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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8414 OF 2025

Kia Park Coop. Housing Society Ltd. ... Petitioner

V/s.

District Deputy Registrar, Cooperative
Societies, Mumbai (3) & Others ... Respondents

Mr. Vishal Kanade with Mrs. Vishaki Bhatia i/by Mr.
Nilesh Parmar for the petitioner.

Smt. Mamta Shrivastava, AGP for respondent No.1-
State.

Mr. Atul Damle, Senior Advocate with Mr. J.P. Singh for
respondent No.2.

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CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 25, 2026

P.C.:

1. The present writ petition challenges the order dated 17 October 2023 passed by the Competent Authority in Application No. 32 of 2023, whereby unilateral deemed conveyance has been granted in favour of the petitioner.

2. The grievance of the petitioner society is confined to that part of the impugned order which permits a right of way in favour of the developer through the portions specified therein and records the particulars, including the width, of such right of way.

3. Mr. Kanade, learned Advocate appearing for the petitioner, placing reliance on the decision of this Court in Riddhi Garden

Buildings No. A1, A2 Co-operative Housing Society Limited vs. District Deputy Registrar, CS, Mumbai City (4), Competent Authority and Others, Original Side Writ Petition (L) No. 14346 of 2023, decided on 8 March 2024, submitted that this Court has held in paragraph 42 that the scope of inquiry under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA) is limited to enforcement of rights flowing from the agreement executed under Section 4 of MOFA. It was contended that where the agreement executed under Section 4 does not recognise any easementary right in the land, the Competent Authority, while exercising powers under Section 11, cannot confer or recognise such right.

4. Per contra, Mr. Damle, learned Senior Advocate appearing for respondent No. 2, submitted that once the society had conceded before the Competent Authority that the developer would have a right of way through the portions specified in the order, the appropriate course available to the society was to seek withdrawal or modification of such concession before the same authority and, if permissible in law, to challenge the consequence thereof before a superior Court.

5. Having considered the submissions advanced by the learned Advocates for both sides, the legal position on the effect of a concession requires to be clarified at the outset. A distinction has consistently been maintained in law between a concession on facts and a concession on law. A concession on facts binds the party because it relates to matters within its own knowledge and

operates as an admission. Once a party admits a factual position, the adjudicating authority is ordinarily entitled to proceed on that basis. However, a concession on law stands on a different footing. Questions of law concern the existence, scope, or limitation of statutory power. Such issues are to be determined by the Court or the authority independently. Jurisdiction cannot be created by consent, waiver, or concession. Therefore, even if a party makes a statement touching the legal position, the authority must still examine whether the law permits the relief sought.

6. In the present case, the so-called recognition of a right of way amounts to a concession on a legal issue rather than a mere factual admission. A right of way is a legal right which must arise either from a statutory provision or from a contractual stipulation binding the parties. The proceedings before the Competent Authority were under Section 11 of the MOFA, where the inquiry is confined to enforcing rights that flow from the agreement executed under Section 4 of the said Act. The central issue, therefore, is not whether the society expressed willingness before the authority, but whether the agreement itself recognises such a right. If the agreement under Section 4 does not create or acknowledge a right of way, the Competent Authority cannot enlarge its jurisdiction merely because a party made a statement or concession during the proceedings. Jurisdiction flows from the statute and the contract recognised by the statute. It does not flow from consent of parties. Any contrary approach would permit parties to confer powers upon the authority beyond what the law contemplates, which is impermissible.

7. For this reason, even assuming that a concession was made on behalf of the society, such concession must be treated as a concession on law and cannot operate to bind the petitioner society. There is an additional aspect which reinforces this conclusion. A co-operative society acts through collective decision-making. Its rights and obligations are expressed through resolutions passed in accordance with its bye-laws. Any decision that affects proprietary or easementary rights of the society cannot rest upon a statement made in the course of proceedings unless it is supported by a valid resolution of the general body or the competent managing body, as required by the bye-laws. In the absence of such resolution forming part of the record before the authority, it cannot be presumed that the society consciously agreed to surrender or recognise a right that may prejudice its legal interests. Therefore, recognition of such a right, without demonstrable institutional approval, cannot be treated as binding on the society and cannot form the basis for conferring relief beyond the statutory scope of the proceedings.

8. In view of the above discussion, this Court is of the considered opinion that the Competent Authority could not have reserved or recognised a right of way in favour of the developer while passing the impugned order. The impugned order, to that extent, cannot be sustained in law. Hence, the following order is passed:

- a) The following portion contained in paragraph 17 of the impugned order is quashed and set aside:

“17 ... and allow right of way to Seiko Investment Pvt. Ltd. to 723/F, CTS No. 723/G from CTS No. 723/E having width of 9 metres.”

b) The authorities under the Act shall, within a period of two weeks from today, ensure issuance of the certificate under Section 11(5) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, and shall take consequential steps for enforcement of the order as modified by the present judgment.

c) It is clarified that neither the Competent Authority nor the Registrar shall insist upon incorporation of any clause granting a right of way to Seiko Investment Private Limited.

9. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)