

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

WRIT PETITION NO. 4648 OF 2025

Valentine Cooperative Housing Society Ltd
at Tank Road, Orlem, Malad West,
Mumbai – 400064.

...Petitioner

Versus

1. District Deputy Registrar, Cooperative Societies, Mumbai City (4)
2. Stell Mary Disoza
3. Rufas John Disoza
4. Aanasli Antoni Disoza
5. Tradi Konsatrans Pereira
6. Lorana Fedrik Disoza
7. Din Loid Disoza
8. Jojef Anton
9. Sabina Imyanual Disoza
10. Osmonda Disoza
11. Myron Disoza
12. Goradon Disoza
13. Crowninu Disoza
14. IMA Disoza
15. M/s. Lubin Enterprises
16. Lubin Co-operative Housing Society Ltd.
at Domnic Colony, Tank Road, Orlem Malad
West, Mumbai – 400064
17. LA Charmaine Co-operative Housing
Society Ltd.
19. Additional Collector – Mumbai
Suburban (ULC) , Government Colony,
Bandra East, Mumbai 400051

...Respondents

SANTOSH
SUBHASH
KULKARNI

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SANTOSH SUBHASH
KULKARNI
Date: 2026.03.06
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Mr. Yogendra M Kanchan, i/b YMK Legal, for the Petitioner.
Mrs. Snehal S Jadhav, AGP, for the Respondent-State.
Mr. Amardev J Uniyal, with Jinal Neghani and B.L. Mangale, for
Respondent No.16

CORAM: N. J. JAMADAR, J.
RESERVED ON: 16th JANUARY, 2026
PRONOUNCED ON: 6th MARCH, 2026

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. By this petition under Article 227 of the Constitution of India, the petitioner assails the legality, validity and correctness of an order dated 27th May, 2016 passed by the Competent Authority (R1) thereby granting a certificate of Unilateral Deemed Conveyance in favour of respondent No.16 and the Deed of Deemed Conveyance dated 23rd January, 2020 executed and registered pursuant to the said order, and another order dated 14th September, 2023 thereby granting a certificate of Unilateral Deemed Conveyance, under Section 11 of the Maharashtra Ownership Flats (Regulation of the promotion of Construction, Sale, Management and Transfer) Act, 1963 ("the MOFA, 1963") in favour of the petitioner.

3. The background facts leading to this petition can be summarized as under:

3.1 Respondent Nos.2 to 14 and/or their predecessor-in-title were the owners of a larger piece and parcel of land admeasuring 4144.10 sq. yards equivalent to 3465 sq. mtrs. bearing Survey No.43, Hissa No.5, corresponding CTS No.201 of village Valnai, Malad (W), Mumbai, ("the larger property"). Respondent Nos.2 to 14 executed a Development Agreement in respect of the larger property in favour of Respondent No.15.

3.2 Respondent No.15 proposed to construct two buildings on the larger property. Building No.1 "Lubin" was constructed by respondent No.15, in two wings, comprising of 30 flats on ground plus four floors. Building No.2 "Valentine" was constructed by respondent No.15. Eventually, the owners of the apartments in building No.1 formed Lubin Co-operative Housing Society (R16) and the owners of the apartments in building No.2 formed Valentine Co-operative Housing Society Ltd., the petitioner.

3.3 The petitioner asserts, the built up area of building No.1 "Lubin" is 1482.13 sq. mtrs. and build up area of building No.2 "Valentine" is 970.12 sq. mtrs. as per the sanctioned building plan.

3.4 Respondent No.16 filed an application for grant of a certificate of Unilateral Deemed Conveyance, being Application

No.169/2014, before the Competent Authority (R1). The petitioner was impleaded as a party opponent (No.10) to the said application. By an order dated 27th May, 2016, repelling the objections of the petitioner – opponent No.10 therein, the Competent Authority was persuaded to issue a certificate of entitlement for Unilateral Conveyance of the land admeasuring 1500.14 sq. mtrs. out of new CTS No.201/A, admeasuring 2319.4 sq. mtrs. as per the physical survey conducted, and certificate issued, by the Architect DARV.

