

Sayali

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

**SAYALI
DEEPAK
UPASANI**

WRIT PETITION NO. 12521 OF 2025

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Shrikant Studios Private Limited ... Petitioner
V/s.
Shrikant Chambers Co-operative
Housing Society Limited and Others ... Respondents

Mr. Mukesh Vashi a/w Panthi Desai i/by M. P. Vashi and Associates, for Petitioner.

Mr. Ashutosh Kulkarni i/by Vipul Raut, for Respondent No. 1.

Ms. M. S. Shrivastava, AGP for Respondent No. 3.

Mr. V. Mannadiar with Ms. Sanika S. Wabale i/b Mannadiar and Co., for Respondent No. 2.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 19, 2026

P.C.:

1. The petitioner has filed this petition under Articles 226 and 227 of the Constitution. The petitioner challenges the order dated 27 June 2025 passed by respondent No.3 under Section 11(3) of MOFA. By this order, respondent No.3 confirmed unilateral deemed conveyance in favour of respondent No.1 society for an area of 2727.92 square meters along with undivided rights in RG area of 493.48 square meters out of the total plot of 7477.75 square meters. These facts give rise to the present petition.

2. The petitioner states that it owns land admeasuring 7477.75 square meters bearing CTS No. 669, 669/1 to 6 and 783 (part) at Village Borla, Taluka Kurla, Mumbai. The petitioner states that it undertook layout development on this land and proposed three buildings. Out of these, it constructed two buildings named Shrikant Chamber I with two wings and Shrikant Chamber II with two basement levels and twelve floors. The petitioner states that the proportionate land area of the first building is 1608.78 square meters and the proportionate land area of the second building is 2252.29 square meters.

3. Respondent No.1 society claims that it is in possession of land measuring 2727.92 square meters along with proportionate RG area measuring 493.48 square meters. The petitioner executed registered and stamped agreements under Section 4 of MOFA with flat purchasers. Under Rule 9 of the MOFA Rules, the petitioner had a statutory duty to convey the land and building in favour of the society within four months of its registration. The society was registered in 2005. The petitioner did not execute conveyance. Respondent No.1 therefore applied in 2024 under Section 11(3) of MOFA for unilateral deemed conveyance. Respondent No.1 asserts that the construction is complete and no further work remains under Rule 12 of the MOFA Rules.

4. The petitioner appeared before the Competent Authority and filed a written statement on 29 April 2025. The petitioner also submitted a draft deed of conveyance and stated that it was ready to convey the property to respondent Nos.1 and 2 on the terms

mentioned in the draft. Respondent No.1 filed a rejoinder and disagreed with those terms. The petitioner then filed an additional written statement on 12 May 2025 again stating that it was ready to convey as per the draft deemed conveyance. On 10 June 2025, the petitioner filed another additional written statement placing further facts on record along with a judgment of this Court in *Marathon Era Co-operative Housing Society v. Competent Authority*, 2024 SCC Online Bombay 1115. The petitioner claims that it was entitled to personal hearing before the Competent Authority. The petitioner alleges that the Competent Authority passed the impugned order without granting such hearing. The petitioner has therefore filed this petition.

5. Mr. Mukesh Vashi, Senior Advocate for the petitioner, submitted that the impugned order violates natural justice. He stated that the petitioner had a right to make oral submissions on the terms in the draft conveyance and on their applicability in view of the judgment in *Marathon*. He referred to Clause 27 of the agreements under Section 4 of MOFA and argued that conveyance could be made to one society for the entire Shrikant Complex or to several societies for each sector or building as per the promoter's discretion. He submitted that the petitioner was entitled to form one society for all unit purchasers or separate societies for each sector or building. He stated that the promoter was required to convey the land and building to the society within six months from the date of its registration. He submitted that the petitioner had the discretion to decide whether conveyance would be made to

one common society for all buildings or to a federation of societies for separate buildings. He referred to paragraph 82 of the Marathon judgment and submitted that such objections cannot be ignored by the Competent Authority while directing conveyance of the entire plot to the society. He prayed that the impugned order be set aside.

