

Shabnoor

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

WRIT PETITION NO.11030 OF 2025

**SHABNOOR
AYUB
PATHAN**

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SHABNOOR AYUB
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**Flyedge Cooperative Premises Society
Ltd.**

A Society registered under the provisions of the
Maharashtra Cooperative Societies Act, 1960

Having its registered address at

CTS No. PF 765, Next to Kora Kendra Flyover,

S. V. Road, Borivali (West), Mumbai – 400 092.

... Petitioner

V/s.

1. State of Maharashtra

Through Ministry of Cooperation, Mantralaya,
Mumbai (Summons to be served on the
Learned Government Pleader appearing for
the State of Maharashtra)

2. District Deputy Registrar,

Cooperative Societies, Mumbai – 4

Competent Authority U/S 5A of MOFA

Having address at Bhandari Bank Bulding, 2nd
Floor, P. L. Kale Guruji Marg, Dadar (W),
Mumbai 400 028(Summons to be served on
the Learned Government Pleader appearing
for the State of Maharashtra)

3. Manvi Holding Pvt. Ltd.

Through its Director Ishwarlal S. Jain

Having address at Johri Bazar,
Jalgaon - 425001

4. Tirumala Designers Private Limited

A Company incorporated under
the provisions of Companies Act 2013

Having registered address at 16A/41,
Mahant Krupa, Manish Nagar,
Four Bungalows, J. P Raod, Andheri (West)
Mumbai 400053

5. Ashok Thimmappa Pakkala

Having address at 508, 5th Floor,
CTS No. FP 765, Next to Kora Kendra Flyover,
S V. Road, Borivali (West), Mumbai – 400 092. ... Respondents

Mr. Anil D'souza a/w Mark Dbritto i/b Ernest Tuscano, for
the Petitioner.

Mr. Abhishek C. Bhadang, AGP, for the State – Respondent.

Mr. Sandeep Waghmare, for Respondent No.3.

Mr. Dinesh Rane, for Respondent No.4.

Mr. Mutahhar Khan a/w Diksha Shirodkar, Smriti Sanjeev
i/b Mhatre Law Associates, for Respondent No.5.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 20, 2026

JUDGMENT.:

1. Leave is granted to amend the petition and remove Respondent Nos.4 and 5, who are not a necessary or proper party because they are neither the promoter nor the owner of the property. The Petitioner shall carry out the amendment forthwith.

2. The Petitioner is a Cooperative Housing Society registered under Section 10 of the Maharashtra Ownership Flats Act, 1963. The Petitioner challenges the order of the Competent Authority under MOFA. The Competent Authority has dismissed the

Petitioner's application for deemed conveyance under Section 11(3) of MOFA.

3. The facts leading to the petition are as follows. On 10 March 2006, an agreement was executed between Ramnarayan Gangadhar Manudhane as Karta and Manager on an as is where is basis. On 15 May 2009, the Municipal Corporation sanctioned the building plans and issued an Intimation of Disapproval in favour of Respondent No.3. On 24 April 2012, the Municipal Corporation issued a Commencement Certificate for the construction. On 15 July 2017, the Municipal Corporation issued an Occupation Certificate for the building. Respondent No.3, as developer, sold flats to purchasers who later became members of the Petitioner Society by executing agreements for sale under Section 4 of MOFA. Respondent No.3 did not register the cooperative society. The Petitioner Society was registered on 2 December 2021. After changes were approved by the Municipal Corporation, the Completion Certificate was re-endorsed on 29 August 2019. On 2 December 2022, the Municipal Corporation granted an Occupation Certificate in favour of Respondent No.3. Respondent No.3 did not execute the conveyance in favour of the Society even after its registration. Therefore, on 2 April 2024, the Petitioner filed an application for deemed conveyance under Section 11(3) of MOFA.

4. Respondent No.3 opposed the deemed conveyance. Respondent No.3 claimed to be the developer and opposed the application. Respondent No.3 argued that the Petitioner had suppressed material facts and that the application was not maintainable. Respondent No.3 also argued that Clauses 22, 39C,

45 and 56 of the agreement barred the Competent Authority from granting conveyance. Respondent No.3 further argued that deemed conveyance could not be granted unless its alleged dues were cleared. Some interveners also opposed the application. They are neither owners nor developers. Their objections are irrelevant and do not require consideration.

