

MPBalekar

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

WRIT PETITION NO. 15759 OF 2025

Mira Shriram Co-operative
Housing Society Ltd. ... Petitioner

V/s.

M/s. Kedarnath Construction
Company and Ors. ... Respondents

Mr. Surel S. Shah, Senior Advocate, a/w Prithviraj S.
Gole, for the petitioner.

Mr. Sharad D. for respondent No.1.

Mr. Nimesh Bhatt for respondent No.3.

Ms. Samiksha Malekar a/w Darshan Pillai for
respondent No.4.

Mr. Mandar Joshi a/w Milind Nar and Biswajeet
Mukherjee i/by D. Joshi for respondent No.5.

Mr. Hamid D. Mulla, AGP, for the State.

Mr. R.R. Mishra for respondent No.7.

Mr. Vilas B. Tapkir a/w Jyotiram Yadav for respondent
No.8.

CORAM : AMIT BORKAR, J.

DATED : MARCH 24, 2026

P.C.:

- 1. Rule.** Rule made returnable forthwith.
- 2.** The petitioner has approached this Court being dissatisfied with the judgment and order dated 15 October 2025 passed by the Competent Authority. By the said order, the application filed by the petitioner under Section 11 of the Maharashtra Ownership Flats

Act came to be rejected.

3. According to the petitioner, once all legal requirements were fulfilled and the promoter failed to execute the conveyance, the Competent Authority ought to have stepped in and granted deemed conveyance. Instead, the authority has refused relief on a ground which, according to the petitioner, has no proper connection with their legal right. This challenge therefore requires careful examination of both facts and the reasoning given by the authority.

4. The background facts show how the dispute has developed. The petitioner is a co-operative society formed by flat purchasers. It consists of 24 residential flats and 33 shops. These members have purchased their respective units long back. It is their consistent case that though they paid consideration and agreements were executed, the promoter did not complete his legal duty of executing conveyance in favour of the society. Because of this failure, the petitioner had no option but to invoke Section 11 of the Act and approach the Competent Authority. Along with the application, all necessary documents were placed on record. However, the Competent Authority rejected the application. The main reason given was that the building was constructed on land which was later shown as reserved under the planning law. According to the authority, such reservation created a legal difficulty in granting conveyance.

5. When the record is carefully examined, the reasoning of the Competent Authority does not appear to stand on firm ground.

The authority itself has recorded a clear finding in paragraph 16(e). It notes that the building of the petitioner was approved in the year 1992. It further records that part Occupation Certificate was granted in the year 1995. This means that the construction was not only sanctioned but was also substantially completed in accordance with law. The important aspect is the timing of the reservation. The record shows that the reservation under the planning law came into existence only in the year 1997. By that time, the building had already been constructed as per sanctioned plan. Therefore, the construction cannot be said to be illegal or contrary to reservation, because such reservation was not even in existence at the relevant time. This aspect goes to the root of the matter. A subsequent reservation cannot take away rights which had already come into existence on the basis of lawful construction.

6. It is also an admitted position that agreements as required under Section 4 of the Act were executed in favour of the individual purchasers. This fact has not been disputed by any of the respondents. These agreements establish the relationship between the promoter and the purchasers. They also show that the purchasers have acquired enforceable rights in respect of their flats and the land appurtenant thereto. Once such agreements are in place and possession is given, the promoter carries a statutory obligation to convey title to the society. This obligation is a duty created by law. Therefore, once this position is accepted, the failure of the promoter to execute conveyance gives a clear cause for invoking Section 11.

7. During the hearing of the present petition, the developer, who is respondent No.1, along with respondent Nos.3 to 5, has clearly stated that they have no objection if deemed conveyance is granted in favour of the petitioner society. This statement is made on instructions and is recorded. This shows that even the promoter side is not disputing the entitlement of the petitioner.

8. The petitioner has also placed on record an affidavit regarding service upon the original owner, who is respondent No.2 through respondent Nos.2(a) and 2(b). The affidavit states that they were served by hand delivery. This fact has been accepted. Despite such service, the said respondents have chosen not to appear before this Court.

9. The only opposition which survives is from respondent Nos.7 and 8. Their contention is that if deemed conveyance is granted in favour of the petitioner, it will affect their rights. This objection has to be tested on facts. The map produced on record becomes important in this context. The map clearly shows the physical location of the petitioner's building and the surrounding structures. It indicates that respondent No.8 society is situated at a distance of more than 150 meters from the petitioner. It also shows that there are Development Plan roads and other buildings in between. Further, it is seen that in respect of several such buildings, deemed conveyance has already been granted. This factual position weakens the objection raised by respondent No.8.

10. As regards respondent No.7, it is also a separate society located at a distance. The map shows that the petitioner's building,

along with an adjoining structure, forms a separate block. This block is clearly separated by roads on three sides. Between the petitioner's property and the properties of respondent Nos.7 and 8, there exist roads as well as other constructed buildings. Therefore, there is no direct overlap of land or rights. The apprehension expressed by these respondents appears to be more theoretical than real. There is nothing on record to show how their legal rights would be affected if conveyance is granted only in respect of the land under the petitioner's building and its appurtenant area.

11. In view of the map and the surrounding circumstances, the objections raised by respondent Nos.7 and 8 do not carry sufficient weight. Their claim of prejudice is not supported by any concrete material. Mere apprehension without factual basis cannot be accepted to defeat a statutory right of the petitioner. Therefore, these objections deserve to be rejected. The map is annexed as part of copy of this order at Exhibit 'X'.

12. Taking an overall view of the matter, the position becomes clear. The construction of the building was lawful at the time it was carried out. The subsequent reservation cannot undo that position. The agreements under the law are admitted. The promoter and other respondents have no objection. The owner has chosen not to appear despite service. The objections raised by other societies are without substance. In such a situation, denial of deemed conveyance would result in continuing injustice to the members of the petitioner society. Therefore, this Court is of the considered opinion that the writ petition deserves to be allowed and appropriate directions for grant of deemed conveyance are

required to be issued.

13. Hence, rule is made absolute in terms of prayer clause (b).

14. The writ petition stands disposed of as allowed.

(AMIT BORKAR, J.)

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- 1 Mira Shriram CHS
2 Shri Ram Tower
3 New Poonam Regency
4 Rashmi Park A-1

HAPPY
HOME CHS

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PLAZA