

Shabnoor

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

WRIT PETITION NO.15676 OF 2025

**SHABNOOR
AYUB
PATHAN**

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Sadanand Shreepat Patil & Ors.

... Petitioners

V/s.

**Balaji Darshan Cooperative
Housing Society Ltd. & Ors.**

... Respondents

Mr. Shivraj Patil i/b Sagar Tambe, Sumnit Bornare, for
the Petitioners.

Mr. F. N. Momin, for Respondent No.1.

Mr. Shailendra Pagare, for Respondent No.2.

Mr. Bapusaheb Dahiphale, AGP, for the State –
Respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 11, 2026

P.C.:

1. The present petition questions a unilateral order of deemed conveyance passed by the Competent Authority under Section 11(3) of the Maharashtra Ownership Flats Act, 1963.

2. The scheme of Section 11 is clear. When a promoter fails to execute a conveyance within the prescribed time, the society is not left without remedy. The statute steps in. The Competent Authority is empowered to examine the material placed before it and, if satisfied, to direct execution of conveyance on behalf of the promoter. The purpose is limited. It is to ensure that flat purchasers are not indefinitely deprived of title. The provision is

not meant to finally adjudicate complex questions of title. It operates in a summary manner to secure transfer of such right, title and interest as the promoter holds.

3. The petitioner, who claims to be the owner and promoter, contends that the Competent Authority has conveyed to the respondent society an area beyond what was legally permissible. According to the petitioner, only 1.55 R could have been conveyed. However, the impugned order grants conveyance of 792.54 square meters. On this foundation, it is argued that the order travels beyond the lawful entitlement of the society and therefore requires interference under Article 226.

4. This objection, at its core, raises a dispute as to measurement and extent of property. It involves examination of title documents, sanctioned plans, agreements with purchasers, and the exact land available for conveyance. These are not matters that can be conclusively determined in writ jurisdiction on affidavit. They require evidence. They require scrutiny of documents in detail. They may even require oral evidence. Such issues are essentially civil in nature.

5. The legal position on this aspect is no longer open to debate. In *Zainul Abedin Yusufali Massawawala And Others Vs. Competent Authority District Deputy Registrar of Co-operative Housing Societies, Mumbai And Others*, reported in 2016 SCC OnLine Bom 6028, a similar grievance was raised. There also, the owner contended that the Competent Authority had granted conveyance of a larger area than what could legally be conveyed and that the

promoter himself had no right over the entire property. The Division Bench examined the scope of proceedings under Section 11. It held that if the complaint of the petitioner is that the Authority has permitted conveyance beyond the terms of the agreement or beyond the promoter's actual entitlement, the appropriate remedy is not a writ petition but a properly constituted civil suit.

6. The reasoning is simple. An order of deemed conveyance does not create a new title. It merely transfers whatever right the promoter possesses. If the promoter asserts that he did not hold title to a particular portion, or that the society is claiming more than what the agreement contemplates, that dispute must be tried by a Civil Court. The writ court does not sit as a trial court in such matters. This principle has been consistently followed by subsequent Division Benches in *Shimmering Heights CHSL and others versus State of Maharashtra (Writ Petition No. 3129 of 2016 decided on 6 April 2016)*, in *P.R. 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)*.

7. Applying the above settled position, the present case does not warrant interference in writ jurisdiction. The petitioner's grievance relates to excess area and alleged overreach by the Authority. Even if the petitioner's assertion is accepted at face value, the remedy lies elsewhere. The petitioner can institute a civil suit, seek declaration of title, and seek appropriate

consequential relief. The Civil Court is competent to examine the exact extent of land, the nature of rights held by the promoter, and whether the society has been conveyed any area beyond entitlement. Entertaining such disputed questions in writ proceedings would convert this Court into a fact finding forum. That is not the function of this Court under Article 226.

8. It is therefore clarified that all contentions on merits are expressly kept open. The Civil Court shall decide the matter independently, without being influenced by any observations made in the present order. The impugned deemed conveyance order will operate subject to the outcome of such proceedings.

9. The ad interim protection granted by this Court on 27 November 2025 shall continue for a period of four weeks from today. This limited continuation is granted only to enable the petitioner to approach the competent Civil Court and seek appropriate interim relief, if so advised.

(AMIT BORKAR, J.)