

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16311 OF 2025

Mahesh Pratap Ramchandra
Singh & Others

... Petitioners

V/s.

District Sub-Registrar, Cooperative
Societies & Others

... Respondents

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GANESH
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Mr. Akshay Ptil with Ms. Diveka Madekar and Mr.
Aimaan Shaikh for the petitioners.

Mr. Y.D. Patil, AGP for respondent Nos.1 and 2-State.

Ms. Nilam Vete for respondent No.3.

CORAM : AMIT BORKAR, J.

DATED : MARCH 9, 2026

PC.:

1. The present writ petition is instituted at the instance of five purchasers who claim to have acquired their respective premises through promoter (Respondent Nos. 4 to 6). The petition is directed against an order of unilateral deemed conveyance granted by the Competent Authority in exercise of powers under Section 11(3) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. The petitioners call in question the legality and propriety of the said order on the ground that the Competent Authority proceeded to grant deemed conveyance without considering the rights and interests of the petitioners who claim to be lawful purchasers in the project.

2. The principal grievance of the petitioners arises from their claim that they are occupants of premises situated in two buildings standing on land bearing Survey No. 30, Hissa Nos. 8/1, 8/2, 2, 3 and 1/4 admeasuring about 3082 square meters at Village Virar, Taluka Vasai, District Thane. According to the petitioners, they purchased their respective premises from respondent No. 4 by executing agreements for sale dated 30 October 1992 under Section 4 of the MOFA 1963. It is their case that the said agreements contained specific stipulations recognising the rights of flat purchasers. In particular, reliance is placed on clauses (f), 12 and 13 of the agreement, which according to the petitioners confer upon the flat purchasers the right to form a cooperative housing society or other appropriate legal body of purchasers for the purpose of managing and administering the property. The petitioners contend that these contractual stipulations recognise and preserve their statutory rights contemplated under the scheme of MOFA 1963.

3. The petitioners further contend that respondent No. 3 initiated proceedings before the Competent Authority by filing an application under Section 11 of the MOFA 1963 seeking grant of deemed conveyance. According to the petitioners, the said application was filed and prosecuted without impleading the petitioners as parties to the proceedings. It is their specific case that the Competent Authority ultimately granted a unilateral deemed conveyance certificate in favour of respondent No. 3 in respect of the land beneath the building in which the petitioners are occupying their respective premises. The petitioners assert that

such an order directly affects their rights and interests. According to them, the impugned order has the effect of depriving them of their statutory right to form a society under Section 10 of the MOFA 1963 and also affects their entitlement to seek independent unilateral deemed conveyance in accordance with law. On this basis, the petitioners submit that they possess sufficient locus to challenge the impugned order. They further contend that in proceedings under Section 11 of the MOFA 1963, persons whose rights in the property are directly affected constitute necessary parties and must be afforded an opportunity of hearing. In the present case, the petitioners submit that the proceedings were conducted without their participation, which renders the impugned order legally unsustainable. It is therefore urged that the order passed by the Competent Authority deserves to be quashed and set aside and the matter requires to be remitted back to the Competent Authority for fresh consideration after granting due opportunity of hearing to the petitioners. The petitioners also allege that respondent No. 3 obtained the order by suppressing material facts, inasmuch as the existence of two buildings standing on the said plot was not disclosed before the Competent Authority. According to the petitioners, such suppression goes to the root of the matter and furnishes an additional ground for setting aside the impugned order.

4. At the first sight, the argument advanced on behalf of the petitioners appears attractive. The submission proceeds on the footing that the agreements executed in their favour confer upon them a right to independently form a society and therefore they

ought to have been heard before the grant of deemed conveyance. However, once the Court examines the agreement in a careful and closer manner, the strength of the argument begins to weaken. The true intention of the parties can only be gathered by reading the relevant clauses of the agreement as a whole. For this purpose it becomes necessary to refer to clause (f) and clause 12 of the agreement executed by the builder in favour of the petitioners. These clauses define the scheme within which the flat purchasers were expected to organise themselves and also indicate the manner in which the property was ultimately intended to be conveyed. The clauses read as follows:

“(f) The Builders are entering into several Agreements similar to this Agreement with several parties who may agree to take acquire premises in the said plot of land on ownership except and subject to such modification as may be necessary or considerable desirable or proper by the Builders, with a view ultimately that the Purchaser of the various premises alongwith occupants of the other premises in the said plot of land shall form a Cooperative Housing Society or Limited Company the said Plot of land together with the Building thereof will be conveyed as herein provided.

12. The flat/shop/Industrial Gala along with other Purchaser of flats/shops/Industrial Galas in the Building shall join in forming and registering the Society or Limited Company to be known by the name as Surya Darshan. The flat/shop/Industrial Gala purchaser will also from time to time sign and execute the application for registration and or membership and other papers and documents necessary for the formation and the registration of the Society or Limited Company and for becoming a member, including the bye-

laws of the proposed society and duly fill in, sign and return to the Builders within 7 days of the same being forwarded by the Builders to the flat/shop/Industrial Gala Purchaser. So as to enable builders to register the organisation of the flat/shop/Industrial Gala Purchaser under Section 10 of the said Act within the time limit prescribed by Rule 8 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1964. No objection shall be taken by the flat/shop/Industrial Gala Purchaser if any changes or modifications are made in draft bye-laws or the Memorandum and or Articles of Association, as may be required by the Registrar of Cooperative Societies or the Registrar as the case may be, or any other competent authority.”

