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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4149 OF 2024

Ghatkopar Chandrodaya Coop. Housing Society Limited, a society incorporated in accordance with the provisions of Maharashtra Cooperative Societies Act, 1960 bearing Registration No.BOM/W-N/HSG/(TC)/8329/97-98, having their office at CTS No.5897, Bhaveshwar Road, Opposite HDFC Bank, Ghatkopar (East), Mumbai 400 077 ... **Petitioner**

V/s.

1. **State of Maharashtra**, through the Ministry of Cooperation
2. **Competent Authority & the District Deputy Registrar (II)**, having his office at 201, 2nd Floor, Kokan Bhavan, CBD Belapur, Navi Mumbai
3. **Tara Construction**, 3rd Floor, Old Chandrodaya Building, Plot No.33, Bhaveshwar Road, Opp. HDFC Bank, Ghatkopar (East), Mumbai – 400 077
4. **Unknown Legal Heirs of Hirbai Devshi Vikamsey**, Age Not known, Occupation Not known residing at Not known.
5. **Alpa Ghanshyam Lalka**, Age Not known, Occu.: Not known, R/at: 504, Shantinath Tower,

Sudha Park, Eastern Express Highway,
Ghatkopar (East), Mumbai 400 077

6. **Jasmine Atul Shah**,
Age Not known, Occu.: Not known,
R/at : 1001, 1002, 1003, Raji Bldg.,
Garden Lane, 60 Feet Road,
Ghatkopar (East), Mumbai 400 077

7. **Unknown Legal Heirs of Indira Jayantilal Vikamsey**, Age Not known
Occupation & R/at Not known

8. **Unknown Legal Heirs of Trikamdas Shivji Ravjiani**, Age Not known,
Occupation & Residing at Not known

9. **Unknown Legal Heirs of Dr. Miss T. Rukshmani**, Age : Not known,
Occupation & Residing at Not known

10. **Unknown Legal Heirs of Dilip T. Ravjiani**, Age Not known,
Occupation & Residing at Not known

11. **Unknown legal heirs of Harish T. Ravjiani**, Age Not known,
Occupation & Residing at Not known. ... **Respondents**

Mr. Pradeep J. Thorat, i/by Mr. Prayag B. Joshi for the petitioner.

Mrs. V.S. Nimbalkar, AGP for respondent Nos.1 & 2-State.

Mr. Ashish Kamat, Senior Advocate with Mr. Rohan Kadam i/by Ms. Dipti Nagda respondent No.5.

CORAM	:	**AMIT BORKAR, J.**
RESERVED ON	:	**JANUARY 27, 2026**
PRONOUNCED ON	:	**JANUARY 29, 2026**

JUDGMENT:

1. By this petition, the petitioner challenges the order dated 5 February 2024 passed by respondent no. 2. By the said order, respondent no. 2 rejected the petitioner's application for deemed conveyance under Section 11 of the Maharashtra Ownership of Flats Act, 1963. The application concerns the property consisting of land admeasuring 955.50 sq. mtrs. and road setback area of 84.60 sq. mtrs. It includes two buildings known as Ghatkopar Chandroday CHS Ltd. with ground plus three floors and Old Chandroday with ground plus two floors. The property is situated at CTS No. 5897, TPS III, Plot No. 33, Survey No. 253/A, Hissa No. 4 part, Bhaveshwar Road, Ghatkopar East, Mumbai 400077.

2. The brief facts are as follows. Originally, four persons namely Trikamdas Shivji Rajiani, Dr. Miss T. Rukshmani, Dilip Trikamdas Ravjiani and Harish Trikamdas Ravjiani owned the land and building known as Chandrodaya at Bhaveshwar Road, Ghatkopar. The land measured 1491.75 sq. yds. equal to 1247.25 sq. mtrs. as per Partition Deed dated 19.05.1947. It measured 1255 sq. yds. equal to 1041.1 sq. mtrs. as per City Survey Records. The property stood on C.S. No. 5897 and Survey No. 253/A Hissa No. 4 part, Plot No. 33 of Town Planning Scheme III. The original owners decided to redevelop the property. They entered into a partnership deed dated 01.07.1978 with Hirbai Devshi Vikamsey, Pramila Thakershi Gosar and Indira Jayantilal Vikamsey. They brought the property as capital into the partnership business. The partnership carried out business as builders and developers in the name of respondent no. 4. Respondent no. 4 obtained IOD and other permissions from the municipal authority. Respondent no. 4 constructed a new building with ground plus three floors consisting of four commercial and six residential premises after demolishing one old structure. Respondent no. 4 retained one old structure consisting of ground plus two floors. Respondent no. 4 sold the commercial and residential premises in the new building to various purchasers by executing agreements and handing over possession.

