

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5700 OF 2025
WITH
INTERIM APPLICATION (ST.) NO.858 OF 2026

Belleza Blue Coop. Housing Society
Ltd., through it's Secretary Dr. Sumedh
Vinayak Anathpindika ... Petitioner

V/s.

Deputy District Registrar (Cooperative)
Pune City, Sugar Commissionerate
& Others ... Respondents

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Mr. Prasad S. Dani, Senior Advocate with Mr.
Prabhakar M. Jadhav for the petitioner.

Mr. P.V. Nelson Rajan, AGP for respondent No.1-State.

Mr. Anil Anturkar, senior Advocate with Mr. Sugandh
Deshmukh and Mr. Vaibhav Thorave for respondent
Nos.3c and 3i.

Mr. Bharat Gadhavi with Mr. Aniket Shitole for
respondent No.3f.

Mr. Ajit Anekar with Ms. Madhuri Negi and Mr.
Siddhant Sawhney i/by Auris Legal for respondent
No.3j.

Mr. Tejas Deshmukh for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : APRIL 21, 2026

P.C.:

1. For the reasons stated therein, Interim Application (St.)
No.858 of 2026 is allowed. Amendment to be carried out within
two weeks from today.

2. By the present writ petition instituted under Articles 226 and 227 of the Constitution of India, the petitioner has called in question the order of deemed conveyance dated 24 November 2023, to the extent adverse to the petitioner, as also the subsequent communication/order dated 15 January 2025. The challenge is confined to that part of the order whereby deemed conveyance has been granted only in respect of land admeasuring 4913.17 square meters, instead of the entire suit property admeasuring 6500 square meters, and in respect of construction area lesser than the total built up area of 4199.26 square meters.

3. The facts giving rise to the present proceedings, as pleaded by the petitioner, are that respondent No.2 failed to discharge its statutory obligations under Section 10(1) of the Maharashtra Ownership Flats Act, 1963. In view of such failure, the bona fide purchasers of tenements situated on the first four floors of Wings A1, B1 and B2, being persons stated to be in lawful occupation of the premises, submitted an application dated 1 March 2021 before respondent No.1 seeking registration of a Co operative Housing Society. It is the case of the petitioner that respondent No.1, after undertaking necessary scrutiny and due diligence of the material placed before it, was pleased to pass an order dated 3 December 2021 recommending registration of the proposed society. Pursuant thereto, a certificate of registration dated 27 December 2021 came to be issued in favour of the petitioner society.

4. It is further the case of the petitioner that respondent No.2, being the developer, and respondent No.3 together with his legal heirs, namely respondent Nos.3(a) to 3(p), were under a statutory

duty under Section 11(1) of the MOFA to convey in favour of the petitioner society all their right, title and interest in the suit property within the prescribed period of four months from the date of registration of the society. However, no such conveyance was executed. In these circumstances, the petitioner society was constrained to file an application dated 23 November 2022 before respondent No.1 under Section 11(3) of the MOFA seeking grant of deemed conveyance in respect of land admeasuring 5500 square meters out of the larger suit property admeasuring 6500 square meters, together with tenements comprising 70 flats and 15 shops situated in the legal portion of Wings A1, B1 and B2, admeasuring about 4199 square meters. The record further indicates that respondent No.2, in its response, stated that the petitioner would be entitled to deemed conveyance of land admeasuring 6000 square meters out of the suit property. The application was opposed by respondent Nos.3(b) to 3(d) and respondent Nos.3(j) and 3(k), who contended that Wings A1, B1 and B2 were wholly unauthorized structures, allegedly not constructed in accordance with the sanctioned layout.

5. Upon consideration of the rival material and after conducting such inquiry as deemed fit, respondent No.1 proceeded to grant partial deemed conveyance by order dated 24 November 2023. Under the said order, conveyance was granted in respect of land admeasuring 4913.17 square meters out of the suit property and built up saleable area admeasuring 3239.06 square meters. The petitioner contends that the authority, while granting partial relief, has not assigned lawful basis for exclusion of the remaining

area.

6. The present writ petition, therefore, arises on the grievance of the petitioner that respondent No.1 failed to direct conveyance of the entire suit property as well as the complete legal built up area upto the fourth floor in Wings A1, B1 and B2 occupied by the members of the petitioner society. It is additionally alleged that the competent authority excluded the area earmarked as amenity space and granted conveyance without inclusion thereof. According to the petitioner, the impugned order dated 24 November 2023 amounts, in substance, to partial rejection of the claim without proper justification and has materially prejudiced the petitioner society.

7. The petitioner has also challenged the communication dated 15 January 2025 whereby respondent No.1 rejected the application dated 28 November 2023 preferred by the petitioner. By the said application, the petitioner had sought reconsideration and grant of deemed conveyance in respect of the entire suit property admeasuring 6500 square meters in place of 4913.17 square meters, and also in respect of the entire buildings standing thereon. Since the request was not accepted, the petitioner has included challenge to the said communication in the present proceedings.

