

Sayali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SAYALI
DEEPAK
UPASANI

WRIT PETITION NO. 5974 OF 2025

Digitally signed
by SAYALI
DEEPAK
UPASANI
Date: 2026.01.28
19:02:22 +0530

Santoshkumar Motial Bhansali

... Petitioner

V/s.

The Competent Authority and District
Deputy Registrar Co-operative Societies
and others

... Respondents

Mr. Sandeep Phatak with Mr. Adhik Kadam, for
Petitioner.

Mr. Pankaj Das, for Respondent No. 2 to 12.

Ms. Kavita N. Solunkhe, Additional GP with Mr. A. A.
Alaspurkar, AGP for State for Respondent Nos. 1 and
17.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 28, 2026

P.C.:

1. The promoter has filed this petition to challenge the judgment and order passed by the Competent Authority under Section 11(3) of the MOFA Act. The impugned order confirms deemed conveyance in favour of the respondent Nos. 2 to 12.

2. The petitioner has raised multiple grievances. One grievance relates to the internal roads. The petitioner refers to clause M of the agreement executed between the developer and the flat purchasers. Under this clause, the purchasers agreed that

amenity spaces, open spaces, and internal roads shall remain with the owner developer permanently. The petitioner states that the Competent Authority has excluded open spaces and amenity spaces accordingly. However, the Competent Authority has granted deemed conveyance for the internal roads. The petitioner submits that this results in transferring common areas to the respondent federation, which is not permissible. The petitioner further submits that during the pendency of the proceedings, the internal roads have been converted into DP roads. Hence, as the owner, the petitioner claims entitlement to compensation for this area. The petitioner also relies on Section 14 of the IBC and submits that the moratorium bars the Competent Authority from exercising powers under Section 11 of the MOFA during its operation.

3. On examining the material placed on record along with the sanctioned layout, it becomes clear that the issue whether the internal road forms part of the common areas cannot be decided summarily. This issue involves determination of factual aspects relating to sanctioned plans, development permissions, and terms of agreements. Such questions require evidence and adjudication before a civil court. The grievance raised by the petitioner on the basis of clause M of the agreement also requires proper legal scrutiny. Under the scheme of the MOFA Act, the promoter can enforce only those terms of agreement which conform to Section 4 read with Form V of the Act and the Rules framed thereunder. Any contractual clause which curtails or takes away rights

conferred upon flat purchasers under the Act cannot override the statute. A private contract cannot derogate from statutory rights. Permanent retention of ownership by the promoter in respect of land intended to be conveyed to the organisation of flat purchasers is not in line with the object of the MOFA Act. At the same time, whether a particular portion of land constitutes a common area for the purpose of conveyance depends on facts. These factual aspects cannot be conclusively determined in writ proceedings.

4. The Division Bench of this Court in *Zainul Abedin Yusufali Massawala and others versus Competent Authority (2016 SCC OnLine Bom 6028)* has explained the nature and effect of an order under Section 11 of the MOFA Act. The Court has held that such an order results in conveyance of only those rights which the promoter actually holds in the land and building. If the promoter considers that the order conveys a larger extent of land or rights than what the purchasers are entitled to, the proper course is to institute a civil suit. The civil court will have full jurisdiction to examine the title documents, evidence regarding extent of land, and all connected issues. The findings recorded by the Competent Authority under Section 11 will not bind the civil court. Thus, the civil rights of the promoter remain intact. They can seek full adjudication before the competent civil court without any prejudice arising from the deemed conveyance order.

5. This approach has been consistently followed by this Court in several decisions. In *Shimmering Heights CHSL and others versus State of Maharashtra (Writ Petition No. 3129 of 2016 decided on 6 April 2016)*, in *P.R. Enterprises and others versus Competent Authority (Writ Petition No. 11251 of 2016 decided on 27 November 2018)*, and in *Mehboob Ali Humza and others versus District Sub Registrar (3), Mumbai and others (Writ Petition No. 3129 of 2016 decided on 24 June 2016)*, the Court has reiterated that writ jurisdiction is not intended for resolution of disputes concerning title, extent of land, development rights, or ownership claims. Such matters demand appreciation of documentary evidence, oral testimony, and factual determination. Only a civil court is equipped to undertake such an exercise. The writ court does not conduct a mini trial. Therefore, promoters or landowners who dispute the quantum of land or nature of rights conveyed must seek their remedies through a civil suit.