3. The agreements contained certain clauses. Clause 2 stated that the agreement is subject to terms and conditions in Annexure A. Clause 8 recorded that an old building exists on the property with twelve tenants. It recorded that the tenants will continue as tenants of the sellers and the sellers will have the absolute right to deal with the old building and tenants. It further recorded that the sellers may sell flats in the old building on ownership basis and such purchasers will become members of the society without extra fees except share money. The clause also provided for a perpetual lease of the old building to the society at nominal rent with taxes payable by the sellers. The clause gave the sellers the right to repair, renovate or reconstruct the old building. Clause 14 of Annexure A provided that after completion of the building, sale of all premises and registration of a common organisation, and after receipt of dues by the seller, the seller shall execute conveyance in favour of the organisation after one year. It further provided that if the seller registers the organisation earlier, the authority of the organisation will remain subject to the control of the seller for issues concerning construction and amenities.

4. In 1997, the purchasers formed a cooperative housing society named Ghatkopar Chandrodaya Co-operative Housing Society. The Dy. Registrar issued a registration certificate dated 5 September 1997. In 2008, the owner carried out additions and alterations in the Old Chandrodaya building by obtaining sanctioned plans from MCGM.

5. The petitioner issued a notice dated 22 February 2023 through its advocate calling upon respondent no. 4 to execute a conveyance deed in favour of the petitioner society within 14 days. Respondent no. 5 and 6 received the notice by registered post AD. They replied through advocates on 6 March 2023 and 7 April 2023. They stated that the issue pertains to the period before 1978 and that documents are not available. They also sought documents. The stand is incorrect because the documents referred in the notice relate to respondent no. 4 itself. In these circumstances, the petitioner filed Application No. 61 of 2023 before respondent no. 2 seeking a certificate for unilateral deed of conveyance under Section 11 of the Act.

6. Respondent Nos.5 and 6 appeared and filed reply dated 18 January 2024 opposing the application. They relied upon two documents. First, a conveyance deed dated 12 May 1996. Second, a property card. These documents show that instead of conveying the property to the society as per the MOFA agreements, respondent no. 4 conveyed the property to one Thakershi Meghji Goshar who is the husband of one of the partners of respondent no. 4. The property card shows mutation accordingly.

7. After hearing the parties, respondent no. 2 passed the impugned order dated 5 February 2024 rejecting the application. Respondent no. 2 recorded three grounds. First, that the society annexed an invalid property card. Second, that there was non-joinder of necessary parties. Third, that the society sought conveyance of the old building which according to respondent no. 2 the society is not entitled to. The petitioner has therefore filed the present petition.

8. Mr. Thorat, learned counsel for the petitioner, submitted that a joint reading of the important clauses of the agreement shows that respondent no. 4 had a clear obligation to execute a conveyance deed for the entire land admeasuring 955.50 sq. mtrs. with 84.60 sq. mtrs. road setback area, along with both buildings known as Ghatkopar Chandroday CHS Ltd. and Old Chandroday in favour of the petitioner society. He submitted that this obligation also flows from the law. He pointed out that respondent no. 4 failed to execute and register the conveyance as required under Section 11(3) of the Maharashtra Ownership Flats Act, 1963. He argued that respondent no. 4 was required to convey the property within the time specified in the agreement or within four months from the date of formation of the society as required under Rule 9 of the Rules of 1964 read with the Act of 1963. He submitted that under MOFA it is the duty of the promoter to execute the conveyance in favour of the society within four months from its registration. He pointed out that the petitioner society was registered in 1997. He submitted that the petitioner repeatedly approached respondent No.4, but respondent No.4 avoided execution of the conveyance on one pretext or another.

