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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2994 OF 2024

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Shantinath Developers (Virar)

C/o. Kirit K. Mehta,
101, Shripal Solitaire, Building No.1,
M.B. Estate, Opposite Parmarth Niketan,
Virar (West), Taluka Vasai
District Palghar 401 303

... Petitioner

V/s.

1. **Competent Officer & District Deputy Registrar**, Administrative Building A,
Room No.206, 2nd Floor, Near
Collector's Office, Boisar Road,
Taluka and District Palghar

2. **Venu Madhav A, B, & C Cooperative Housing society Limited**,
a Coop. Housing society Association
registered under the provisions of
Maharashtra Cooperative Societies
Act, 1960, having it's address at
Venu Madhav A, B, & C Cooperative
Housing society Limited, Near Vijay
Vallabh Hospital, Tirupati Nagar
Phase-I, Virar West, Taluka Vasai
District Palghar 401 303.

... Respondents

Mr. Naushad Engineer, Senior Advocate with Mr. Aman Anand and Mr. Abir Patil (through V.C.), and Pratyusha Thanawala i/by Wadia Ghandy & Co., for the petitioner.

Mrs. M.P. Thakur, AGP for respondent No.1-State.

Mr. Rohan awant with Mr. Aagam Mehta i/by Mr. Vinod Kumar Shukla and Ms. Kanchan Gupta for respondent No.2.

CORAM : AMIT BORKAR, J.

RESERVED ON : JANUARY 28, 2026

PRONOUNCED ON : FEBRUARY 12, 2026

JUDGMENT:

1. By the present Writ Petition, the petitioner calls in question the legality and correctness of the order dated 9 November 2023 passed by respondent No. 1 in exercise of powers under Section 11(3) of the Maharashtra Ownership of Flats Act, 1963. The challenge is directed against the grant of deemed conveyance in favour of respondent No. 2.

2. The facts giving rise to the petition are as follows. The petitioner is the developer of land bearing Survey No. 370, H.N. 1, 2, 3/1, 3/3, 4 to 16, 18 to 30 (Old) and Survey No. 435 (New), admeasuring in aggregate 27,160 square metres, situated at Village Bolinj, Taluka Vasai, District Palghar. After obtaining requisite sanctions from the competent authorities, the petitioner undertook development of a group housing scheme known as “Yadushree Complex” on the said property. The southern portion of the property, admeasuring 4,023 square metres, was developed by constructing two buildings comprising five wings. Occupation Certificates for these wings were obtained during the period 2013 to 2014, and possession of the completed structures was duly handed over. An area admeasuring 3,425 square metres earmarked as Development Plan road was surrendered to the Vasai Virar City

Municipal Corporation. The northern portion of the larger property, admeasuring approximately 9,145 square metres, is affected by a reservation for a high school and is accordingly not available for free development.

3. In the central portion of the property towards the western side, admeasuring 3,797.85 square metres, the petitioner developed a separate project known as “Venu Madhav,” consisting of three wings designated as A, B and C. Construction of the said project was completed. The co-operative housing society of the purchasers in the said three wings came to be registered on 27 September 2018. Thereafter, the project was formally handed over to the said society on 4 February 2019.

4. The eastern portion of the property, admeasuring approximately 3,600 square metres, remains available for further development. According to the petitioner, it is entitled to utilize the balance base FSI available on the entire property in accordance with prevailing development control regulations and applicable law. Within the layout, an area admeasuring 989.67 square metres is reserved as a recreation ground.

5. It is the petitioner’s case that in each Agreement for Sale executed with the flat purchasers, a specific disclosure was made under Clause 32. Under the said clause, the purchasers were informed that the petitioner would execute conveyance of the property in favour of a Federal Co-operative Society or Apex Body to be formed, and that the individual societies would not object to such conveyance. In furtherance thereof, on 4 February 2019, a

majority of the allottees, including all members of the managing committee, executed a Consent Letter and Undertaking expressly recording their agreement that the owner would execute conveyance in favour of the Apex Body or Federal Society upon full utilization of the total plot potential.

6. On 19 April 2021, respondent No. 2 addressed a communication to the petitioner seeking conveyance of that portion of the property on which the Venu Madhav project stands constructed. Subsequently, on 30 December 2021, respondent No. 2 preferred an application before respondent No. 1 under Section 11(3) of the Act seeking deemed conveyance of the said portion.