6. In reply, Mr. Kulkarni, Advocate for respondent No.1, submitted that the society was registered on 20 May 2005. Rule 9 of the MOFA Rules required conveyance to be executed within four months from the date of registration. Clause 21 of the agreements under Section 4 also required conveyance within six months from registration. He submitted that the Competent Authority has conveyed only 2727.92 square meters along with undivided RG rights of 493.48 square meters out of a total plot of 6467.30 square meters. He submitted that respondent No.1 has a built-up area of 5948.59 square meters which is 50.87 percent of the total permissible built-up area of 11695.30 square meters. He submitted that such conveyance does not affect the rights of the petitioner to develop the phase III building. He submitted that phase III is on a different plot than the plot conveyed to respondent No.1.

7. He relied on the judgment of this Court in *Neelkanth Heights Cooperative Housing Societies Association Ltd. v. Abhinav Real Estate Pvt. Ltd.*, 2025 SCC OnLine Bom 21346. In that case, the developer relied on similar clauses claiming that conveyance would take place only after full development of the larger property. This Court rejected such contention and held that private

agreements cannot override statutory protection for flat purchasers. It was also held that deemed conveyance in favour of an apex federation would arise only after such federation is formed but such formation is not a legal pre-condition. If more buildings are constructed and more societies are formed in the future, their proportionate share in land can be worked out. Such future events cannot block the legal rights of an existing society. He submitted that the petition deserves dismissal.

8. The central issues are these. First, whether the Competent Authority breached principles of natural justice by not granting an oral hearing to the petitioner. Second, whether Clause 27 and Clause 21 of the sale agreements empower the promoter to delay or condition conveyance until completion of the entire complex or formation of an apex federation. Third, whether the impugned conveyance prejudices the petitioner's right to develop Phase III or otherwise affects rights not covered by the conveyance.

9. I now deal with the petitioner's submission that it had a right to make oral submissions on the draft conveyance and on the applicability of *Marathon*, and that denial of such oral hearing vitiates the impugned order for breach of natural justice. This objection must be tested against the governing principles laid down by the Supreme Court, in *State of U.P. v. Sudhir Kumar Singh*, (2021) 19 SCC 706.

10. The petitioner does not dispute that it was served, that it appeared before the Competent Authority, and that it filed three written statements /submissions, placed documents, placed its

draft conveyance and cited the *Marathon* judgment. The petitioner's grievance is limited to the absence of an oral hearing.

11. Paragraphs 29 to 42.5 of *Sudhir Kumar Singh* clarify the controlling test. Natural justice is flexible. It is not an inflexible ritual. Breach of *audi alteram partem* must be tested on prejudice. Mere allegation of breach is not enough. The Court must determine whether real prejudice was caused. The authority cannot presume lack of prejudice to justify non-compliance. However, the Court can refuse to set aside an order if, on appraisal of the facts, it finds that no prejudice occurred. The Court must ultimately assess whether the complaining party had fair opportunity and whether anything would have changed if oral hearing was granted.

12. Applying these principles here, the petitioner's objection does not fall in the category of "no notice" or "no hearing at all". It falls, at best, within the category of "no oral hearing" or "no adequate opportunity". The written submissions filed by the petitioner show that all factual and legal grounds were placed before the Competent Authority. The petitioner placed its draft conveyance twice. The petitioner cited and relied on *Marathon*. The Competent Authority considered those materials. Nothing prevented the petitioner from placing any fact or legal proposition in writing. There was no dispute on factual matters requiring oral examination or cross-examination. The nature of the proceeding under Section 11(3) is documentary. The statutory scheme does not mandate oral hearing in every case.

13. Paragraphs 31, 32 and 42.3 of *Sudhir Kumar Singh* hold that where facts are undisputed and no real prejudice is shown, breach of natural justice does not vitiate the order. Paragraph 36 further holds that the question is whether the hearing would have made any difference. In the present case, the petitioner does not show what additional material or legal argument could have been presented orally that was not already placed in writing. The petitioner does not indicate how oral hearing would alter the outcome. This is important because the outcome turned on statutory obligations under MOFA, non-execution of conveyance for nineteen years, the existence of a registered society, and proportional conveyance. These are not matters that oral hearing could transform.

14. Paragraphs 42.4 and 42.5 of *Sudhir Kumar Singh* emphasise that prejudice must be real and not speculative. Here, the petitioner's claim of prejudice rests only on assertion that oral submissions "ought to have been permitted". This does not satisfy the test laid down. There is no factual foundation to infer that oral hearing would change the statutory analysis. There is also no dispute that the petitioner did not ask for cross-examination or seek to controvert facts. In such circumstances, absence of oral hearing does not constitute real prejudice.