3.5 Pursuant to the aforesaid certificate, a Deed of Unilateral Deemed Conveyance came to be executed in favour of respondent No.16 Society, on 23rd January, 2020.

3.6 In the intervening period, the petitioner preferred an application for grant of a certificate of entitlement for Unilateral Deemed Conveyance seeking conveyance of an area of land admeasuring 917.56 sq. mtrs. out of CTS No.201/A and undivided rights in 9.15 sq. mtrs. wide right of way area admeasuring 141.59 sq. mtrs. out of Survey No.206/D, in terms of the Architect's Certificate.

3.7 By an order dated 14th September, 2023, the Competent Authority (R1) rejected the claim of the petitioner in regard to the land bearing Survey No.206/D, finding the same completely

ill-founded. Noting that in respect of CTS No.201/A, out of total area of 2319.4 sq. mtrs., a certificate of Unilateral Deemed Conveyance had already been granted in favour of respondent No.16 – opponent No.15 therein, for an area admeasuring 1500.14 sq. mtrs, the Competent Authority granted a certificate of entitlement for Deemed Conveyance in respect of the land admeasuring 819.26 sq. mtrs., only.

3.8 It appears that respondent No.16 initiated the process of redevelopment. Taking umbrage, the petitioner invoked the writ jurisdiction asserting, *inter alia*, that respondent No.16 is in the process of appointing a developer for redevelopment of its property in terms of the Deed of Conveyance dated 23rd January, 2020 and, in that event, the petitioner would suffer great hardship, loss and damage as the petitioner would ultimately get lesser area of land than its entitlement.

3.9 The core contention of the petitioner is that, despite the built up area of building No.1 “Lubin” being 1482.13 sq. mtrs., as per the sanctioned building plan, the Competent Authority (R1) has granted a certificate of Unilateral Deemed Conveyance for land admeasuring 1500.14 sq. mtrs., to the prejudice of the rights of the petitioner. Hence this petition challenging both the

orders granting certificate of Unilateral Deemed Conveyance in favour of respondent No.16 and the petitioner.

4. An affidavit-in-reply has been filed on behalf of respondent No.16. At the outset, the tenability of the petition is questioned on the ground of delay and laches as the order of grant of certificate of Unilateral Deemed Conveyance in favour of respondent No.16 was passed on 26th May, 2016 and the petitioner, despite being a party to the said proceeding and having contested the same, has assailed the said order after nine years and there is no explanation whatsoever to account for such an inordinate delay. Secondly, the petition was stated to be *malafide* as the petitioner has invoked the writ jurisdiction only after respondent No.16 initiated the process to appoint a developer to redevelop its property. The petition is driven by a devious design to derail the redevelopment of respondent No.16 Society.

5. On the merits of the matter, it was contended that, in the instant petition, the petitioner has endeavoured to raise the grounds which were not at all taken before the Competent Authority. In any event, the reliance on the Government Resolution dated 22nd June, 2018 is misconceived as the said Government Resolution has no application to the case of

respondent No.16 as the certificate of Unilateral Deemed Conveyance was issued much prior to the issuance of the said Government Resolution. Even otherwise, in terms of the said Government Resolution, while granting Deemed Conveyance in respect of a building in the layout where the TDR has been utilized, the conveyance should be granted according to the plinth and appurtenant area. In the case at hand, 350 sq. mtrs. of TDR is loaded on the petitioner Society's building. Thus, there is no infirmity in any of the impugned orders. Respondent No.16, thus, prayed for dismissal of the petition with exemplary costs as the petition has been filed with malafide intent.

6. In the wake of the aforesaid pleadings and the material on record, I have heard Mr. Yogendra Kanchan, the learned Counsel for the petitioner, Mr. Amardev Uniyal, the learned Counsel for respondent No.16, and Smt. Sneahl Jadhav, the learned AGP for the State, at some length.