7. By the impugned order dated 9 November 2023, respondent No. 1 allowed the said application and granted deemed conveyance in respect of an area admeasuring 4,652.26 square metres in favour of respondent No. 2. According to the petitioner, the said order is contrary to the terms and stipulations contained in the Agreements for Sale executed with the flat purchasers and also contrary to the Consent Letter and Undertaking executed by the majority of the allottees. Aggrieved thereby, the petitioner has instituted the present Writ Petition.

8. Mr. Naushad Engineer, learned Senior Advocate appearing for the petitioner, submitted that respondent No. 1 has erred in recording a finding that there exists a partition between the project of respondent No. 2 and the remaining portion of the larger property, and that the entire portion including the recreation ground has been handed over. According to him, the alleged

partition is merely temporary in nature. There has been no legal subdivision of the property. The members of respondent No. 2 were at all material times aware that such partition was provisional and liable to be removed, so that all allottees across the layout may have common access to the recreation ground.

9. He further submitted that respondent No. 1 has adopted an unduly technical interpretation of Clause 32 of the Agreements for Sale and, in doing so, has failed to consider the Consent Letter executed by a majority of the members of the society. The said Consent Letter, according to him, clearly records in express terms that the property would be conveyed to the Apex or Federal Society upon completion of development of the entire plot. The impugned order, he submits, proceeds without due regard to this binding undertaking.

10. It was next contended that respondent No. 1 has not adverted to the fact that the project forms part of a composite group housing scheme consisting of five buildings and other proposed structures. The grant of conveyance of a segregated portion of the layout in favour of respondent No. 2 would, according to the petitioner, adversely affect its right to utilize the balance Floor Space Index available on the remaining portion. It would also prejudice the rights of allottees in other buildings by restricting their access to the recreation ground and other common amenities envisaged in the overall layout.

11. Learned Senior Counsel further submitted that respondent No. 2 is merely a co-operative society formed for certain buildings

within the larger scheme and does not represent other societies existing or proposed on the same property. The land, according to him, remains contiguous and undivided. In such circumstances, respondent No. 2 cannot claim the character of an Apex or Federal body for the entire layout. As it does not represent all allottees of all existing or proposed buildings on the property, it lacks the locus to seek conveyance of a larger undivided parcel.

12. He then submitted that respondent No. 2 had, in its application, sought conveyance of an area admeasuring 4,787.52 square metres, though the plinth area of the two buildings forming part of its project is stated to be only 1,301.62 square metres. By the impugned order, respondent No. 1 has granted deemed conveyance in respect of 4,652.26 square metres, which includes the recreation ground and certain common areas. This, according to the petitioner, demonstrates a patent error in computation and reflects non application of mind in determining the extent of land appurtenant to the buildings.

13. It was also contended that the impugned order proceeds on an erroneous premise that there exists a formal and permanent demarcation of the recreation ground area in favour of respondent No. 2. This finding, according to the petitioner, is contrary to Clause P of the Consent Letter, which specifically provides that the provisional compound wall abutting the recreation ground would be demolished as and when required in accordance with plans sanctioned by the competent authority.

14. Mr. Rohan Sawant, learned Advocate appearing for respondent No. 1, opposed the petition and submitted that the present challenge is directed against an order dated 9 November 2023 passed under Section 11(3) of the Act, whereby deemed conveyance of an area admeasuring 4,652.26 square metres has been granted to respondent No. 2 pursuant to its application seeking such relief. He submitted that the Agreement for Sale under the Act is dated 20 August 2012. The Occupation Certificate for Wings A and B of respondent No. 2 was issued on 21 December 2014, and for Wing C on 19 November 2015. The society of respondent No. 2 came to be registered on 27 September 2018. Upon the petitioner's failure to execute conveyance of the land appurtenant to the said society, respondent No. 2 was constrained to file an application dated 30 December 2021 before respondent No. 1 seeking deemed conveyance.

15. Learned counsel submitted that the built up area considered for the purpose of deemed conveyance has been computed on the basis of revised development permissions read with sanctioned plans of 2018 issued by the Vasai Virar Municipal Corporation. The area granted comprises 870.90 square metres for Wings A and B, 430.72 square metres for Wing C, 2,621.15 square metres towards internal areas, and 729.49 square metres towards the recreation ground. These figures, he submitted, are founded upon a survey conducted for the purpose of seeking deemed conveyance and the relevant sanctioned plans.

16. It was further submitted that around the year 2014, the land appurtenant to respondent No. 2, including its recreation ground,

was permanently demarcated by the petitioner itself in order to obtain the Occupation Certificate. The sanctioned blueprint issued by the Municipal Corporation dated 1 October 2018 reflects such demarcation. Photographs placed on record, it is submitted, indicate that the separation of respondent No. 2's portion from the larger plot is permanent in character.