8. The petitioner society states that by application dated 28 November 2023 it specifically prayed for deemed conveyance of the full suit property admeasuring 6500 square meters instead of the reduced area granted under the earlier order, and further

sought recognition of saleable area admeasuring 4199.26 square meters instead of 3239.06 square meters, corresponding to 70 flats and 15 shops collectively situated in the legal portion of Wings A1, B1 and B2. According to the petitioner, such claim was founded upon the law laid down by this Court and by the Hon'ble Supreme Court. It is further alleged that the said application was not substantively considered and that rejection thereof was merely communicated on 15 January 2025. The petitioner, therefore, explains the delay in approaching this Court on that basis.

9. It is the petitioner's case that it was constrained to file the present petition only after receipt of the communication dated 15 January 2025. The petitioner has further pointed out that the same order dated 24 November 2023 had earlier been challenged by respondent Nos.3(b) to 3(d) and respondent Nos.3(j) and 3(k), being legal heirs of the original land owner, by filing Writ Petition No.275 of 2024. The said writ petition came to be dismissed by this Court by order dated 26 March 2025. It is stated that during pendency of the present proceedings, the aforesaid writ petition stood finally decided, and therefore the petitioner relies upon the said development in support of its present challenge.

10. Mr. Dani, learned Senior Advocate appearing on behalf of the petitioner, submitted that respondent No.1 having accepted the petitioner's entitlement in principle by granting partial deemed conveyance under the order dated 24 November 2023, ought to have granted conveyance of the entire suit property admeasuring 6500 square meters instead of restricting it to 4913.17 square meters. He further submitted that the competent authority ought

to have granted conveyance of saleable area admeasuring 4199.26 square meters instead of limiting the same to 3239.06 square meters, which area corresponds to 70 flats and 15 shops situated in the legal portion of Wings A1, B1 and B2 in the project known as Belleza Blue. According to the learned Senior Counsel, once legality of the relevant portion of construction was accepted, there was no occasion to deny full consequential relief.

11. Inviting attention to Schedule I containing the description of property and the project area in respect of which development was undertaken, Mr. Dani submitted that the project area has been described therein as 65 R out of the total 81 R land. He further submitted that in the agreement executed under Section 4 of MOFA, at various places also, the total area has been consistently described as 65 R. He then referred to the area statement forming part of the sanctioned plan wherein the gross area of the plot is shown as 6500 square meters and the net plot area as 5780.19 square meters. On the strength of these documents, it was urged that the impugned reduction of area is contrary to the admitted project documents themselves.

12. Learned Senior Counsel further submitted that in the application preferred by the petitioner, the claim was for conferment of deemed conveyance over area admeasuring 5780.19 square meters. He also invited attention to the judgment of the Coordinate Bench in Writ Petition No.275 of 2024, wherein challenge to the same order by the owners came to be rejected, while clarifying that upholding of the order dated 24 November 2023 would not preclude the petitioner society from independently

claiming the entire land admeasuring 6500 square meters by assailing the said order. Referring to the impugned order, he pointed out that area admeasuring 867.02 square meters had been deducted without lawful basis. It was, therefore, submitted that at the least the petitioner is entitled to conveyance of 5780.19 square meters.

13. Per contra, Mr. Anturkar, learned Senior Advocate appearing in opposition, submitted that the petitioner in its original application had claimed lesser area and, therefore, its entitlement cannot travel beyond the area specifically sought in such application. Inviting attention to various clauses of the agreement under Section 4 of MOFA, he submitted that the expressions “said premises” and “said land” have been separately and consciously used therein. According to him, the expression “said land” is described as admeasuring 6000 square meters, whereas the expression “said premises”, particularly in Clause 21, refers only to Flat No.307. He submitted that the description of “said premises” is confined to the individual flat unit and cannot be enlarged into a claim over the entire property. On such basis, dismissal of the petition was sought.

14. Mr. Anturkar further placed reliance upon the judgment of this Court in K and K Developers & Others vs. Manjiri Greens Phase IV Cooperative Housing Society Limited & Others, Writ Petition No.8478 of 2023 decided on 9 March 2026. He submitted that the observations recorded in the said judgment would govern the controversy in hand and demonstrate that the petitioner is not entitled to the wider relief presently claimed.

15. Mr. Deshmukh, learned Advocate appearing for *respondent No.2*, and Mr. Anekar, learned Advocate appearing for respondent No.5, who are added parties to the petition, adopted the submissions advanced by Mr. Anturkar in their entirety and prayed for dismissal of the writ petition.

REASONS AND ANALYSIS:

16. I have heard the learned Senior Advocates and the learned Advocates for the parties at some length. I have also gone through the pleadings, the documents referred to across the record, the order dated 24 November 2023 and the communication dated 15 January 2025.

17. The case of the petitioner is founded on the statutory scheme under the Maharashtra Ownership Flats Act, 1963. The petitioner says that the promoter did not execute conveyance within the time required by law. The society was therefore constrained to seek deemed conveyance. The petitioner also says that the members of the society are not strangers, but bona fide purchasers in lawful occupation of the premises. Once the society came to be registered, the promoter and the land owner were under a clear obligation to convey the rights in the land and the relevant structures. This basic legal duty is not seriously in dispute. The contest is only about the extent of the land and the area to be conveyed.

