

Shabnoor

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

WRIT PETITION NO.9162 OF 2025

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Momin Zulfikar Kasam

Aged : 57 yeas, Occu: Business,
Having address at 1901 Fatemid Co-op. Hsg.
Society Ltd., Jogeshwari (West),
Mumbai – 400 102

... Petitioner

V/s.

- 1. Pooja Cooperative Housing Society Ltd.,**
Near Hoechst Quarters, Amar Nagar,
Off. L. B. S. Marg, Mulund (West),
Mumbai – 400 082.
 - 2. Hoechst Marion Roussel Limited.,**
(Now Known as Sanofi India Ltd.,)
Hoechst House, Nariman Point, 193
Backbay Reclamation, Mumbai – 400 021.
 - 3. The Competent Authority & District Deputy
Registrar, Cooperative Societies (2),**
East Suburban, Mumbai
Room No.201, Konkan Bhavan,
C.B.D. Belapur, Navi Mumbai 400 614.
- ... Respondents

Mr. Pradeep Thorat A/W Ms. Aditi Naikare, Mr. Aniesh
Jadhav, Ms. Priyanka Bhoite for the petitioner.

Ms. Nikita Vardhan A/W Ms. Srushtee Panhale i/by
Kanga & Co. for respondent No. 2.

Mr. Karl Tamboly i/by Mr. Jayesh M. Joshi for
respondent No.3 in WP/9162/2025.

Mr. Y. D. Patil, AGP for the respondent / State.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 10, 2026

RESERVED ON : MARCH 24, 2026

JUDGMENT:

1. By the present Petition instituted under Article 227 of the Constitution of India, the petitioner calls in question the legality and correctness of the Order dated 29 May 2025 passed by the Competent Authority and District Deputy Registrar, Cooperative Societies – 2, East Suburban, Mumbai in Application No. 68 of 2024. By the said Order, the Competent Authority has proceeded to grant a Certificate of Unilateral Deemed Conveyance in favour of respondent No.1. The petitioner, therefore, seeks setting aside of the said order on grounds as urged in the Petition.

2. The facts giving rise to the present Petition, in brief, are that the petitioner, Mr. Momin Zulfikar Kasam, claims to be the owner of a portion of a larger land parcel. respondent No.1 is Pooja Co-operative Housing Society Ltd., hereinafter referred to as “the Society”. Respondent No.2 is Hoechst Marion Rousell Ltd., the erstwhile owner of the larger property, and respondent No.3 is the Competent Authority and District Deputy Registrar, Cooperative Societies – 2, East Suburban, Mumbai, who has passed the impugned Order. The larger property admeasures 36,325 sq. mtrs. and is described by various Survey and CTS numbers, both old and new, situate at Village Nahur, Taluka Kurla, Mumbai Suburban District. Out of the said larger property, the subject matter of the present Petition is a portion admeasuring 2400 sq. mtrs., forming

part of Plot No. 404 and corresponding CTS numbers, as more particularly described in the Petition.

3. It is petitioners case that on 28 January 1999, respondent No.2 executed an Agreement for Sale in favour of respondent No.1 Society in respect of Building No. 5. Subsequently, on 12 August 1999, respondent No.1 Society obtained additional FSI to the extent of 10,500 sq. ft. for construction of three additional floors on the existing structure, pursuant to an arrangement between respondent No.2, Lok Housing, and the Society. Thereafter, on 02 February 2000, respondent No.2 executed an Indenture of Lease-cum-Conveyance in favour of respondent No.1 Society for a period of 999 years in respect of the subject property admeasuring 2400 sq. mtrs., along with conveyance of the building consisting of stilt plus four upper floors, comprising 16 flats with a total built-up area of 1299.76 sq. mtrs. Thereafter, on 24 March 2000, respondent No.2 executed a Supplemental Agreement in favour of respondent No.1 Society for the limited purpose of rectifying the area mentioned in Clause 4 of the Indenture of Lease-cum-Conveyance. Respondent No.1 Society thereafter entered into arrangements with its members and allotted the constructed flats to them. The Society places reliance on certain alleged Agreements purportedly executed under the provisions of the Maharashtra Ownership Flats Act, 1963. However, it is the case of the petitioner that the additional flats constructed were not sold by way of conveyance, but were merely allotted to members. It is also on record that on 13 April 2023, respondent No.2 executed a Registered Indenture of Conveyance in favour of the petitioner,

thereby conveying land admeasuring 27,605.51 sq. mtrs. out of the larger property. The portion so conveyed to the petitioner includes the land on which the building of respondent No.1 Society stands.