17. According to him, the principal grievance of the petitioner concerns the inclusion of certain areas described as common areas within the extent of land granted under deemed conveyance. The petitioner contends that a recreation ground admeasuring 989.67 square metres is common to the portion on which respondent No. 2's buildings stand and the balance portion where further development is proposed. It is further contended that there is no permanent demarcation and that a temporary partition separates the society's land from the remaining portion, which would be removed after completion of development so that allottees of both portions may access the recreation ground.

18. In response, it was submitted that the inclusion of the recreation ground area within the deemed conveyance is based upon the sanctioned plan dated 1 October 2018 issued by the Municipal Corporation. The said plan demarcates an area of 989.67 square metres marked as RG 1, separated from the balance portion. Another area admeasuring 347.60 square metres marked as RG 3 is specifically shown as the recreation ground of the balance portion. The impugned order has relied upon this sanctioned plan while including RG 1 within the area granted to respondent No. 2. It is further pointed out that respondent No. 1

has in fact granted a lesser area of 729.49 square metres towards the recreation ground on the basis of revised development permission dated 8 March 2013.

19. It was submitted that the dispute raised by the petitioner pertains essentially to the nature of demarcation of the recreation ground and common areas and to its alleged entitlement to Floor Space Index. Such questions, it is contended, involve adjudication of proprietary rights. It is well settled that an order of deemed conveyance under Section 11 of the Act does not conclusively determine title. If the petitioner claims a larger or superior right than what is recognized by the competent authority, the appropriate remedy is to institute a civil suit to establish such right. In support of this submission, reliance is placed on the decisions in *Zainul Abedin Yusufali Massawawala ve Competent Authority District*, 2016 SCC OnLine Bom 6028; *M/s Shree Chintamani Builders v. State of Maharashtra*, 2016 SCC OnLine Bom 9343, *Swastik Promoters and Developers v. Competent Authority*, 2025 SCC OnLine 256.

20. Learned counsel further submitted that the petitioner has sought to rely upon certain plans of the years 2011 and 2021 to contend that the recreation ground was not demarcated and was common to both portions. These plans, it is submitted, were not produced before respondent No. 1 during the hearing of the deemed conveyance application and cannot now be relied upon. In any event, the reliance on such plans raises factual disputes regarding demarcation, access, and specific proprietary rights, which fall within the jurisdiction of the civil court. Reliance is

placed upon the decisions in *Sawastik (Supra)*, *Mehboob Ali Humza & Others v. District Sub-Registrar (3), Mumbai/Competent Authority*, 2016 SCC OnLine Bom 6021.

21. As regards the petitioner's contention that the Agreements for Sale contemplate conveyance to an Apex Federation upon completion of development of the larger property, it is submitted that such a clause cannot override the statutory obligation under the Act. Clauses which postpone the promoter's obligation to convey till completion of the entire project have been held to be inconsistent with the provisions of the Act and cannot defeat the statutory right of flat purchasers. Reliance is placed on the decision in *Lok Housing and Construction Ltd. v. State of Maharashtra*, 2025 SCC OnLine 711.

22. In conclusion, it is submitted on behalf of respondent No. 1 that the writ petition is devoid of merit, as it seeks adjudication of disputed questions of fact and proprietary rights which lie within the domain of the competent civil court and not within the limited supervisory jurisdiction under Article 226.

ANALYSIS:

23. The main complaint of the petitioner centres around the inclusion of what it describes as common areas within the land granted by way of deemed conveyance. According to the petitioner, the recreation ground admeasuring 989.67 square metres was always intended to serve the entire layout. It is said to be a common amenity for the existing buildings as well as for the buildings proposed on the balance portion of the property. On this

premise, the petitioner argues that the Competent Authority committed an error in treating that area as forming part of the land exclusively appurtenant to respondent No.2. The petitioner further submits that there is, in fact, no permanent demarcation separating the recreation ground from the balance portion. The physical partition presently seen on site is, according to the petitioner, temporary in nature. It is described as a provisional arrangement made during the course of development. The petitioner maintains that once the construction on the remaining portion is completed, the partition will be removed and all allottees, whether from respondent No.2's buildings or from the proposed buildings, will have common access to the recreation ground.

24. This submission again brings into focus the central dispute between the parties. On one side is the assertion of a shared amenity forming part of an integrated layout. On the other is the finding of the Competent Authority, based on sanctioned plans, that the area stands demarcated and forms part of the land to be conveyed to respondent No.2. Whether the recreation ground is truly common to the entire project or is confined to the portion developed for respondent No.2 cannot be determined merely by reading the pleadings. It requires careful scrutiny of sanctioned layout plans, development permissions, and the intention disclosed at the time of approval of the scheme.