5. When clause (f) and clause 12 are read together, the intention behind the agreement becomes reasonably clear. Undoubtedly, the agreement recognises the statutory scheme contained in Section 10 of the MOFA 1963, which contemplates formation of a cooperative housing society or other legal body of flat purchasers. However, the right so recognised is not absolute in the manner suggested by the petitioners. The language of clause (f) shows that the builder had entered into several agreements with different purchasers in respect of various premises situated on the same plot of land. The clause further indicates that the purchasers of all the premises together with occupants of other premises on the same plot were expected to form a single cooperative housing society or limited company. The concluding portion of the clause makes the intention even clearer by stating that the entire plot of land together with the buildings thereon would ultimately be conveyed to such collective organisation of

purchasers.

6. This aspect becomes more significant when one notices the description of the property contained in the schedule to the agreement. The schedule refers to the entire plot of land. That plot corresponds to the very land on which respondent No.3 society has already been constituted. Thus the agreement itself proceeds on the basis that the purchasers were to organise themselves collectively in relation to the entire property and not building wise or purchaser wise.

7. It is true that clause 12 refers to the formation of a society to be known as “Surya Darshan”. However, while interpreting a contract, the document must be read as a whole so that its real intention is gathered. A settled principle of interpretation of conveyances is that when two clauses appear to be inconsistent, the Court must attempt to harmonise them. If reconciliation is not possible, the earlier clause which expresses the intention generally prevails over the later clause. Applying this principle to the present case, the controlling intention emerges from clause (f). The later clause must therefore be read subject to the earlier stipulation. Once so read, it becomes evident that the agreement contemplated formation of only one cooperative society in respect of the entire plot and not multiple independent societies for separate buildings. Consequently, the right of the petitioners to form an organisation stands qualified by the arrangement recorded in clause (f), which envisages a common society of all purchasers on the plot.

8. It is also an admitted position that respondent No.3 society has already been formed. The record does not show that the petitioners took effective steps to form a separate society under Section 10 of the MOFA 1963 within the time contemplated under the statutory scheme. As a result, their legal position continues to remain that of individual purchasers who hold premises under agreements for sale. The status of a recognised organisation of flat purchasers, which is contemplated under the Act for seeking conveyance, has not come into existence in their favour. In such circumstances the general principle that an existing cooperative society must be heard in proceedings affecting its rights would not apply to the petitioners. The petitioners have not constituted themselves into a society or company capable of asserting collective rights in the property. Their claim therefore remains at the stage of individual purchasers.

9. In view of this position, the right claimed by the petitioners has not matured into a legal entitlement to seek deemed conveyance. Under the scheme of MOFA 1963, the right to demand conveyance and the right to apply for deemed conveyance are normally exercised by the organisation of flat purchasers formed under Section 10. Such organisation represents the collective interest of all purchasers in the property. In the present case, that collective body already exists in the form of respondent No.3 society. Once such a society has come into existence in respect of the entire plot, individual purchasers cannot separately assert a parallel right to seek conveyance. The statutory scheme does not contemplate multiple claims for conveyance in relation to the same

property by different groups of purchasers. For this reason, the existence of respondent No.3 society operates as a bar against the petitioners asserting an independent right of conveyance. Consequently, the petitioners cannot be treated as persons aggrieved so as to confer upon them the necessary locus to challenge the order granting deemed conveyance.

10. Since the petitioners have not demonstrated the existence of an enforceable legal right in their favour, the question of their being necessary parties before the Competent Authority does not arise. The only enforceable right flowing from the agreement in their favour is the right to participate in the formation of a society along with other purchasers of premises on the same plot. The agreement itself envisages such collective organisation. Therefore, the proceedings undertaken by the Competent Authority at the instance of the existing society cannot be invalidated merely because the petitioners, who remain individual purchasers, were not impleaded in those proceedings.

11. In this view of the matter, the contractual arrangement between the parties and the statutory scheme under the MOFA 1963 both point towards the formation of a single society representing the purchasers of the entire plot. That society has already come into existence in the form of respondent No.3. The petitioners cannot insist upon an independent right inconsistent with that arrangement. The only practical course open to them is to become members of the existing society and thereafter participate in its management and affairs in accordance with law. For this reason, the writ petition filed by individual purchasers

challenging the deemed conveyance cannot be entertained.

12. However, while declining to entertain the petition, it is necessary to clarify the position of the petitioners so that their legitimate interests are not prejudiced. If the petitioners apply to respondent No.3 society seeking membership in accordance with the relevant statutory provisions and the bye laws of the society, such request shall be considered in accordance with law. Subject to fulfilment of the prescribed requirements, the petitioners shall be admitted as members of respondent No.3 society so that they may participate in the affairs of the society as flat purchasers forming part of the same property.

13. The writ petition stand disposed of in above terms. No costs.

(AMIT BORKAR, J.)