4. On 12 August 2024, respondent No.1 Society preferred Application No. 68 of 2024 before respondent No.3 seeking issuance of a Certificate of Unilateral Deemed Conveyance in respect of the subject property. It is not in dispute that the petitioner was not impleaded as a party to the said proceedings at the initial stage. By Order dated 09 September 2024, the Competent Authority allowed Application No. 68 of 2024 and granted a Certificate of Deemed Conveyance in favour of respondent No.1 Society. Aggrieved thereby, the petitioner approached this Court by filing Writ Petition No. 2596 of 2025 challenging the grant of Deemed Conveyance. By Order dated 25 February 2025, this Court allowed the said Writ Petition, set aside the earlier Order of the Competent Authority, and remanded the proceedings for fresh consideration in accordance with law. Pursuant to the remand, respondent No.1 amended Application No. 68 of 2024 and impleaded the petitioner as a party. Respondent No.1 contended that respondent No.2 had entered into Agreements for Sale with individual purchasers under Section 4 of the Maharashtra Ownership Flats Act, 1963, and placed reliance upon an Agreement dated 28 September 2000 executed in favour of one Mr. P. S. Doraiswamy by the Society, in respect of Flat No. 601. A plain reading of the said Agreement indicates that Clause 7 stipulates that the flat shall remain the property of the Society and that the allottee is merely entitled to occupation and

membership. Clause 11 further clarifies that the Agreement shall not be construed as a grant, demise, or assignment of the flat. It is also material that neither the petitioner nor respondent No.2 are parties to the said Agreement relied upon by respondent No.1.

5. The petitioner, upon being impleaded, appeared before the Competent Authority and filed his reply opposing the Application. The principal contention raised by the petitioner was that the Application for Deemed Conveyance was not maintainable in law, inasmuch as the land admeasuring 2400 sq. mtrs. had already been demised in favour of the Society and the building had already been conveyed, and therefore no further conveyance could be sought. Notwithstanding the aforesaid objections, the Competent Authority, by the impugned Order dated 29 May 2025, proceeded to allow Application No. 68 of 2024 and granted a Certificate of Deemed Conveyance in respect of the subject property in favour of respondent No.1 Society. Being aggrieved by and dissatisfied with the said Order, the petitioner has instituted the present Petition invoking the supervisory jurisdiction of this Court.

6. Mr. Thorat, learned Advocate appearing on behalf of the petitioner, submitted that there exists no agreement between the promoter and the purchasers as contemplated under Section 4 of the Maharashtra Ownership Flats Act, 1963, and consequently, the proceedings initiated under Section 11 of the said Act were not maintainable in law. He invited attention to the fact that respondent No.2 had, on 2 February 2000, executed an Indenture of Lease-cum-Conveyance for a period of 999 years in respect of the subject property admeasuring 2400 square meters in favour of

respondent No.1 Society, along with conveyance of the building consisting of stilt plus four upper floors having a built-up area of 1299.76 square meters. He further submitted that respondent No.2 had thereafter executed a conveyance in favour of the petitioner in respect of land admeasuring 27,605.51 square meters. On this basis, it was contended that in the absence of a valid agreement under Section 4 of MOFA, the application for deemed conveyance was liable to be rejected.

