

Shabnoor

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

WRIT PETITION NO.2109 OF 2025

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Shaila Ravindra Kaware & Ors. ... Petitioners
V/s.
Saicharan Cooperative Housing Society
Limited & Ors. ... Respondent

Mr. Kishor Patil a/w Amar Parsekar, Ajinkya Desai,
Shantanu Raktate, for the Petitioners.

Ms. Savina R. Crasto, AGP, for the State – Respondent
Nos.2, 5 to 7.

Mr. Prathamesh Bhargude, for Respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : APRIL 28, 2026

P.C.:

1. The petitioners are saying that they are owners of some part of property, and because of that ownership they are feeling affected by order passed by Competent Authority under Section 11 of said Act of 1963. It is appearing that said authority has granted unilateral deemed conveyance in favour of respondent society, meaning thereby conveyance is given without full consent of all sides but by statutory power. The petitioners therefore are placing their case on footing that their ownership rights are touching this action.

2. However, it is required to be seen that such proceedings under said provision are more in nature of facilitating transfer

which promoter has failed to do, and not for deciding deeply who is true owner in full legal sense. Even if petitioners are claiming ownership, that claim by itself does not automatically make writ jurisdiction proper place for deciding correctness of conveyance in full factual detail, because such matters require detailed evidence which is not possible here.

3. The grievance which is strongly put by petitioners is that more area than what is shown in Architect's Certificate has been given to the society. According to them, this is clear case of non application of mind. At first sight, such contention appears having some force because area determination is important aspect. But when seen little closely, it becomes clear that Competent Authority while exercising powers under Section 11 is not expected to conduct minute measurement disputes like civil trial. The authority mostly relies on documents placed, including certificates and plans, and proceeds to effectuate conveyance. If there is some excess or discrepancy in area, that may raise dispute of factual and technical nature. Such dispute cannot be easily decided only on affidavit material. Therefore, even if petitioners are correct partly or fully, still that issue becomes matter requiring detailed evidence, cross checking of plans, and maybe even expert opinion, which is beyond scope of present proceedings.

4. This Court, in *Shimmering Heights Co-operative Housing Society Ltd. & Ors. v. State of Maharashtra & Ors. (Writ Petition No. 3129 of 2016, decided on 6 April 2016)*, have underscored that proceedings for deemed conveyance are not intended to adjudicate complicated questions of title. Similarly, in *Zainul*

Abedin Yusufali Massawawala & Ors. v. Competent Authority, District Deputy Registrar of Co-operative Housing Societies, Mumbai & Ors., 2016 SCC OnLine Bom 6028, it has been reiterated that the Competent Authority exercises limited jurisdiction and cannot determine rival ownership claims. In *P.R. Enterprises & Anr. v. Competent Authority & Anr. (Writ Petition No. 1125 of 2016, decided on 27 November 2018)*, this Court has held that disputes pertaining to contractual entitlement or proprietary rights must be agitated before the Civil Court.

5. The scheme of law is to ensure that flat purchasers are not kept waiting endlessly for conveyance. If every objection regarding title or area is allowed to be fully tried in such proceedings, then object of law will fail. Further, it is also stated in previous decisions that Competent Authority has limited jurisdiction. It cannot decide rival claims of ownership between parties. If two persons are saying that same property belongs to them, such issue needs full trial. Also, disputes relating to contractual rights or proprietary interest must go before Civil Court, because Civil Court is having complete power to record evidence, frame issues, and give final findings binding on parties. Therefore, these judicial pronouncements are guiding factor, and this Court is required to follow same consistent line.

6. The Division Benches have also consistently taken view that when owner comes before writ court saying that excess area is wrongly given, such dispute essentially involves question of title or extent of property. These are not simple administrative errors always. They may involve interpretation of agreements, plans,

development rights, and sometimes historical records. Such matters cannot be satisfactorily gone into under Article 226, because writ jurisdiction is mainly for examining legality of decision making process and not for resolving disputed facts in detail. Therefore, even if petitioners are raising genuine grievance, still proper forum is Civil Court. The Civil Court can examine whether area is rightly conveyed or not, and can grant appropriate relief including declaration or injunction if required.

7. In that view of matter, it becomes necessary to send petitioners to proper remedy. If this Court entertains such disputes in writ jurisdiction, it may lead to incomplete adjudication and possible injustice. Hence, relegation to civil suit becomes appropriate course.

8. Hence, the following order is passed:

(i) The Writ Petition stands disposed of with liberty to the petitioners to approach the competent Civil Court.

(ii) All contentions of the parties are expressly kept open to be urged in such proceedings.

(iii) The period spent in prosecuting the present Petition shall be treated as bona fide prosecution for the purposes of Section 14 of the Limitation Act, 1963.

9. With these observations, the Writ Petition stands disposed of.

10. There shall be no order as to costs.

(AMIT BORKAR, J.)