18. The material placed by the petitioner shows that the project documents do not support the area fixed by the authority. Schedule I of the agreement, as pointed out by learned Senior Advocate for the petitioner, describes the project area as 65 R out

of total 81 R. The agreement under Section 4 also carries the same description at more than one place. Then there is the area statement in the sanctioned plan, where the total area of the plot is shown as 6500 square meters and the net area as 5780.19 square meters. When such documents show the project land and net plot area in a particular manner, the authority could not have reduced the area.

19. The petitioner is also right in saying that the order dated 24 November 2023 does not explain the deduction of 867.02 square meters in any convincing manner. A statutory authority dealing with deemed conveyance is expected to examine the project record carefully. It cannot make a partial grant on assumptions, nor can it leave important deductions without proper reasoning. The power exercised under Section 11(3) must rest on the project records, the sanctioned plan, the agreement, and the lawful occupation reflected in the scheme. Here, those materials pointed in the petitioner's favour to a much larger extent than what was conveyed.

20. The submission of the petitioner that the built up saleable area of 4199.26 square meters ought to have been included also has force. The petitioner's case is that 70 flats and 15 shops stand in the legal portion of Wings A1, B1 and B2. The authority has granted only 3239.06 square meters. No satisfactory reason is shown for cutting down the saleable area, particularly when the legal portion of the buildings is not disputed. Once the lawful portion of the construction is identified, the conveyance must follow the same.

21. The argument of respondent No.1 and the contesting respondents that the petitioner cannot claim more than what was mentioned in the application does not carry the matter any further. The application has to be read with the accompanying documents. It is the project record which gives the real picture. If the documents disclose that the land is measuring 6500 square meters in gross and 5780.19 square meters in net area, the authority could not have treated a lesser figure as final merely because of a narrow reading of one part of the prayer. In a matter of deemed conveyance, substance has to prevail over form, provided the claim is supported by the record. Here the record supports the petitioner.

22. The reliance placed by the respondents on the use of the expressions “said premises” and “said land” in the agreement under Section 4 also does not help them. The expression “said premises”, as pointed out by learned Senior Advocate for the respondents may refer to the individual flat in Clause 21. But that clause cannot be isolated from the rest of the agreement and used to reduce the larger project area. A reading of the agreement as a whole shows that the land and the premises are separately described for different purposes.

23. The contention that the petitioner had claimed 6000 square meters or *5500 square meters* at one stage, and therefore it cannot now claim a different extent, is also not acceptable in the present facts. The documents relied upon by the petitioner show that the sanctioned plan refers to 6500 square meters gross and 5780.19 square meters net. Where the authority itself had before it the

sanctioned plan and the agreement, it was bound to determine the correct area on the basis of those materials.

24. The order of the coordinate Bench in Writ Petition No.275 of 2024 also assists the petitioner. The challenge by the legal heirs of the land owner was rejected. The Court clarified that the upholding of the order dated 24 November 2023 would not come in the way of the petitioner society in independently challenging that order and claiming the entire land. The petitioner's right to raise its own challenge was expressly kept open. The present petition is therefore deserves a decision on merits.

25. The petitioner society has succeeded in showing that the impugned order suffers from material error in limiting the conveyance of land and built up area. The order dated 24 November 2023 and the communication dated 15 January 2025 are therefore liable to be quashed and set aside to the extent they restrict the petitioner's entitlement. The petitioner is entitled to deemed conveyance of the net land area admeasuring *6500 square meters*, as borne out by the sanctioned plan and allied records, and of the built up saleable area admeasuring 4199.26 square meters pertaining to the legal portion of Wings A1, B1 and B2, together with such appurtenant rights as follow in law.

26. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

- (i) The writ petition is allowed;
- (ii) The order dated 24 November 2023 passed by respondent No.1 granting partial deemed conveyance, and

the order dated 15 January 2025, are quashed and set aside to the extent they restrict the entitlement of the petitioner society;

(iii) It is declared that the petitioner society is entitled to deemed conveyance in respect of land admeasuring 6500 square meters, being the net plot area borne out from the sanctioned plan and project record, together with built up saleable area admeasuring 4199.26 square meters corresponding to the legal portion of Wings A1, B1 and B2 comprising 70 flats and 15 shops;

(iv) Respondent No.1 shall issue fresh consequential order and complete all necessary steps for grant and registration of deemed conveyance in favour of the petitioner society in respect of the aforesaid land and area, as expeditiously as possible and in any event within a period of eight weeks from the date of receipt of authenticated copy of this order;

(v) In case respondents approach Civil Court, the Civil Court shall decide the proceedings independently and in accordance with law, without being influenced by any observations made in this judgment or by the findings recorded by the Competent Authority;

(v) All concerned authorities shall act upon an authenticated copy of this order;

(vi) Rule is made absolute in the aforesaid terms;

(vii) There shall be no order as to costs.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 6 May 2025. The corrections are shown in italicize.