25. If the petitioner is correct that the recreation ground was conceived as a common facility for the entire plot, then its segregation may affect not only development rights but also the

rights of future purchasers. Conversely, if the sanctioned plans show a clear division and allocation of specific recreation areas to distinct portions, then the inclusion of such area within deemed conveyance may be justified. These are matters which hinge on factual evaluation of plans, permissions and site conditions.

26. In answer to the petitioner's grievance, it is submitted that the Competent Authority did not act on assumption or conjecture while including the recreation ground in the deemed conveyance. The decision, according to respondent No.1, is founded squarely on the sanctioned plan issued by the Municipal Corporation on 1 October 2018. That plan, it is pointed out, clearly marks an area admeasuring 989.67 square metres as RG 1. The plan also shows this area as distinct and separated from the remaining portion of the larger plot.

27. It is further emphasized that the same sanctioned layout identifies another area admeasuring 347.60 square metres as RG 3. This latter area is shown as appurtenant to the balance portion where further development is proposed. In other words, the sanctioned plan itself appears to allocate different recreation grounds to different portions of the property. On this basis, respondent No.1 submits that the recreation ground marked as RG 1 was rightly treated as appurtenant to the buildings of respondent No.2.

28. The impugned order specifically refers to this sanctioned plan while determining the extent of land to be conveyed. It is not the case that the authority carved out an area without reference to

planning documents. Rather, it relied on the layout approved by the municipal body. This aspect assumes significance because sanctioned plans carry statutory value. They reflect the manner in which the development was approved and permitted by the planning authority.

29. It is also pointed out that the authority did not mechanically grant the entire 989.67 square metres shown as RG 1. On the basis of revised development permission dated 8 March 2013, respondent No.1 has in fact granted a lesser area of 729.49 square metres towards the recreation ground. This, according to respondent No.1, demonstrates application of mind and reconciliation with earlier permissions.

30. These submissions, once again, highlight that the dispute turns on interpretation of sanctioned plans and revised permissions. Whether RG 1 was intended to serve only respondent No.2's buildings or the entire layout is a matter that can be conclusively determined only after close examination of the planning documents, the sequence of permissions and the physical layout on site.

31. The controversy therefore travels beyond a simple question of legal interpretation. It touches upon planning documents, physical demarcation and the original design of the housing scheme. Such matters are ordinarily examined in a properly instituted civil proceeding where evidence can be led and tested. In writ jurisdiction, the Court does not undertake that detailed enquiry.

32. The petitioner has also attacked the impugned order on the ground of incorrect calculation of area. It is urged that the extent of land granted under deemed conveyance is excessive when compared with the plinth area of the buildings. According to the petitioner, the authority has included internal areas and portions such as the recreation ground without proper basis. In substance, the grievance is that the arithmetic does not add up and that the planning documents have not been correctly understood.

33. Respondent No.1, on the other hand, has placed reliance on revised development permissions and sanctioned layout plans issued by the municipal corporation. It is stated that the computation of 4,652.26 square metres was not arbitrary but was derived from approved plans and a survey carried out for the purpose of deemed conveyance. The authority has explained how separate components such as building footprints, internal access areas and recreation ground were taken into account.

34. At this stage, it becomes clear that the dispute is not merely about a number written in the order. The figure in question flows from interpretation of sanctioned plans. It may require comparison between original permissions and revised permissions. It may involve checking whether the survey conducted tallies with municipal records. It may even require reconciliation between site measurements and approved blueprints. These are not mechanical calculations that can be corrected by simple scrutiny in writ proceedings.

35. To determine whether the computation is correct, the Court would have to examine technical documents in detail. The parties may have to lead expert evidence from architects or surveyors. Municipal officers may have to explain how certain areas were classified. The Court may need to consider whether internal roads, open spaces and recreation grounds were earmarked exclusively or commonly. All this involves appreciation of evidence in a structured manner.

36. Writ jurisdiction is not designed for such an exercise. The Court does not sit as a trial court in these proceedings. It does not record oral evidence or undertake a detailed examination of planning documents as part of a fact finding mission. When the challenge turns on interpretation of plans, measurements and reconciliation of records, the proper forum is the civil court where evidence can be led and tested.

37. For these reasons, the questions raised by the petitioner regarding area computation cannot be conclusively decided in this writ petition. They require a full trial and careful evidentiary evaluation.

