

MPBalekar

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

WRIT PETITION NO. 4520 OF 2017

Dev Darshan Matunga
Co-operative Housing Society Ltd. ... Petitioner
V/s.
State Of Maharashtra and Ors. ... Respondents

**WITH
INTERIM APPLICATION NO. 9740 OF 2024
IN
WRIT PETITION NO. 4520 OF 2017**

Mr. Dilip S. Kulkarni a/w Rajiv Singh for the petitioner.

Mr. A.A. Alaspurkar for the State – Respondent Nos. 1
& 2.

Mr. Mangal Bhandari i/by Pranjali Bhandari for
respondent Nos. 3(ii) to 3(iv.)

CORAM : AMIT BORKAR, J.

DATED : APRIL 27, 2026

P.C.:

INTERIM APPLICATION NO. 9740 OF 2024

1. It is informed that respondent No.3(iii) of the cause title of the petition appears to have been died. Hence, name of respondent No. 3(iii) be deleted from the cause title.

2. Necessary steps to that regard to be taken forthwith.

3. The interim application is disposed of.

WRIT PETITION NO. 4520 OF 2017

4. The challenge raised in the present writ petition is directed

against the order passed by the Competent Authority in exercise of powers under Section 11(3) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, whereby the application preferred by the petitioner for grant of unilateral deemed conveyance came to be rejected.

5. The principal reason assigned in the impugned order was that certain tenants were stated to be occupying the first three floors of the building. It further appears that the said factual position was thereafter corrected by issuance of a corrigendum. The Competent Authority has also observed that conferment of unilateral deemed conveyance at this stage may unnecessarily complicate the existing situation, particularly when no specific provision was indicated regarding the future course of action concerning the rights and interests of such tenants.

6. The facts giving rise to the present petition, to the extent they are undisputed, disclose that during the period from 1 December 1972 to the year 1973, several agreements for sale came to be executed in respect of the building in question. It further appears that the application seeking registration of the petitioner society was allowed by an order dated 31 March 2004. Thereafter, the petitioner invoked Section 11 of the said Act by filing an application on 23 November 2015. In view of these admitted dates and transactions, the applicability of the provisions of the MOFA Act is not in dispute between the parties. Likewise, the execution of separate agreements during the period 1972 to 1973 also remains an admitted position.

7. Once an organisation of flat purchasers stands duly registered under Section 10 of the Act, the statutory obligation cast upon the promoter becomes operative. Rule 9 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1964 mandates that the promoter shall execute the conveyance in favour of such organisation within the prescribed framework. In the event of failure or omission on the part of the promoter, the machinery under Section 11 of the Act becomes available so that the legislative object of transferring title to the body of purchasers is not defeated.

8. In the present facts, it appears that upon the plot admeasuring 1066 square metres there exist two separate co-operative societies. It is material to note that the second society has issued its No Objection Certificate consenting to execution of conveyance in favour of the petitioner society. In such circumstances, the inter se rights and entitlement of the parties would necessarily fall for consideration in the light of Clause 2(c) (vi) of the Government Resolution dated 22 June 2018, which governs situations where more than one society exists upon the same parcel of land.

9. It shall, therefore, be open to all concerned parties to place before the Competent Authority the requisite calculations of land area, built-up area and corresponding entitlement, as contemplated under the Government Resolution dated 22 June 2018, for determining the extent of conveyance to which the petitioner society may be entitled. The Competent Authority shall

also take into consideration the Architect Certificates and other technical material produced by the respective parties and, after due scrutiny thereof, shall pass an appropriate order regarding conferment of deemed conveyance in favour of the petitioner society in accordance with law.

10. The parties shall remain present before the Competent Authority on 4 May 2026, without awaiting any further notice.

11. The Competent Authority shall, within a period of six weeks from the date of appearance of the parties, determine and decide the actual area liable to be conveyed in favour of the petitioner society, strictly in accordance with the provisions contained in the Government Resolution dated 22 June 2018 and other applicable legal provisions.

12. Since the impugned order rejects the application preferred under Section 11 of the Act in its entirety, without proper adjudication of the petitioner's entitlement in the light of the governing Government Resolution and relevant material, the impugned order dated 23 November 2016 passed by the Competent Authority cannot be sustained. The same is accordingly quashed and set aside.

13. The original application bearing No.1002185 of 2015 stands restored to the file of the Competent Authority, who shall, after granting adequate opportunity of hearing to all sides, adjudicate afresh the entitlement of the petitioner in terms of the directions recorded hereinabove.

14. In view of the aforesaid directions and observations, the writ petition stands disposed of.

(AMIT BORKAR, J.)