7. Mr. Kanchan, the learned Counsel for the petitioner, submitted that the grant of Deemed Conveyance in favour of respondent No.16 in respect of an area admeasuring 1500.14 sq. mtrs. is against the weight of the material on record. Mr. Kanchan would urge in the initial plan sanctioned in the year 1987 the built up area of building No.1 was shown 1500.14 sq.

mtrs. However, the said plan came to be subsequently revised in the year 2000 and the built up area of building No.1 was shown 1482.13 sq. mtrs. only. Yet, the Competent Authority proceeded to grant a certificate of Unilateral Deemed Conveyance in favour of respondent No.16 on the basis of the Architect's Certificate which is patently incorrect. Secondly, in view of the Government Resolution dated 22nd June, 2018, the Competent Authority was enjoined to grant a certificate of Unilateral Deemed Conveyance in favour of the petitioner in respect of 970.12 sq. mtrs. on the basis of the built up area consumed by the Valentine. Despite the patent error having been pointed out to the Competent Authority, the latter proceeded to grant a certificate of Unilateral Deemed Conveyance in respect of an area admeasuring 819.26 sq. mtrs. only.

8. Mr. Kanchan submitted that the adherence to the guidelines in the Government Resolution dated 27th June, 2018, is peremptory. Reliance was placed on a judgment of this Court in the case of *Rai Residency Pvt. Ltd. vs. Competent Authority and District Deputy Registrar, Co-operative Societies and ors*¹.

1 2025 SCC OnLine Bom 3591.

9. Per contra, Mr. Uniyal, the learned Counsel for respondent No.16, stoutly submitted that the petition does not deserve to be entertained on the count of laches and malafide. Taking the Court through the averments in the petition, especially paragraphs 9(m) and (n) and paragraph 15, Mr. Uniyal would urge that the petitioner has been filed with an express assertion that after respondent No.16 commenced the process of redevelopment and appointment of a developer, the petitioner professed to assail the order granting the certificate of Unilateral Deemed Conveyance in favour of respondent No.16 passed prior to nine years. The contention in the petition that the petitioner did not challenge the order dated 27th May, 2016 on account of the legal advice then tendered is a subterfuge. There is no explanation for the huge and inordinate delay. Thus, the petition deserves to be dismissed in limine. Reliance was placed by Mr. Uniyal on an order passed by this Court in *Jaydeep Developers vs. Competent Authority and District Deputy Registrar, Co-operative Societies and ors.*², wherein this Court had declined to entertain the challenge to an order of Deemed Conveyance, which was passed on 21st March, 2017.

10. Inviting the attention of the Court to the grounds on which the petitioner had resisted the grant certificate of Unilateral Deemed Conveyance in Application No.169 of 2014, Mr. Uniyal would urge that the grounds now sought to be urged were never taken before the Competent Authority.

11. At the outset, it is necessary to note that the petitioner was a party to Application No.169/2014 and did contest the same. The order of Deemed Conveyance dated 27th May, 2016 passed therein was admittedly not assailed by the petitioner either by instituting the petition before this Court or by filing a suit, till the petitioner preferred an application for Deemed Conveyance in the year 2023. A period of more than seven years elapsed between the date of the granting certificate of entitlement for Unilateral Deemed Conveyance and the filing of the application before the Competent Authority by the petitioner. The said Application No.66/2023 filed by the petitioner was allowed by the Competent Authority on 14th September, 2023. Yet, the instant petition came to be filed before this Court in the month of February, 2025, assailing both the orders. There is indeed delay in assailing the order granting a certificate of Unilateral Deemed Conveyance in favour of respondent No.16. By any standard, the delay of nine years is inordinate.

12. It is trite the exercise of writ jurisdiction is discretionary. Though there is no prescribed period of limitation for filing a writ petition, if the petition suffers from delay and laches and no explanation is forthcoming, the Writ Court would be justified in declining to entertain the petition. A party who seeks relief from the Writ Court in exercise of its extraordinary jurisdiction is expected to approach the Court with reasonable dispatch. Undoubtedly, the reasonableness of time is a relative concept and hinges upon the facts and circumstances of the given case and the explanation offered for not approaching the Court at an earlier point in time.

13. A Three-Judge Bench of the Supreme court in the case of *Chairman/Managing Director, Uttar Pradesh Power Corporation Limited and others vs. Ram Gopal*³ enunciated the principle as under:

“11. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In *SS Balu v. State of Kerala* (2009) 2 SCC 479, this Court observed thus:

3 (2021) 13 Supreme Court Cases 225.

