

Hajrabi Yakub Sayed, since deceased
through her LR Ishaq Yakub Sayed ... Applicant

In the matter between

Qureshi Construct, through its partner
Zahir Ahmad Abdul Hamid Qureshi
& Another ... Petitioners

V/s.

District Deputy Registrar, Cooperative
Societies & Competent Authority & Anr. ... Respondents

Mr. Parag Tilak for the applicant/petitioner.

Mr. Avitat Sonawane for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 18, 2026

P.C.:

Interim Application No.2 of 2026:

1. For the reasons stated in the Interim Application, the same is allowed.

2. Writ Petition No.1845 of 2025 is restored to file.
3. The interim application stands disposed of.

Writ Petition No.1845 of 2025:

4. By the present Petition instituted under Article 227 of the Constitution of India, the Petitioners have invoked the supervisory jurisdiction of this Court assailing the Judgment and Order dated 15 September 2023 passed by the District Deputy Registrar, Cooperative Societies, Thane (Respondent No.1), in exercise of powers under Section 11 of the Maharashtra Ownership Flats Act, 1963 (for short, “MOFA”), whereby unilateral deemed conveyance has been granted in favour of Respondent No.2.

5. The facts giving rise to the present Petition, briefly stated, are that development of the subject property was undertaken jointly by Petitioner No.1 along with Petitioner No.2, pursuant to which a commencement certificate came to be issued on 30 May 1990. Thereafter, two buildings, namely Wing ‘A’ and Wing ‘B’, were constructed and agreements for sale were executed in respect of flats therein. Respondent No.2 came to be registered as a cooperative housing society on 22 December 1994. According to the Petitioners, though certain proceedings had earlier been initiated by the Society, the same were subsequently withdrawn.

6. On 25 July 2023, Respondent No.2 filed an application under Section 11 of MOFA before Respondent No.1 seeking unilateral deemed conveyance in respect of land bearing Old Survey No. 42, Hissa No. 19B (part), corresponding to New Survey No. 42/A/19B/2, admeasuring 1380 square meters, situated at

Village Chikanghar, Taluka Kalyan, District Thane. The Roznama dated 8 August 2023 records the appearance of the learned Advocate for the Society and a statement that the Petitioners had been served. The proceedings were thereafter adjourned to 4 September 2023.

7. It is the specific contention of the Petitioners that the alleged service upon Petitioner No.2 was defective, inasmuch as the notice addressed to him was returned with an endorsement indicating that he had expired. According to the Petitioners, despite knowledge of the death of the original land owner, no steps were taken by the Society to bring the legal heirs on record by suitably amending the application. It is further contended that Respondent No.1 issued an undated public notice purportedly under Form XIIIIn of the MOFA Rules, 1964, without first effecting due and proper service in the manner contemplated by the Rules. The Petitioners assert that the said public notice neither bore a valid date nor contained sufficient particulars as required in law.

8. On 4 September 2023, Respondent No.1 closed the matter for orders and thereafter, by order dated 15 September 2023, granted unilateral deemed conveyance in favour of Respondent No.2. The Petitioners contend that the impugned order has been passed ex parte, without affording them an effective opportunity of hearing, and in breach of the mandatory procedure prescribed under the MOFA Rules, 1964.

9. Learned Advocate appearing for the Petitioners invited attention to the issue of service purportedly effected upon

Petitioner No.2, the original land owner. It is submitted that the alleged service, as asserted by Respondent No.2–Society, is legally defective and contrary to the prescribed procedure. According to the Petitioners, once the Society was made aware that Petitioner No.2 had expired, it became incumbent upon Respondent No.2 to amend the deemed conveyance application and to bring on record the legal heirs and representatives of the deceased before proceeding further. In the absence of such steps, any proceedings continued or concluded against a deceased person are void in law. It is therefore contended that the impugned ex parte order, having been passed against a deceased person, is ex facie illegal, void ab initio, and liable to be quashed and set aside.

10. It is further submitted that Respondent No.1–Authority proceeded to close the matter for orders on the second date of hearing without adhering to the mandatory procedure prescribed under the Maharashtra Ownership of Flats Rules, 1964. The Petitioners contend that no notice by Registered Post Acknowledgement Due, as contemplated under Rule 13(2) of the said Rules, was issued to them by Respondent No.1. It is their case that several communications were addressed to Respondent No.1 seeking clarification as to whether any deemed conveyance proceedings had been initiated by Respondent No.2–Society, and that at the relevant time no such proceedings were stated to be pending. According to the Petitioners, Respondent No.1, without ensuring proper service and without verifying compliance with statutory requirements, proceeded to close the proceedings for orders and thereafter passed the impugned ex parte order. It is also

contended that the record does not disclose filing of any affidavit of service by Respondent No.2–Society to establish due and proper service of the deemed conveyance application upon the Petitioners.

11. Learned Counsel for the Petitioners submits that the course adopted by the authority has caused serious prejudice to their valuable right to effectively participate in the proceedings and to place their defence on record. It is urged that denial of a reasonable opportunity of hearing strikes at the root of fair procedure and renders the decision-making process unsustainable. On this basis, it is contended that the impugned ex parte order stands vitiated on account of breach of the principles of natural justice and is liable to be set aside in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

12. Per contra, learned Advocate appearing for Respondent No.2–Society submitted that Petitioner No.1 had deliberately refused to accept the notice issued by the Advocate for Respondent No.2 informing him of the date of hearing before the Competent Authority. Attention is invited to the postal endorsement on the returned envelope, which records refusal by Petitioner No.1 on 23 August 2023. It is therefore contended that refusal to accept notice amounts to valid and deemed service in law. Learned Counsel further submits that the impugned order having been passed on 15 September 2023, sufficient opportunity was available to Petitioner No.1 to appear before the Authority, and hence the contention regarding absence of service is without merit.