7. Per contra, Mr. Tamboly, learned Advocate appearing for respondent No.1 Society, placed reliance upon the Indenture of Lease-cum-Conveyance dated 2 February 2000 and, in particular, the clauses contained therein which confer rights to grant, sell, transfer, and convey the building and the demised premises admeasuring 2400 square meters in favour of purchasers or lessees. He submitted that the building standing on the said land was constructed and thereafter dealt with in a manner attracting the character of a promoter, thereby giving rise to statutory obligations under Section 11 of the Maharashtra Ownership Flats Act, 1963. Developing the said submission further, learned counsel invited attention to the specific clauses in the Lease-cum-Conveyance, which record that the vendors had granted, conveyed, and transferred to the purchaser or lessee the entirety of Building No.5 consisting of stilt plus four upper floors, having a built-up area of 1299.76 square meters, together with the land appurtenant thereto. It was submitted that, in exercise of the authority flowing from the said conveyance dated 2 February 2000, respondent No.1 Society had entered into agreements with

individual members. He also referred to the recitals in the subsequent conveyance executed in favour of the petitioner by his vendor, contending that the said document contains specific stipulations casting an obligation upon the petitioner to make available to respondent No.1 Society the land together with the building. Particular reliance was placed on Clause (r), read with other relevant clauses, which makes reference to Building No.5 and the land admeasuring 2400 square meters already demised in favour of respondent No.1 Society for a period of 999 years.

8. Learned counsel further invited attention to Clause (bb) of the conveyance executed in favour of the petitioner, to contend that the petitioner had agreed to purchase the entire property from the vendor subject to an obligation to convey portions of the land in favour of various co-operative housing societies described in the Fifth Schedule to the said conveyance, for a consideration of Rs.1 crore. It was submitted that the Fifth Schedule specifically identifies the portion of land underneath Building No.5 admeasuring 2400 square meters as being demised to respondent No.1 Society for a period of 999 years. On this basis, it was urged that the present Petition is devoid of merit and is liable to be dismissed. In support of the aforesaid submissions, reliance was placed upon the judgment of this Court in *Haresh Vijaysinh Bhatia & Others vs. District Deputy Registrar & Others*, 2025 SCC OnLine Bom 1981. It was submitted that once the petitioner has stepped into the shoes of the original owner and promoter in respect of the land beneath the building, he cannot retain any independent right inconsistent with the statutory scheme, and is bound to convey his

right, title, and interest in favour of respondent No.1 Society.

9. In rejoinder, learned Advocate for the petitioner submitted that the alleged agreement dated 26 June 1999, purportedly executed under the provisions of the Maharashtra Ownership Flats Act in favour of one of the members of respondent No.1 Society, was never produced before the Competent Authority. It was further submitted that the respondent No.1 Society had declined the request of the petitioner to carry out a private survey of the property. On these grounds, it was contended that the petitioner is entitled to the reliefs as prayed for.

REASONS AND ANALYSIS:

10. I have given thoughtful consideration to the rival submissions and to the registered documents placed on record. The real question is whether respondent No.1 Society had a lawful basis to seek deemed conveyance under Section 11 of the Maharashtra Ownership Flats Act, 1963, and whether the petitioner, who later purchased a substantial portion of the larger property, can resist that claim by saying that there was no agreement under Section 4 of the said Act.

11. The first point raised by the petitioner is that there was no agreement between the promoter and the flat purchasers as required under Section 4 of MOFA, and for that reason, the application under Section 11 itself could not have been entertained. It is correct that Section 4 speaks about a written agreement between promoter and purchaser. Still, the Court cannot read that provision in isolation and ignore what has

actually happened on the ground and what documents are already executed between the parties. Here, the material on record shows that respondent No.2 had already executed, on 2 February 2000, a Lease-cum-Conveyance in favour of respondent No.1 Society. This document clearly mentions the land area of 2400 square meters. It also clearly describes the building, being stilt plus four upper floors, with specific built-up area. Even the period of 999 years is clearly stated. These details show that the parties had completed a registered document. Therefore, to say that the Society had no right only because a separate Section 4 agreement is not shown in a particular format may defeat purpose of the Act.