6. It must also be noted that the Competent Authority exercising powers under Section 11 of the MOFA Act has a limited mandate. The Authority examines the registered agreements, sanctioned plans, and related records. It ensures that the conveyance is executed in accordance with the statutory scheme. It does not adjudicate upon complex disputes concerning title. It does not decide whether the society has claimed more land than what it can legitimately claim. It does not settle ownership disputes between rival claimants. These questions fall within the domain of the civil court. Hence, if the petitioners

believe that respondent No. 2 to 12 have claimed more land than what they are entitled to, the appropriate remedy is to institute civil proceedings rather than invoke writ jurisdiction under Article 226.

7. For these reasons, this Court has consistently exercised restraint in interfering with deemed conveyance orders at the instance of promoters or landowners. Once it is clarified that the observations and findings recorded in the deemed conveyance order do not operate as *res judicata* in future civil proceedings, there is no legal prejudice caused to the promoters or landowners. Their rights under civil law remain fully intact. They retain the liberty to challenge the society's claim before the civil court. Their remedies remain unaffected.

8. The judgment of this court in *Anudan Properties Private Limited vs Mumbai Metropolitan Region, Slum Rehabilitation Authority and Others* 2025 SCC OnLine Bom 692 explains how to deal with conflicts between IBC proceedings and statutory obligations under a welfare statute. It draws a clear distinction between monetary claims that get frozen under a resolution plan and statutory obligations that continue despite insolvency. It also holds that Section 14 of the IBC does not bar statutory authorities from discharging statutory functions.

9. Applying that reasoning to the present facts, two points become relevant. First, the petitioner's reliance on Section 14 of the IBC to restrain the Competent Authority from exercising

powers under Section 11 of the MOFA Act cannot succeed. The Competent Authority performs a statutory function. It confers a statutory benefit upon flat purchasers. This function is not in the nature of a recovery action. It is not a claim enforcement mechanism. It is an exercise of statutory power to perfect title in favour of an organization of purchasers. Under the logic of *Anudan Properties*, statutory rights of third parties and statutory duties of authorities continue despite insolvency or moratorium.

10. Second, the argument that the moratorium or the resolution plan extinguishes factual defaults or immunizes the promoter from consequences cannot be accepted. *Anudan Properties* holds that a resolution plan may extinguish monetary claims but it does not erase past defaults. It does not prevent statutory regulators from acting in public interest. The MOFA framework creates statutory contracts under Section 4. The obligation to convey title is part of that statutory framework. Proceedings for deemed conveyance enforce performance of a statutory obligation in specie. They do not seek money. They do not constitute debt recovery. Therefore, they fall outside the bar of Section 14.

11. Under MOFA, conveyance of land and building to the society or federation is the norm. Whether internal roads constitute common areas is a factual issue for a civil court. The Competent Authority is not required to adjudicate ownership disputes. Its task is limited. If the promoter asserts that more land

than permitted has been conveyed, its remedy is to file a civil suit. This matches the approach laid down in *Zainul Abedin Yusufali Massawala*.

12. On this reasoning, the petitioner's challenge under Article 226 does not merit acceptance. The correct course is to relegate the parties to a civil suit without disturbing the statutory process under Section 11 of the MOFA Act.

13. In my opinion, the petition does not warrant interference under writ jurisdiction. The petitioner can pursue its claims before a civil court in accordance with law.

14. All contentions raised by the petitioner are kept open. They may be adjudicated in civil proceedings concerning enforcement of the alleged rights of the petitioner.

15. At this stage, learned counsel for the petitioner seeks continuation of the oral statement made in June 2025 however for the reasons in the present judgment the request for continuation of stay is rejected.

(AMIT BORKAR, J.)