5. The Competent Authority dismissed the application mainly on the ground that the property card contains a note prohibiting transactions in respect of CTS or FP No. 765. The Competent Authority held that this note creates a barrier to granting deemed conveyance because it prevents transfer of a clear and marketable title.

6. The Petitioner's advocate submitted that the Competent Authority has given a flimsy and unsustainable reason. He submitted that any defect or note in the property card does not affect the legal right of a registered cooperative housing society to seek deemed conveyance. He submitted that action under Section 11(3) of MOFA depends on the legal duty of the promoter and the agreements executed under Section 4 of MOFA. He submitted that the Competent Authority under Section 11(3) has the power to issue a certificate of deemed conveyance. He submitted that once it is shown that the promoter had a legal and contractual duty to convey the property, that the flat purchasers have formed a cooperative society, and that the promoter has failed to convey his rights within the time allowed, then the Competent Authority must grant deemed conveyance. He also submitted that revenue entries have no relevance while exercising power under Section 11(3) of

MOFA. He pointed out an application dated 27 February 2025 filed by Respondent No.3 before the Competent Authority, in which Respondent No.3 stated that he has no objection to unilateral deemed conveyance in accordance with law. He also relied on the Occupation Certificate dated 2 December 2022.

7. On the other hand, the advocate for Respondent No.3 submitted that the purchasers have not cleared the alleged dues. He submitted that under the agreement, the promoter has full discretion either to transfer the property on ownership basis or to grant it on lease. He submitted that such discretion is given to the promoter under the agreement. He therefore submitted that since the promoter has two options, either to execute a lease deed or to execute a conveyance, there is no need to interfere with the order of the Competent Authority. He prayed that the application be dismissed.

8. Respondent Nos.4 and 5 are neither owners nor developers. They do not fall within the definition of promoter under MOFA. Their rights are not affected by the decision to grant deemed conveyance in favour of the Petitioner Society.

9. The agreements for sale executed by Respondent No.3 show a contractual obligation to transfer ownership to the flat purchasers. The Petitioner society was registered on 2 December 2021. The Occupation Certificate dated 2 December 2022 is on record. Respondent No.3 did not execute conveyance after registration. These facts support the statutory claim for deemed conveyance.

10. The Competent Authority erred in treating a note in the property card as a bar to deeming conveyance. The property card entry is a revenue record. It does not, by itself, negate the promoter's statutory and contractual duty to convey. Where the promoter sells flats under agreements for sale and then fails to execute conveyance, the statutory remedy under Section 11(3) is triggered by that failure. The property card entry cannot be used to strip the purchasers of that statutory remedy without clear, supporting evidence of a legal impediment.

11. Respondent No.3's bare allegation of unpaid dues lacks evidential support on the record. No decree, no registered claim, and no document showing a quantified demand and legal basis for a lien appear on record. In contrast, Respondent No.3 filed an application dated 27 February 2025 before the Competent Authority stating he has no objection to unilateral deemed conveyance in accordance with law. That document supports the Petitioner's entitlement. In the absence of admissible proof of dues, the alleged arrears do not justify withholding deemed conveyance.

12. The submission that the promoter had an absolute contractual option to grant lease instead of conveyance cannot prevail on these facts. The agreements produced on record are agreements for sale under Section 4 of MOFA. Those agreements impose on the promoter a duty to convey ownership to the purchasers. A contractual clause permitting an alternative does not defeat a purchaser's statutory remedy where the promoter sold on the basis of ownership and then failed to convey.

13. Objections raised by interveners who are neither owners nor promoters warrant no weight. They have no proprietary right that the grant of deemed conveyance would impair. The Competent Authority should not have given their objections controlling effect over the statutory claim of the registered society.

14. The Competent Authority should have exercised the power under Section 11(3) to grant a certificate of deemed conveyance once the statutory and contractual facts were established. The Authority had the jurisdiction and the duty to do so.

15. Hence the order of the Competent Authority dated 20.5.2025 is set aside.

16. The Competent Authority is directed to grant a certificate of deemed conveyance in favour of the Petitioner cooperative society as per application at Ex. I annexed to the present petition.

17. The Competent Authority shall complete the formalities and issue the certificate within 15 days from the date of receipt of a certified copy of this judgment.

18. No order as to costs.

(AMIT BORKAR, J.)