

Sayali

WRIT PETITION NO. 8040 OF 2025

Ms. Kavita N. Solunke, Additional GP with S. L. Babar,
AGP for State- Respondent Nos. 1 and 2.

DATED : FEBRUARY 09, 2026

1. By the present Petition under Article 226 of the Constitution of India, the Petitioners, who claim to be the owners of the property in question, have impugned the order passed by the Competent Authority in exercise of powers under Section 11(3) of the Maharashtra Ownership of Flats Act. By the said order, the Authority has directed conferment of deemed conveyance in favour of Respondent No. 3 Society in respect of land admeasuring 263.10 square metres, comprising C.T.S. Nos. 945, 945/1, 945/2 and 945/3, situated at Village Kurla, Division

No. 2, Mumbai Suburban District, together with the building standing thereon.

2. The factual matrix giving rise to the present proceedings is as follows. It is the case of the Petitioners that one Balkrishna Parshuram Bapat was the original owner of the land admeasuring 263.10 square metres, described in the Petition as the said property. Upon his demise, the property devolved upon his son, Shrinivas Balkrishna Bapat, and daughter, Sumati Balkrishna Bapat. Shrinivas Bapat expired on 22 September 2006, and Sumati had predeceased him. Consequently, Respondent Nos. 4 and 5, along with the present Petitioners, claim to have succeeded to the ownership of the property. It is further stated that as the structure had become dilapidated, Balkrishna Bapat decided to reconstruct the bungalow by raising three upper floors, while retaining five galas on the ground floor. For this purpose, development rights were entrusted to Respondent No. 6. On the basis of a Development Agreement and a Supplementary Development Agreement executed by Balkrishna Bapat, Respondent No. 6 undertook construction of the building in question.

3. The record indicates that under the Development Agreement, which was also executed by co-owner Shrinivas Bapat and Sumati Bapat, the Developer undertook to form either a company or an organization of flat purchasers. It was agreed that the Developer would construct the first floor for allotment to

the owner and two additional floors for third-party purchasers, and thereafter convey the property together with the entire constructed area. Clause 6 of the Agreement contemplates transfer in favour of third parties, namely flat purchasers. Clause 78 provides that in the event formation of a society or company is not legally feasible, all flats agreed to be sold shall be treated as property belonging to the purchasers collectively. Despite such contractual stipulations, no society was formed by the owners or the Developer. The purchasers thereafter formed and registered Respondent No. 3 Society under the Maharashtra Cooperative Societies Act. Even after registration, no conveyance was executed for nearly fourteen years. Respondent No. 3, therefore, invoked Section 11(3) of the Act and sought deemed conveyance, which came to be granted by the impugned order.

4. Learned Counsel appearing for the Petitioners contended that Respondent No. 6 was engaged merely as a contractor for construction of upper floors and did not acquire any independent right, title or interest in the land or structure. It was submitted that certain occupants had defaulted in payment of rent and carried out unauthorized alterations, which led to eviction proceedings up to the Supreme Court. It was further urged that the Developer had no right, title or interest in the land beneath the building and, therefore, could not have transferred any interest in excess of what he possessed. According to the Petitioners, all relevant agreements were not placed before the Competent Authority. It was also contended that the occupants

were tenants and not flat purchasers within the meaning of the Act. The grant of deemed conveyance, particularly in respect of what is described as an unauthorized fourth floor and to a society comprising such occupants, is stated to be beyond the scope of Section 11(3). On these grounds, it was prayed that the impugned order be set aside.

5. In reply, learned Counsel for Respondent No. 3 Society submitted that the agreements with the purchasers were executed not only by the Developer but also by co-owners Shrinivas Bapat and Sumati Bapat. The agreements specifically provide for formation of a cooperative housing society and for conveyance of the entire building area in favour of the flat purchasers. It was submitted that even in the alternative situation where formation of a society was not feasible, the property was to vest collectively in the purchasers. It was further contended that in proceedings under Section 11, the Competent Authority is not required to adjudicate upon the extent of title of the Developer beyond recognizing that the Developer can convey only such right, title and interest as he possesses. If the Petitioners assert any independent civil right or dispute the authority of the Developer, they are at liberty to institute appropriate civil proceedings. The findings rendered under Section 11 would not operate as res judicata in such proceedings. It was, therefore, submitted that the Petition deserves dismissal.