15. The petitioner relies on *Marathon* to contend that its contractual clauses on larger layout and federation had to be considered orally. *Marathon* was considered in writing. More importantly, the issues arising in *Marathon* concern internal

arrangement and federation aspects within a larger residential complex. Those issues do not override the statutory mandate of conveyance under MOFA and the ratio in *Neelkanth Heights* that private clauses cannot postpone statutory conveyance. Oral argument cannot change this legal position.

16. The Supreme Court in *Dharampal Satyapal Ltd. v. CCE*, (2015) 8 SCC 519 (cited in para 36 of *Sudhir Kumar Singh*) recognises that oral hearing is not required in all cases and that written representation may suffice depending on the nature of the case. Section 11(3) proceedings fall in that category. They are based on admitted documents such as agreements under Section 4, society registration, sanctioned plan, built-up area, and correspondence. There was no adversarial factual inquiry requiring oral testing.

17. Applying the principles in *Sudhir Kumar Singh* following aspects are clear (i) The petitioner had notice and opportunity.(ii) There was no total denial of hearing. At most, there was denial of a facet, namely oral submissions.(iii) There is no demonstrated prejudice. (iv) Facts necessary for decision were admitted or indisputable. (v) Oral hearing would not change the statutory consequence of default under MOFA. (vi) The complaint is thus a procedural grievance without impact on substantive rights. For these reasons, the objection of breach of natural justice fails. The impugned order cannot be set aside on this ground. The statutory scheme, factual record, and Supreme Court's test of real prejudice compel rejection of this challenge.

18. The petitioner relies on Clause 27 and Clause 21 of the agreements to claim promoter discretion to defer conveyance until completion of the entire complex or to direct conveyance to a single society or to separate societies. MOFA is a beneficial statute designed to protect flat purchasers. The statutory obligation to convey within the time fixed by the rules cannot be defeated by private contractual provisions that seek to postpone or condition conveyance beyond the statutory timeline. Rule 9 and Clause 21 require conveyance within a fixed time from registration of the society. The word “period” in Rule 9 denotes a fixed and definite span of time. Contractual terms which seek to postpone conveyance until an uncertain future event, such as completion of all phases or of an entire layout, are inconsistent with the statutory scheme and are void to the extent of that inconsistency. The promoter did not execute conveyance for nearly two decades. Where the promoter defaults, Section 11 supplies the statutory remedy of unilateral deemed conveyance. Private clauses in a contract cannot nullify that remedy. The Competent Authority therefore acted within the statutory framework when it granted conveyance corresponding to the completed and defined society. [See. *Flagship Infrastructure Ltd. v. The Competent Authority* 2025 SCC Online Bom 1240, *Neelkanth Heights Cooperative Housing Societies Association Ltd. v. Abhinav Real Estate Pvt. Ltd.* 2025 SCC OnLine Bom 21346].

19. The Competent Authority limited the conveyance to 2727.92 square meters with proportionate RG rights. The record shows that

this allocation corresponds to the built-up area and membership of respondent No.1 society. The Competent Authority did not convey the whole layout. It conveyed only the portion attributable to the society that exists today. The petitioner's submission that entire Shrikant Complex must be conveyed as a single unit lacks statutory support. The impugned order respects proportionality. It secures the legal right of an existing society. It leaves unaffected the petitioner's right to develop other phases on plots not conveyed to respondent No.1.

20. The petitioner fears prejudice to Phase III development. The Competent Authority's order does not include the Phase III plot. The conveyance relates to a different plot and to the built-up area of respondent No.1. If the petitioner develops further buildings and if new societies form later, their respective shares can be determined and adjusted. Speculative apprehensions about future development do not justify denial of statutory rights now claimed by a defined society.

21. The petitioner's long delay of almost 20 years in executing conveyance after society registration in 2005 runs against the petitioner. The statutory timeline and the protection for purchasers exist precisely to prevent promoters from indefinitely withholding conveyance. The petitioner cannot now rely on future arrangements to defeat the statutory remedy invoked by respondent No.1 after prolonged default of almost 20 years.

22. The Competent Authority exercised jurisdiction vested by Section 11(3). The order records the material facts, the

submissions and the legal position. It applies statutory provisions and established legal principles. Nothing in the record shows arbitrariness, illegality or perversity in the decision-making. The Competent Authority did not exceed its jurisdiction. It did not misread the law in a manner that calls for interference by this Court.

23. The petition is dismissed. No order as to costs.

(AMIT BORKAR, J.)