9. He further submitted that the objection of non-joinder is not sustainable. According to him, the society did not know the details of the legal heirs of the deceased partners of respondent no. 4. He stated that the society also did not know about the conveyance dated 12 May 1996 and the mutation entry till respondent nos. 5 and 6 filed their reply. He stated that the society later learnt that Thakershi Meghji Goshar had expired and that respondent nos. 5 and 6 are his heirs. He pointed out that respondent nos. 5 and 6 are already parties. He submitted that non-joinder is a curable defect. He submitted that the so-called invalid property card could not be a ground for rejection. He stated that the society annexed the property card available on the government website and was not aware of any other property card. He pointed out that the valid property card was already on record through the reply of respondent nos. 5 and 6.

10. Mr. Kamat, learned senior advocate for respondent nos. 5 and 6, submitted that the petitioner made a false statement in the application that it was in exclusive possession of the entire plot. He pointed out that a revenue survey dated 3 January 1986 shows that two buildings occupy the plot. One is Old Chandrodaya, a ground plus two floor building constructed in 1967, owned by respondent nos. 5 and 6 and fully tenanted. The other is New Chandrodaya, a ground plus three floor building constructed around 1979 and occupied by the petitioner society. He submitted that both buildings are physically separated by a boundary wall and are managed independently. He submitted that Old

Chandrodaya is owned by respondent nos. 5 and 6 and New Chandrodaya is owned by the petitioner. He relied on an architect's certificate dated 24 December 2024 which shows that New Chandrodaya has a built up area of 585.45 sq. mtrs. corresponding to 498.84 sq. mtrs. of plot area, while Old Chandrodaya has a built up area of 492.92 sq. mtrs. corresponding to 456.88 sq. mtrs. of plot area. He argued that despite these facts, the petitioner sought deemed conveyance of the entire plot including the land under Old Chandrodaya which belongs to these respondents.

11. He submitted that Section 11 of MOFA has a limited purpose. According to him, its purpose is to enable flat purchasers to obtain title only to the land proportionate and necessary for their building. He submitted that Clause 13 of the Model Agreement under the MOFA Rules also states that conveyance is only for the vendor's right title and interest in the proportionate part of the land together with the building. He submitted that a Government Resolution dated 22 June 2018 clarifies that when two societies exist on the same land, conveyance must be granted only in proportion to the built up area and amenities. He pointed out that this Resolution has been upheld and applied by this Court.

12. He submitted that therefore Section 11 applies only to convey the promoter's right title and interest in proportion to the constructed building. He submitted that only in rare cases with clear contractual language can a society claim more land than its proportionate share. He submitted that the competent authority under Section 11 has only a summary jurisdiction. He argued that when there is serious dispute regarding interpretation of clauses, the parties must approach a civil court. He relied on the judgment in Mazda Construction Company to submit that in disputed cases parties must be relegated to a civil suit. He submitted that in the present case the petitioner seeks conveyance of the entire plot based on Clause 8 of the agreement. He submitted that the petitioner's interpretation of Clause 8 is seriously disputed. He referred to Clause 8 and submitted that it deals with the old building and recognizes that it pre-existed and stands separate from the new construction. He submitted that the clause recognizes that the seller continues to own Old Chandrodaya and the land beneath it. He pointed out that the clause grants absolute rights to the seller in respect of the old building and its tenants. He submitted that these rights show that the seller retained ownership over the building and corresponding land.

13. He further submitted that the clause allows the seller to sell flats in the old building on ownership basis if it chooses. According to him, this confirms that the seller has an ownership interest in that building and land. He submitted that only if the seller chooses to sell flats on ownership basis in Old Chandrodaya would the purchasers become members of the petitioner society and only then would conveyance follow for that land. He submitted that the clause uses the words "in case", which shows that it is contingent and optional. He submitted that Clause 8 is in the nature of an option which respondent nos. 5 and 6 may exercise at their discretion and cannot be forced to exercise. He submitted that the petitioner's interpretation that they are entitled to conveyance of the entire land and only required to lease back Old Chandrodaya to the owners is incorrect. He submitted that the interpretation must respect the order of words in the clause and words cannot be rearranged. He next addressed Clause 14. He submitted that Clause 8 is specific and prevails over Clause 14 which is general. He submitted that the Schedule attached to the agreement only refers to the new building Chandrodaya and does not refer to the old building. He submitted that therefore conveyance of Old Chandrodaya arises only if flats are sold on ownership basis under Clause 8. He submitted that this supports the position that title in Old Chandrodaya will pass only upon sale of flats. He further submitted that Old Chandrodaya is a tenanted structure and the rights of tenants cannot be restricted or affected by deemed conveyance of the land beneath their premises. He submitted that there is a serious dispute regarding interpretation of the agreement and the petitioner’s claim to the entire plot. He submitted that in such a situation the petitioner must file a civil suit for adjudication of its larger claim. He pointed out that the competent authority has interpreted Clause 8 in the manner argued by the respondents which is a reasonable view. He submitted that such a finding cannot be interfered with under Article 227.On these grounds, respondent nos. 5 and 6 sought dismissal of the petition.