“17. It is also well-settled principle of law that “delay defeats equity”. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.”

(emphasis supplied)”

14. In the case of *Mrinmoy Maity vs. Chhanda Koley and others*⁴, the Supreme Court delineated the approach to be adopted by the Writ Court when its jurisdiction is invoked belatedly. The observations in paragraphs 9 to 11 read as under:

“9. An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or laches is one of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.

10. The discretion to be exercised would be with care and caution. If the delay which has occasioned in approaching the writ court is explained which would appeal to the conscience of the court, in such circumstances it cannot be gainsaid by the contesting party that for all times to come the delay is not to be condoned. There may be myriad circumstances which gives rise to the invoking of the extraordinary jurisdiction and it all depends on facts and circumstances of each case, same cannot be described in a straight jacket formula with mathematical precision. The ultimate discretion to be exercised by the writ court depends upon the facts that it has to travel or the terrain in which the facts have travelled.

11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to

4 (2024) 15 SCC 215.

be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and laches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and laches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and laches on the part of the applicant in approaching a writ court. This Court in the case of *Tridip Kumar Dingal and others v. State of W.B and others.*, (2009) 1 SCC 768 has held to the following effect:

“56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide *State of M.P. v. Bhailal Bhai* [AIR 1964 SC 1006 : (1964) 6 SCR 261] , *Moon Mills Ltd. v. Industrial Court* [AIR 1967 SC 1450] and *Bhoop Singh v. Union of India* [(1992) 3 SCC 136 : (1992) 21 ATC 675 : (1992) 2 SCR 969]). This principle applies even in case of an infringement of fundamental right (vide *Tilokchand Motichand v. H.B. Munshi* [(1969) 1 SCC 110] , *Durga Prashad v. Chief Controller of Imports & Exports* [(1969) 1 SCC 185] and *Rabindranath Bose v. Union of India* [(1970) 1 SCC 84]).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from

case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose.”

15. In the case of *Rikhab Chand Jain vs. Union of India and others*⁵, the Supreme Court expounded as to what would constitute reasonable period, especially when there is an alternate remedy which is required to be exhausted within a prescribed period of limitation. The observations in paragraph 13 read as under:

“13. Although there is no period of limitation for invoking the writ jurisdiction of a High Court under Article 226, all that the courts insist is invocation of its jurisdiction with utmost expedition and, at any rate, within a “reasonable period”. What would constitute “reasonable period” cannot be put in a straight-jacket, and it must invariably depend on the facts and circumstances of each particular case. Nonetheless, the period of limitation prescribed by an enactment for availing the alternative remedy provided thereunder in certain cases does provide indication as to what should be the “reasonable period” within which the writ jurisdiction has to be invoked.”

16. The decision in the case of *Rikhab Chand Jain* (supra) assumes importance in the facts of the case as pursuant to the grant of a certificate of Unilateral Deemed Conveyance, the Deed of Conveyance came to be executed and registered in favour of respondent No.16, on 23rd January, 2020. If the petitioner was to assail the legality and validity of the order granting certificate of Unilateral Deemed Conveyance dated 27th May, 2016 and

5 2025 SCC OnLine SC 2510.

Deed of Conveyance dated 23rd January, 2020, before the Civil Court, the period of limitation would be three years from the date the right to sue first accrued.

17. In the light of the aforesaid enunciation of law reverting to the facts of the case, I find substance in the submission of Mr. Uniyal that no reasonable explanation has been furnished for the inordinate delay. A bald assertion that, due to legal advice that the petitioner should apply for grant of Deemed Conveyance separately, the petitioner did not challenge the impugned order dated 27th May, 2016 passed in Application No.169/2014, is unworthy of countenance. It is imperative to note that, even the application for grant of certificate of Deemed Conveyance was filed by the petitioner after a period of seven years from the said order dated 27th May, 2016.

18. The situation which, thus, obtains is that there has been huge and inordinate delay in assailing the order dated 27th May, 2016 and the explanation sought to be offered for the delay is plainly unworthy of credence. Writ Court is required to weigh the explanation offered to account for the acceptability of the same. In exercise of extraordinary and equitable jurisdiction, such inordinate and unexplained delay cannot be lightly brushed aside to the prejudice of the parties, who have altered

their position on the premise of the finality of the order passed by the Competent Court/Tribunal.