6. The principal grievance of the petitioners is that the Competent Authority has granted deemed conveyance in respect of property which, according to them, never stood transferred to the developer and could not have been conveyed to the society. They assert that respondent No. 6 was only a contractor. They contend that he had no independent right in the land. They also submit that certain portions of the construction are unauthorized and that the occupants were tenants, not flat purchasers. On that basis, they challenge the very foundation of the order under Section 11(3).

7. On the other hand, the society points out that the development agreements were executed by the co owners themselves. The clauses clearly provided for formation of a society and conveyance of the entire building. The society submits that the Competent Authority acted within its statutory limits. It further contends that even if there is a dispute regarding title or extent of land, such dispute cannot be resolved in writ jurisdiction.

8. The legal position on this aspect is no longer uncertain. The Division Bench of this Court in *Zainul Abedin Yusufali Massawala and others versus Competent Authority (2016 SCC OnLine Bom 6028)* has clearly explained the scope of an order passed under Section 11 of the MOFA Act. The Court has held that deemed conveyance operates only to the extent of the right, title and interest which the promoter actually holds. It does not enlarge

his title. It does not create new rights in favour of the society. If the promoter or landowner believes that the order travels beyond the promoter's actual entitlement, the remedy is not to challenge the order in writ jurisdiction on disputed questions of title. The proper remedy is to institute a civil suit where the entire evidence can be examined.

9. This principle directly answers the central submission of the petitioners. Their case rests on the assertion that respondent No. 6 had no transferable interest in the land and that the society has claimed more than what was legally permissible. These are not pure questions of law. They require scrutiny of title documents. They require examination of the development agreement and supplementary agreement. They may require evidence on the nature of possession, the status of occupants, and the sanctioned plans. Such an enquiry cannot be undertaken in proceedings under Article 226. A writ court does not record oral evidence. It does not conduct a detailed trial. It does not resolve contested facts which demand proof.

10. The same view has been consistently adopted by this Court in *Shimmering Heights CHSL and others versus State of Maharashtra (Writ Petition No. 3129 of 2016 decided on 6 April 2016)*, in *PR. 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). In each of these decisions, the Court has reiterated that disputes relating to ownership, extent of land, development rights, or alleged excess conveyance fall squarely within the jurisdiction of the civil court. The writ court examines the legality of the decision making process. It does not adjudicate rival title claims.

11. It is also necessary to consider the statutory framework. The Competent Authority under Section 11 performs a limited function. It verifies whether there are registered agreements with flat purchasers. It examines whether the statutory obligation to convey has been fulfilled. It considers the sanctioned plans and relevant documents placed before it. The Authority does not pronounce upon absolute title. It does not adjudicate complex ownership disputes between promoters, landowners, tenants, or third parties. The statute does not confer such wide adjudicatory power.

12. Therefore, when the petitioners argue that the developer was only a contractor, that he had no transferable interest, or that the fourth floor is illegal, they in substance raise issues which go to the root of title and extent of rights. These issues cannot be conclusively determined in writ proceedings. They must be established by leading evidence before a civil court.

13. It is equally important to note that the order of deemed conveyance does not foreclose the petitioners' remedies. The law is settled that findings recorded by the Competent Authority

under Section 11 do not operate as res judicata in subsequent civil proceedings. The civil court remains free to examine all documents independently. It may confirm, modify, or negate the claim of the society depending upon the evidence. The petitioners therefore suffer no irreversible prejudice merely because deemed conveyance has been granted.

14. Once this legal position is kept in view, the present petition cannot be entertained. The petitioners seek, in substance, an adjudication on title. That exercise lies outside the narrow compass of Article 226. The appropriate course for the petitioners is to institute a properly constituted civil suit where all questions of right, title, and interest can be fully tried.

15. Accordingly, while declining to interfere with the impugned order in writ jurisdiction, the petitioners are relegated to their remedy before the competent civil court. All contentions of the parties on merits are kept open.

16. The civil court shall decide the matter uninfluenced by any observations made in the deemed conveyance proceedings.

(AMIT BORKAR, J.)