Reasons and analysis:

14. Having heard the learned advocate for the petitioner and the learned senior advocate for the respondents, and after going through the record with their help, including the agreement executed under Section 4 of the MOFA Act, the following factual position becomes clear.

15. First, there is one single plot described in the agreement as the "said plot" under Section 4 of MOFA. This plot measures 955.50 square meters after deducting the setback area. There is also a road setback benefit of 84.56 square meters. Both sides accept these measurements. There is no dispute that both the old building and the new building stand on this same plot.

16. Second, the promoter constructed a new building, sold the flats to various purchasers, and handed over possession. The flat purchasers then formed a cooperative housing society in the year 1997.

17. Third, there is also an old building on the same plot. It has tenants. The agreement recognises this situation. Clause 8 gives the promoter certain rights to deal with the old building and its tenants. It also gives the promoter an option to sell flats in the old building on an ownership basis in the future. If that were to happen, the new owners would become members of the society and the society would lease back the old building portion to the promoter or its nominee at nominal rent. Till such event takes place, the promoter continues to manage the old building and remains responsible for taxes and other outgoings.

18. Fourth, Clause 14 of Annexure A sets out what must happen at the final stage. It states that once the building work is completed, all premises are sold, the society is registered, and the promoter receives all its dues, the promoter shall execute a conveyance of the property in favour of the society after one year. This clause refers to conveyance of the "property." It does not restrict this to only the new building or only part of the land. The property is the same “said plot” described in the schedule.

19. Fifth, the record shows that the new building was completed, that flats were sold, that buyers were put in possession, and that the society was formed and registered in 1997. These steps satisfy the conditions mentioned in Clause 14. In any case, after one year from fulfillment of these steps, the promoter was required to execute the conveyance.

20. Sixth, despite these facts, the conveyance was not executed. Instead, respondents rely on a conveyance dated 12 May 1996 in favour of a third party and a mutation entry in the property card. The society disputes the effect of this transfer and says it was not disclosed earlier. Even assuming such a transfer exists, it does not undo the promoter’s earlier contractual promise and statutory duty to convey the property to the society once the conditions under Clause 14 were met.

21. Seventh, respondents also rely on the existence of two buildings and separate built up areas. While this may explain possession and management during the development stage, it does not change the fact that both buildings stand on the same Section 4 plot described in the agreement. Under MOFA, the promoter must convey the land to the society. The law does not support permanent retention of land by the promoter after formation of the society, except where clear and specific exclusions exist in the contract, which is not the case here.

22. Eighth, the competent authority rejected the society's application for reasons such as non-joinder of parties and alleged invalid property card. These defects were curable. The identity of legal heirs came to light upon filing of replies. None of these reasons justify rejection of substantive rights under MOFA when the contractual conditions for conveyance had already been satisfied.

23. Thus, when the agreement is read as a whole, when the Section 4 disclosures are kept in mind, and when the statutory duty under MOFA is considered along with the admitted factual steps, the situation that emerges is that the promoter was under a clear contractual and statutory obligation to convey the property to the society, subject to protecting tenancy rights in the old building and implementing lease-back arrangements contemplated under Clause 8.

