

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 1502 OF 2026**

M/s. D.K. Construction & Land
Developers

...Petitioner

V/s.

1. D.K. Residency Co-operative
Housing Society Limited & Ors.

...Respondents

Mr. Omkar Kulkarni *i/b. Mr. Kevin Pereira, for the Petitioner.*

Mr. Moinuddin Khan, *for Respondent No.1.*

Ms. D.S. Deshmukh, *AGP for State.*

CORAM: SANDEEP V. MARNE, J.

DATED: 16 June 2026.

P.C.:

1) By this petition, Petitioner challenges order dated 4 September 2025 passed by the District Deputy Registrar, Co-operative Societies, Mumbai City (1) and Competent Authority (**Competent Authority**) issuing Certificate of unilateral deemed conveyance in respect of land and building in favour of Respondent No.1-Society.

2) I have heard Mr. Kulkarni, the learned counsel appearing for the Petitioner and Mr. Khan, learned counsel appearing for Respondent No.1.

3) The main objection sought to be raised on behalf of the Petitioner to the order of deemed conveyance passed by the Competent Authority is issuance of only part Occupancy Certificate in respect of the building. It is submitted that the Society misrepresented before the Competent Authority that full Occupancy Certificate in respect of the building has been issued. It is contended that what is issued on 24 January 2020 is only part Occupancy Certificate. It is submitted that several works in the building are still incomplete, as well as, there is balance FSI potential which the Petitioner proposes to utilise.

4) This Court has taken a view in ALJ Residency Co-operative Housing Society Ltd. Versus. State of Maharashtra & Ors.¹ and Yogesh Jayant Khadilkar Versus. The State of Maharashtra & Ors.² that deemed conveyance in respect of the building can be granted by the Competent Authority even in absence of Occupancy Certificate. In the present case, there is part Occupancy Certificate issued in respect of Society's building. Thus, it cannot be contended that the construction of building is unauthorised. If full Occupancy Certificate is indeed not issued, the Petitioner has to share the blame for the same. It is Petitioner's statutory obligation to secure full Occupancy Certificate in respect of the building. Petitioner cannot be permitted to take benefit of its own wrong. Under Section 11(1) of Maharashtra Ownership of Flats Act, 1963 (MOFA), there is a statutory duty imposed on the Petitioner to transfer his right, title and interest in the land and the building in favour of organisation of flat purchasers. Since statutory duty is not performed by the Petitioner-Developer, the Competent Authority has stepped into

1 2024 SCC Online Bom 3638

2 Writ Petition No. 13755 of 2022 dtd 11 February 2025

the shoes of the Petitioner and has performed the duty under Section 11(3) and (4) of MOFA which the Petitioner is supposed to perform. In my view therefore non-issuance of full Occupancy Certificate cannot be a ground for Competent Authority not issuing Certificate of unilateral deemed conveyance.

5) So far as balance FSI potential in the building is concerned, the case does not involve layout development. This is a case where a single building is being constructed on the land. Therefore, there is no question of proportionate division of land in accordance with Government Resolution dated 22 June 2018. In that view of the matter, it is highly questionable as to whether Petitioner can exploit any further FSI in the building. However, if the Petitioner believes that any part of FSI flowing out of conveyed land still belongs to it, it is for the Petitioner to file a Civil Suit challenging the conveyance made in favour of Respondent No.1-Society. It is well settled position of law that mere grant of Certificate of unilateral deemed conveyance is not final determination of rights and obligations of parties in respect of the conveyed land. Petitioner can always institute a Civil Suit and claim right, title or interest in respect of the land conveyed by the Competent Authority. In view of the above position, I do not find any valid ground to interfere in the impugned order.

6) Reserving the liberty of the Petitioner to file a Suit, Writ Petition is **disposed of**.