19. I am, thus, inclined to hold that, on the ground of delay and laches itself, the petition does not deserve to be entertained.

20. Even on the merits of the matter, this Court does not find any justifiable reason to entertain the petition. A useful reference, in this context, can be made to the judgment of the Supreme Court in the case of **Arunkumar H. Shah HUF Vs Avon Arcade Premises Co-op. Society Ltd⁶**, wherein the nature of the jurisdiction exercised by the Competent Authority and the approach expected of the High Court while testing the legality, validity and correctness of such order was enunciated as under:

“37. Our conclusions on the interpretation of sub-sections (4) and (5) of Section 11 of the MOFA are as under:

.....

ii. The competent authority, while following the summary procedure, cannot conclusively and finally decide the question of title. Therefore, notwithstanding the order under sub-section (4) of Section 11, the aggrieved parties can always maintain a civil suit for establishing their rights;

iii. The provisions of Section 11 are for the benefit of the flat purchasers. In writ jurisdiction, the Court should not interfere with the order granting deemed conveyance unless the same is manifestly illegal. The writ court should generally be show in interfering with such orders. The reason is that, notwithstanding the order under Section 11(4), the remedy of aggrieved parties to file a civil suit remains open; and”

21. The High Court is, thus, expected to interfere only when the order passed by the Competent Authority suffers from manifest illegality. Since the aggrieved party has the remedy of instituting a substantive suit based on title, the Writ Court should be slow in interfering with the order passed by the Competent Authority, where the challenge is predominantly premised on the title or the entitlement to a particular/larger area.

22. In the case at hand, at best, the case of the petitioner is that, the built up area of respondent No.16 Society's building is 1482.13 sq. mtrs. and not 1500.14 sq. mtrs. It is imperative to note that in the reply filed by the petitioner in Application No.169/2014 before the Competent Authority the only objection that was taken by the petitioner was that the Architect's certificates produced by the petitioner showed that the built up consumed by Lubin (R16) was 1482.13 sq. mtrs. and the Architect's certificate produced by respondent No.16 showed the built up consumed by Lubin as 1500.14 sq. mtrs. and, hence, it was left to the Competent Authority to decide on that anomaly.

23. The aforesaid discrepancy, even if taken at par, could hardly furnish a justification for the Writ Court to interfere with the order passed by the Competent Authority granting a

certificate of Unilateral Deemed Conveyance in favour of respondent No.16 as by no stretch of imagination can it be said that the said order suffers from manifest illegality or jurisdictional error or stares in the face on account of its perversity.

24. So far as the challenge to the order granting a certificate of Unilateral Deemed Conveyance in favour of the petitioner purportedly for a lesser area (819.26 sq. mtrs.) against the prayer for a larger area (917.56 sq. mtrs.), suffice to note that the Competent Authority has ascribed justifiable reasons, including that the claim of the petitioner for grant of certificate of Deemed Conveyance in respect of the area, out of CTS No.206/D, was completely ill-founded. The factor of TDR having been loaded on the building No.2 “Valentine” also weighs in as in the Government Resolution dated 22nd June, 2018, which certainly governs the application of the petitioner, it is, *inter alia*, provided that, while making Deemed Conveyance in respect of the buildings in the layout where TDR is utilized, the conveyance should be made according to the plinth and appurtenant area. Thus, the claim premised on total built up area cannot be readily countenanced.

25. In any event, if the petitioner is dissatisfied with the grant of lesser area by the impugned order dated 14th September, 2023, the petitioner can institute a suit before the competent civil court.

26. For the foregoing reasons, the petition deserves to be dismissed.

27. Hence, the following order:

: O R D E R :

(i) The petition stands dismissed with costs.

(ii) Rule discharged.

[N. J. JAMADAR, J.]

At this stage, Mr. Kachan, the learned Counsel for the petitioner, seeks continuation of ad-interim relief.

In the light of the view, which this Court is persuaded to take, especially on the aspect of delay and laches, the oral application for continuation of ad-interim relief stands rejected.

[N. J. JAMADAR, J.]