24. For the purpose of examining the points that arise in this matter, it becomes necessary to reproduce certain clauses from the agreement executed under Section 4 of the MOFA Act. The clauses that are relevant for present discussion are Clauses 2, 8, and 14. They read as follows:

> <u>Clause 2</u>:
> "This Agreement shall be subject to the terms and conditions mentioned in Annexure 'A' hereto and the said terms and conditions shall be deemed to have been duly incorporated herein and forming part thereof."
>
> <u>Clause 8</u>:
> "There is also an old building on the property. There are 12 tenants in the said old building. The said tenants and the

tenants who will come hereinafter shall continue to be tenants of the sellers and the sellers will have absolute right and power to deal with the said building and tenants herein. The seller will have absolute right to transfer or create new tenancy or sell the said premises or any part thereof on ownership basis to any person they like and the same shall be binding on the Buyer or Society or Association or Company to be formed by the other flat acquirers. In case the seller decides to sell any of the flats on the ownership basis such purchaser will be made member of the Society and/or Association or Company which will be formed by the flat acquirers. Such persons shall be made members without charging any amount or fees except they will have to acquire requisite shares and will have to abide by the Bye-laws of the Society and/or Memorandum and Articles of Association or Company as the case may be. It is further agreed that the Society and/or Association or Company to be formed by flat acquirers, shall execute a lease of old building with the land acquirers to and in seller having proper right of way or its nominee or nominees. The lease shall be in perpetuity of nominal rent of Re. 1/-. However, all Municipal Taxes and other outgoings of the said building shall be paid by the seller or its nominee or nominees, the seller shall be entitled to repair, renovate, reconstruct or make additional construction of the said portion of the land.”

<u>Clause 14 of Annexure ‘A’</u>:

“On completion of the building and sale of all premises therein and after registration of the common organization as aforesaid, when the seller has received all its dues from the premises acquirers, then one year thereafter, the seller shall execute conveyance of the property in favour of such common organisation free from all Commerce. If however, the seller at its discretion choose to get such a common organization registered earlier, the authority of the premises acquirers and of the common organization shall be subject to

> the over-all authority and control of the seller over all or any of the matters concerning the said building the construction and completion thereof and all amenities appertaining thereto.”

25. Clause 2 makes it clear that Annexure A is part of the main agreement. This point is important because Clause 14 is in Annexure A. By virtue of Clause 2, Clause 14 binds both sides in the same way as any other term in the main body of the agreement.

26. Clause 8 recognises that there is an old building standing on the same plot. It also records that there are twelve tenants in that old building and future tenants may also occupy it. Clause 8 states that those tenants will continue as tenants of the sellers. It also gives the sellers absolute right to deal with the old building and its tenants. This includes the right to transfer, create new tenancy, or even sell premises in that old building on ownership basis. If such sale happens, the purchaser would become a member of the society without extra charges except the cost of shares. The clause further states that in such a situation the society will execute a lease of the old building in favour of the seller at a nominal rent of one rupee per year. Taxes and other outgoings of the old building will be paid by the seller. The seller is also given power to repair, renovate, reconstruct or make additional construction on that part of the land.

27. This clause, therefore, deals with the special status of the old building and its tenants. It reflects the concept of dual ownership in a limited way. The seller retains certain management and disposal rights over the old building and the land under it, while the flat purchasers acquire rights in the new building and the land under the new building. Clause 8 also shows that the old building and the new building stand on the same larger plot described in Schedule A. The larger plot is the property referred to as the said plot under Section 4 of the MOFA Act. After deducting the setback area, that plot measures 955.50 square meters. There is also a road setback benefit of 84.56 square meters. These measurements are not in dispute. This shows that both buildings form part of the same layout and that the promoter treated the entire land as a single development plot.

28. The rights in Clause 8 do not wipe out the legal position that the promoter is the promoter of the entire plot for the purpose of MOFA. Under Section 4 of MOFA, the promoter must disclose title, layout, and area of the entire plot. That is why the agreement describes the whole area of the plot in Schedule A. Flat purchasers do not purchase only the built up area. They also purchase an undivided interest in the land on which the building stands. At the same time, Clause 8 recognises that the seller kept control over the old building portion. This creates a dual situation where the seller has management rights over the old building and tenants, while the flat purchasers and society have rights in the new building and the common plot.

29. Clause 14 states says that after the building is completed, all premises sold, the common organisation registered and the seller receives all dues, then after one year the seller shall execute conveyance of the property in favour of the common organisation.

