

Shabnoor

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

WRIT PETITION NO.5820 OF 2024

**SHABNOOR
AYUB
PATHAN**

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SHABNOOR AYUB
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Alcon Through Its Authorized Partner ... Petitioner

V/s.

The District Deputy Registrar
Cooperative Societies & Ors.

... Respondents

Mr. Bhushan Raut, for the Petitioner.

Ms. Aloka A. Nadkarni, AGP, for the State – Respondent
Nos.1 and 2.

Mr. Nilesh Wable, for Respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 11, 2026

P.C.:

1. The petitioner is a promoter and developer. He has challenged the order dated 24 February 2021 passed by the Competent Authority under Section 11(3) of the Maharashtra Ownership Flats Act, 1963. The order directs execution of deemed conveyance in favour of the respondent society. The promoter seeks to set aside that order.

2. The main ground urged is lack of proper service. According to the petitioner, notice of the proceedings was sent to his old address. He submits that the society was aware of his new address, yet chose not to serve him there. As a result, he could not appear before the Competent Authority. He further contends that in 1998

a conveyance had already been executed in favour of the proposed society through its Chief Promoter. On that basis, he argues that there was no occasion to grant deemed conveyance. At the most, the authority could have conveyed the interest of individual flat purchasers. He also submits that the area directed to be conveyed includes a portion of land for which the society had executed a power of attorney in his favour. According to him, that portion ought to have been excluded.

3. The first issue is service of notice. The material on record shows that the address used by the society was the address mentioned in the agreement for sale executed under Section 4 of the Act. That agreement is a statutory document. The promoter himself provided that address. If he later changed his address, the burden was on him to clearly inform the society that the earlier address should no longer be used. A vague or informal communication is not enough. There must be a clear intimation stating that all future correspondence and legal notices be sent to a specified new address. In the absence of such communication, the society was justified in proceeding on the basis of the address recorded in the agreement. The law does not expect the society to make enquiries or assumptions about a possible change of address. Therefore, the contention that service was improper does not inspire confidence.

4. Even if one assumes some defect in service, the next question is whether such defect has caused real prejudice. The Supreme Court in *State of Uttar Pradesh v. Sudhir Kumar Singh*, AIR 2021 SC 406, has clarified that every violation of natural justice does

not automatically invalidate an order. The Court must examine whether the person complaining has suffered actual prejudice. The test is practical. One must see whether the outcome would have been different had proper hearing been granted. In the present case, the petitioner has not demonstrated how his presence before the authority would have changed the result. A bare assertion of non service is not sufficient.

5. The proceedings under Section 11 are summary in character. The Competent Authority examines whether the promoter has failed to execute conveyance within the statutory period. If the failure is established, the authority steps in to protect the flat purchasers. In such proceedings, a mere technical objection cannot override the substantive rights of purchasers. Unless clear legal prejudice is shown, an order cannot be set aside only on a procedural irregularity. The Court must look at the substance and not merely the form.

6. The alleged prejudice is founded on the sale deed of 1998. However, the record indicates that the so called conveyance was executed in favour of a proposed society represented by a Chief Promoter who was none other than the developer himself. The society was registered only in 2005. Until registration, the society has no independent legal personality. A conveyance executed by the developer in favour of himself in another capacity does not result in transfer of title in the eye of law. It is only after registration that the society becomes capable of holding property. Therefore, the 1998 document cannot defeat the statutory right of the registered society to seek conveyance. No prejudice flows from

such a transaction.

7. As regards the contention of excess area, the promoter relies upon a power of attorney allegedly executed by the society in his favour. Whether that document creates any subsisting or enforceable right is a matter which requires detailed evidence. Such issues relate to title and contractual rights. Proceedings under Section 11 are not meant for adjudication of complex title disputes. If the promoter claims independent rights over any portion of land, he is free to approach the competent civil court. The existence of such a claim does not render the order of deemed conveyance illegal. On the face of the record, no jurisdictional error or manifest illegality is shown in the impugned order.

8. The Division Bench in *Zainul Abedin Yusufali Massawala (2016 SCC OnLine Bom 6028)* has explained the scope of Section 11 in plain terms. An order of deemed conveyance does not enlarge the rights of the society. It does not confer fresh title. It only compels transfer of whatever right, title and interest the promoter already possesses. The Competent Authority does not act as a civil court deciding ownership once and for all. It only ensures that the statutory obligation to convey is not defeated by delay or inaction. If the promoter's own title is limited, the society receives only that limited title. The order cannot travel beyond the promoter's own interest. If the promoter feels that a larger area has been included than what is legally attached to the building, the law provides a clear remedy. He can approach the civil court. A civil court can examine the original title deeds, sanctioned layout plans, commencement certificates, occupation certificates, and

revenue entries. It can determine whether certain areas form part of a larger layout. It can decide whether open spaces, internal roads or recreation grounds were meant for common use of multiple buildings. These are matters of evidence and detailed scrutiny. Importantly, the findings of the Competent Authority under Section 11 do not bind the civil court. They do not operate as *res judicata*. The civil court can independently assess the material and record its own conclusions. Therefore, the promoter is not left without recourse.

9. This position has been reiterated in subsequent decisions 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 have consistently held that disputes relating to title, extent of land or development rights cannot be resolved in writ jurisdiction. Such disputes require examination of documents and, where necessary, oral evidence. A writ court under Article 226 does not conduct a trial. It does not weigh evidence in the manner of a civil court. Its role is supervisory. It examines legality, not disputed questions of ownership. Therefore, if the petitioner's grievance relates to excess land or competing claims over portions of the property, the proper forum is the civil court and not this Court in its writ jurisdiction.

10. Hence The writ petition stands dismissed with liberty to approach civil court, if he desires.

11. No costs.

(AMIT BORKAR, J.)