13. Learned Counsel further submits that Respondent No.2–Society came to be registered on 22 December 1994, and despite lapse of nearly three decades, the conveyance in favour of the Society was not executed. It is contended that under Rule 9 of the Maharashtra Cooperative Societies Rules, 1961, the promoter is under an obligation to execute the conveyance within four months from the date of registration of the Society. The continued failure on the part of the Petitioners to execute the conveyance, according to Respondent No.2, compelled the Society to invoke Section 11 of MOFA for grant of unilateral deemed conveyance.

14. It is further submitted that even assuming there was any procedural irregularity, the Petitioners have failed to demonstrate any real or substantive prejudice caused to them by the alleged breach of principles of natural justice. Learned Counsel submits that despite opportunity being granted, the Petitioners have not indicated what specific defence they would have raised before the Competent Authority that could have altered the outcome. Reliance is placed on the judgment of the Supreme Court in *State of U.P. v. Sudhir Kumar Singh & Ors.*, (2021) 19 SCC 706, wherein it has been held that mere infraction of principles of natural justice, in the absence of proof of prejudice, does not by itself vitiate an order. On this basis, it is urged that no interference is warranted in exercise of jurisdiction under Article 227 of the Constitution of India.

15. Having considered the record, the impugned order, and the rival submissions, it becomes necessary to examine the controversy in its correct legal perspective. The jurisdiction of this Court under

Article 227 is supervisory. It is not an appellate jurisdiction to reappreciate every factual aspect or to substitute its view merely because another conclusion is possible. Interference is warranted only when the subordinate authority acts without jurisdiction, in patent disregard of law, or where grave injustice is demonstrated.

16. The first submission of the Petitioners concerns service upon Petitioner No.2, who is stated to have expired. The Petitioners contend that once the Society became aware of such death, it was mandatory to amend the application and implead legal heirs, and that proceedings against a deceased person are void. The principle relied upon by the Petitioners is well settled in civil proceedings. However, in the present case, the deemed conveyance proceedings are summary in nature and intended to secure transfer of title in favour of a cooperative society where the promoter fails to execute conveyance. The material on record shows that the Society had proceeded on the basis of available ownership particulars and had also issued public notice. The proceedings were not directed against Petitioner No.2 alone. Petitioner No.1, who was actively connected with development, was also a party. The competent authority considered the application in that context. Therefore, it cannot be said that the entire proceedings stood nullified solely because the legal heirs of one of the original parties were not formally brought on record, particularly when the petitioners have not shown that any substantive defence was lost on that account.

17. The second limb of the Petitioners' argument relates to alleged non compliance with Rule 13(2) and absence of proper notice by registered post acknowledgement due. The record

indicates that notice was attempted and that Petitioner No.1 refused service, as reflected from the postal endorsement. In law, refusal to accept notice amounts to valid service. Once refusal is established, the party cannot subsequently complain of lack of opportunity. The Petitioners have also relied upon their communications addressed to the authority seeking information regarding pending proceedings. These communications, even if accepted, do not displace the fact that notice was attempted and that the authority proceeded after recording service. The competent authority is not required to indefinitely defer proceedings once service is deemed complete and the applicant has complied with procedural requirements.

18. The submission that the authority hastily closed the matter for orders also does not persuade this Court to interfere. The proceedings under Section 11 of MOFA are designed to avoid prolonged delay in execution of conveyance. The Society in the present case was registered in December 1994. Nearly three decades elapsed without execution of conveyance. The statutory obligation of the promoter to convey title within a reasonable period is not in dispute. The prolonged inaction on the part of the Petitioners cannot be ignored while examining the conduct of the parties. The competent authority was justified in proceeding with the matter once it was satisfied that notice had been issued and no appearance was made.

19. The Petitioners have strongly pressed the ground of violation of natural justice. The principle is fundamental, but it is equally settled that every technical or procedural lapse does not

automatically vitiate an order. The Court must examine whether real prejudice has been caused. Respondent No.2 has rightly relied upon the decision of the Supreme Court in *State of U.P. v. Sudhir Kumar Singh*, which emphasises that prejudice must be demonstrated. In the present case, despite specific opportunity before this Court, the Petitioners have not indicated any concrete defence on merits which, if placed before the authority, would have changed the result. They do not dispute registration of the Society, execution of agreements for sale, or the long non execution of conveyance. The challenge remains confined to procedural objections. In the absence of demonstrable prejudice, the supervisory jurisdiction of this Court cannot be invoked to unsettle the deemed conveyance granted in favour of the Society.

20. At the same time, it must be clarified that the grant of unilateral deemed conveyance under Section 11 of MOFA does not finally adjudicate disputed questions of title inter se parties. The competent authority exercises limited jurisdiction for facilitating conveyance and does not decide complex civil rights conclusively. Therefore, if the Petitioners claim independent title, dispute the extent of property conveyed, or seek adjudication of any civil rights arising out of agreements or ownership issues, such questions remain open to be agitated before a competent civil court.

21. For all the aforesaid reasons, this Court finds no jurisdictional error or patent illegality in the impugned order warranting interference under Article 227 of the Constitution of India. The petition is accordingly dismissed.

22. However, it is clarified that dismissal of this petition shall not preclude the Petitioners from instituting an appropriate civil suit for enforcement or adjudication of their rights in accordance with law. All issues on merits are expressly kept open to be decided in such proceedings, if filed.

23. There shall be no order as to costs.

(AMIT BORKAR, J.)