The language uses the expression conveyance of the property. The property is nothing but the said plot referred in the agreement, which is the land described in Schedule A after deducting the setback area. Clause 14 does not carve out the old building portion. It does not state that the seller may retain ownership of the land under the old building permanently. It also does not say that the common organisation will receive only the land under the new building.

30. When Clause 8 and Clause 14 are read together, the position becomes clearer. Clause 8 deals with how the seller may manage or dispose of the old building and the land under it till the point of conveyance. It gives the seller options. It preserves tenancy rights. It enables possible sale of flats in the old building. If that happens, the old building purchasers will join the society and there will be proportional conveyance. Clause 14, on the other hand, fixes the duty of the seller to convey the property once the development is complete and dues are received. The clause also gives one year time after these conditions are fulfilled.

31. There is no conflict between these clauses. Clause 8 operates at the development and management stage. Clause 14 operates at the end stage. Clause 8 cannot be stretched to mean that the seller can withhold conveyance of the land under the old building permanently. Clause 8 also cannot remove the rights of flat purchasers in the land described in Schedule A. Under MOFA, the promoter must convey title to the land and building to the society. MOFA does not recognise permanent holding of land by the promoter after forming the society. If the promoter wanted to permanently exclude the land under the old building from conveyance, the agreement needed clear language to that effect. There is no such language.

32. The concept of dual ownership is partially applicable in the present case. The seller continued to own and control the old building and the land under it during the development period. But dual ownership in this sense is subject to the final conveyance. It cannot override Clause 14 or the statutory obligation under MOFA. Once the new building was completed, premises sold, society formed and dues received, the promoter's temporary dual control ends.

33. In this case, the plot described in Schedule A measures 955.50 square meters after deducting the setback area. Both buildings stand on this plot. The agreement treats this entire plot as a single property. Clause 14 directs conveyance of this property to the common organisation. Therefore the conveyance must cover the entire Schedule A plot, subject to rights of existing tenants and to lease back arrangements provided in Clause 8. This interpretation gives effect to all terms of the agreement and the provisions of MOFA.

34. On the point of non-joinder of legal representatives of the owner, the facts are clear. Respondent numbers 5 and 6 are the legal representatives of Thakarsi Meghji Koshur. They were already parties to the proceedings at the time of hearing. Once the legal representatives are already on record, there is no question of non-joinder. The purpose of joining legal representatives is to ensure that the estate of the deceased person is properly represented. Therefore, the rejection on the ground of non-joinder was incorrect and unjustified.

35. Insofar as rejection of the application on the ground of an incorrect property card is concerned, this approach cannot be sustained. The proceedings under Section 11 of MOFA are intended to give effect to the agreement executed under Section 4. These proceedings are not meant to decide complex title disputes. Their role is to ensure that the promise made by the promoter regarding conveyance of land and building is carried out. Therefore, unless there is a serious and genuine dispute about the identity or description of the land itself, the competent authority cannot refuse to consider the matter on the basis of an incomplete property card.

36. In the present case, there was no serious dispute about the description of the property. Both sides accepted that the plot described in the agreement is the same plot containing the old and new buildings. The survey numbers, CTS numbers, measurements, and location are consistent across the documents placed on record. In such a situation, treating a property card annexed by the society as incorrect and using that as the sole basis for rejection is unjustified. As a matter of fact, Respondent Nos. 5 and 6 had placed on record correct property card.

37. It must be understood that failure to produce a revenue document such as a property card cannot take away the substantive statutory right of flat purchasers to obtain conveyance.

Section 11 of MOFA exists to protect purchasers from indefinite postponement of conveyance. It would defeat the entire purpose of the Act if their rights could be denied merely because a revenue document was not perfectly attached at the first instance. Therefore, rejection on this ground shows non-application of mind and cannot stand in law.

38. On a careful reading of the contract, the Act and the record, the petitioner have established a substantial right to a conveyance. The promoter had a contractual and statutory duty to execute conveyance after sale, registration, and receipt of dues.

39. For these reasons the petition succeeds.

40. Order dated 5 February 2024 is set aside. Petitioners application filed before competent authority under section 11(3) of MOFA Act is allowed in terms of prayer clause 11 (a).

41. No order as to costs.

(AMIT BORKAR, J.)

Note: This Judgment is modified as per order dated 30 January 2026. Paragraph 1 is deleted & rest paragraphs are renumbered.