12. It is also necessary to remember the purpose of MOFA. The Act is made to protect flat purchasers and housing societies. It is intended to prevent a promoter or any person claiming through him from holding back conveyance or creating obstacles. Therefore, when the documents already show that the land and building were effectively transferred in favour of the Society through a long-term lease and conveyance, the absence of a separate agreement cannot defeat that right. The Court has to see the real nature of the transaction.

13. On the other hand, the submissions of respondent No.1 Society carry more force. The Lease-cum-Conveyance dated 2 February 2000 clearly records that the vendors granted and transferred Building No.5 together with the land appurtenant to it. The area of 2400 square meters is specifically mentioned. They are clear recitals in a registered document. They amount to admission of rights. They show that the Society was given a legal

interest in both land and building. It was not merely allowed to occupy. If the land was already demised for 999 years and the building was already conveyed, then the later contention of the petitioner that the Society has no right to seek conveyance becomes difficult to accept. It goes against the very documents forming the title.

14. The position becomes even more clear when one looks at the conveyance dated 13 April 2023 executed in favour of the petitioner. The petitioner did not purchase the land in a unrestricted manner. The conveyance itself contains recitals which show that certain portions were already committed. Clause (r) and related clauses refer to Building No.5 and to the land of 2400 square meters already given to respondent No.1 Society for 999 years. Further, Clause (bb) shows that the petitioner agreed to purchase the property subject to obligations, including the obligation to convey portions of land to societies mentioned in the Fifth Schedule. That schedule specifically includes the land underneath Building No.5.

15. This means the petitioner had full notice of the existing arrangement. He cannot now say that the Society has no claim. When a person purchases property with such recitals, he accepts those conditions along with the property. The obligation travels with the land. The petitioner stepped into the position of his predecessor, but only to that extent and subject to those burdens. He cannot claim a better right than what was available under the document itself.

16. A purchaser cannot ignore what is clearly written in his own conveyance. If the document says that certain land is already demised or required to be conveyed to a society, then that obligation binds him. He cannot later turn around and deny it. His rights are not independent. They are controlled by the earlier transactions and by the recitals in his own deed. Therefore, the argument of the petitioner that the Society has no enforceable right does not stand on firm ground.

17. The contention regarding non-production of the agreement dated 26 June 1999 also does not assist the petitioner. The key documents are already before the Court. The Lease-cum-Conveyance of 2000 and the later conveyance of 2023 clearly set out the rights and obligations. These are registered documents. When such documents clearly show the position, the absence of another agreement does not change the decision. The Court cannot ignore clear recitals in registered deeds merely because one additional document is not produced.

18. Similarly, the issue of private survey is not of much consequence in this case. The dispute here is not about exact measurement. The issue is about legal rights arising from conveyances. Those rights are already recorded in the documents. A private survey cannot override or alter the contents of a registered deed. Therefore, refusal to permit such survey does not affect the validity of the Society's claim.

19. The reliance placed by respondent No.1 on the judgment in *Haresh Vijaysinh Bhatia* also supports the same line of reasoning. A

subsequent purchaser, who derives title from the original owner, is bound to complete the conveyance including residual rights to complete ownership in favour of the society. The burden does not disappear on transfer. It continues and binds the next holder.

20. In view of all this material, it becomes clear that the Competent Authority has not committed any error. After remand, the petitioner was given opportunity and his objections were taken into account. Still, the documents continued to show that respondent No.1 Society already had recognized rights in respect of the land and building. The petitioner's title was also subject to those rights. In such circumstances, the grant of deemed conveyance cannot be said to be without basis. It is supported by the record and by the legal position flowing from the documents.

21. For these reasons, I am of the view that the challenge raised by the petitioner cannot succeed. The contention that there was no Section 4 agreement is too limited to dislodge the effect of the registered conveyances. The Society has shown a clear legal foundation for its claim. The petitioner, having purchased the property with express recitals and obligations in the deed, cannot now resist the implementation of those obligations. The impugned Order dated 29 May 2025, therefore, does not call for interference. The Petition deserves to be dismissed.

22. The petition is therefore dismissed.

23. No order as to costs.

(AMIT BORKAR, J.)