38. The observations of the Division Bench in *Zainul Abedin Yusufali Massawala (2016 SCC OnLine Bom 6028)* and the later decisions of this Court apply directly to the controversy at hand. Those decisions explain, in clear terms, the limited nature of an order passed under Section 11 of the MOFA Act. A deemed conveyance order does not create new rights. It merely transfers to the society whatever right, title and interest the promoter actually

holds in the land and building. Nothing more. Nothing beyond that.

39. If a promoter believes that the Competent Authority has included a larger extent of land than what is legally appurtenant to the building, the statute does not leave the promoter without remedy. The proper course is to approach the civil court. The civil court has full power to examine title deeds, layout plans, development permissions, revenue records and all surrounding evidence. It can decide whether the society was entitled to the entire area claimed. It can also decide whether certain portions such as recreation grounds, internal roads or open spaces were common to a larger layout. Importantly, the findings of the Competent Authority do not bind the civil court. They do not operate as *res judicata*. The civil court is free to independently assess the evidence and determine rights.

40. This principle has been repeated in several judgments of this Court. In *Shimmering Heights CHSL and others versus State of Maharashtra (Writ Petition No. 3129 of 2016 decided on 6 April 2016)*, in *P.R. Enterprises and others versus Competent Authority (Writ Petition No. 11251 of 2016 decided on 27 November 2018)*, and in *Mehboob Ali Humza and others versus District Sub Registrar (3), Mumbai and others (Writ Petition No. 3129 of 2016 decided on 24 June 2016)*, the Division Benches of this Court has consistently held that writ jurisdiction is not meant for resolving disputes about title, extent of land, development rights or ownership claims. Such issues require appreciation of documents, examination of witnesses, and detailed factual analysis. A writ

petition cannot be converted into a trial. The Court exercising jurisdiction under Article 226 does not record evidence or conduct a fact finding enquiry in the manner of a civil court.

41. In the present case, the petitioner disputes the inclusion of certain areas in the deemed conveyance. It questions the demarcation of the recreation ground. It disputes the computation of area. It challenges the authority of respondent No.2 to seek conveyance. All these grounds, in substance, relate to the extent of land and the nature of rights claimed. They are not pure questions of law. They require scrutiny of plans, permissions, internal documents of the society, and possibly oral evidence. These are precisely the kind of matters which the above judgments say must be examined by a civil court.

42. It is equally important to note the limited role of the Competent Authority under Section 11. The Authority verifies the registered agreements, the sanctioned plans and the statutory compliance. It ensures that the promoter performs the statutory obligation of conveyance. It does not conduct a full scale adjudication of title disputes. It does not decide complex questions of ownership between rival claimants. Therefore, if the promoter believes that the society has claimed more land than it is entitled to, the Act itself contemplates that such grievance can be pursued in civil proceedings.

43. Once this legal position is kept in view, the apprehension of prejudice loses force. The deemed conveyance order does not foreclose the petitioner's rights. It does not prevent the petitioner

from filing a suit. It does not bind the civil court on questions of title or extent. The petitioner remains at liberty to institute appropriate civil proceedings and seek declaration of its rights. It may also seek consequential reliefs as permissible in law.

44. In that sense, the consistent approach adopted by this Court requires judicial restraint in writ jurisdiction. Interference at this stage would amount to converting a supervisory proceeding into a trial on facts. The statutory scheme and the precedents clearly indicate that the correct course is to relegate the parties to the civil court, where all their rival claims can be examined fully and finally on evidence.

45. Respondent No.1 correctly reminds that orders of deemed conveyance are susceptible to challenge where jurisdictional defects exist. But a blanket claim that the order is incorrect on the facts does not convert this writ into the correct forum. The petitioner has adequate alternative remedy in a civil suit seeking declaration, partition, account and other reliefs. The record does not disclose such a gross and patent illegality on the face of the order that warrants interference in exercise of extraordinary writ jurisdiction.

46. The writ petition is dismissed. The petitioner is relegated to pursue its remedy before the competent civil court. The petitioner may institute a suit appropriate reliefs in the appropriate civil forum.

47. It is clarified that in the event the petitioner institutes a civil suit raising disputes regarding title, extent of land, demarcation,

development rights or inclusion of any portion in the deemed conveyance, the competent civil court shall adjudicate the matter independently and on its own merits. All questions relating to the true extent of land appurtenant to the buildings, the character of the recreation ground, the nature of demarcation and the respective rights of the parties are expressly kept open for determination in appropriate civil proceedings.

48. No order as to costs.

(AMIT BORKAR, J.)