

Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11692 OF 2025

SHABNOOR
AYUB
PATHAN

Digitally signed by
SHABNOOR AYUB
PATHAN
Date: 2026.02.11
18:56:47 +0530

Pebbles II Cooperative Housing Society
Limited

... Petitioner

V/s.

M/s Abhinav Rainbow Developers
& Ors.

... Respondents

WITH
INTERIM APPLICATION NO.38805 OF 2025
IN
WRIT PETITION NO.11692 OF 2025

Vatvruksh Pebbles Cooperative
Housing Society Ltd.

...Applicant/Intervener

In the matter between

Pebbles II Cooperative Housing Society
Limited

... Petitioner

M/s Abhinav Rainbow Developers
& Ors.

... Respondents

WITH
INTERIM APPLICATION (ST) NO.3722 OF 2026
IN
WRIT PETITION NO.11692 OF 2025

Pebbles Plaza Condominium

...Applicant/Intervener

In the matter between

Pebbles II Cooperative Housing Society
Limited

... Petitioner

V/s.

M/s Abhinav Rainbow Developers
& Ors.

... Respondents

Mr. Tejas Deshmukh a/w Kshitij Kankariya and Ronak Utgikar, for the Petitioner.

Mr. Hamid D. Mulla, AGP for the State – Respondent No.93.

Mr. Nachiket Khaladkar, for Respondent No.1.

Mr. Satyajeet P Dighe, for Applicant in IA(st)/3722/2006.

Mr. Omkar Kulkarni, for the Applicant in IA/38805/2025.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 9, 2026

JUDGMENT:

1. By the present petition under Article 227 of the Constitution of India, the petitioner calls in question the legality and correctness of the order dated 3 March 2025 passed by the Competent Authority under the Maharashtra Ownership Flats Act, 1963. By the impugned order, the Authority partly allowed the application preferred by the petitioner society for unilateral deemed conveyance. However, it excluded the portion of land falling within the High Energy Materials Research Laboratory setback, holding that such land is required to be kept open in view of the order passed under Section 44 of the Maharashtra Land Revenue Code, 1966.

2. The relevant facts are not in serious dispute. Respondent No.1 became the owner of land admeasuring 59,559 square meters comprised in Survey Nos. 270/1 to 270/3, 271/1 to 271/3, 272/1 to 272/7, 273/1, 273/2, 316/4, 316/5, 317/1 to 317/5, 318/1, 318/2, 319/1, 319/3, 319/5 and 319/6B, situated at Bavdhan

Budruk, Taluka Mulshi, District Pune. Ownership over a substantial portion was acquired under six registered sale deeds executed in the year 2012. Development rights in respect of the remaining land were obtained under development agreements dated 31 December 2011 and 23 January 2012.

3. By order dated 31 December 2012, land admeasuring 3,488.09 square meters was directed to be kept open on account of its proximity to the High Energy Materials Research Laboratory. An additional area of 735.70 square meters was shown as affected by a proposed 18 meter road. On 3 September 2013, further land was brought within the ambit of the restrictions. Ultimately, by order dated 27 June 2016, the area required to be kept open due to proximity to the High Energy Materials Research Laboratory was enhanced to 6,500 square meters, and the area under the proposed 18 meter road stood at 1,001.77 square meters.

4. A commencement certificate dated 19 October 2015 was issued in respect of land admeasuring 60,055 square meters. Out of this, 3,900.55 square meters was shown as falling within the 457 meter setback line from the High Energy Materials Research Laboratory. In the year 2015, Respondent No.1 executed agreements for sale in favour of various flat purchasers in the buildings forming part of the petitioner society.

5. The petitioner contends that Respondent No.1 has already exhausted the entire Floor Space Index relatable to the land falling within the 457 meter setback line by utilizing it on the contiguous plot. It is urged that Respondent No.1 cannot, therefore, retain the

said portion. On 5 September 2024, the petitioner filed an application seeking unilateral deemed conveyance of land admeasuring 59,559 square meters. In support thereof, an architect's certificate dated 4 September 2024 was produced, certifying that the society was entitled to deemed conveyance of 47,301.31 square meters, inclusive of the land falling within the 457 meter setback line.

6. Respondent No.1 opposed the application contending that the petitioner had no entitlement to conveyance of the land falling within the 457 meter setback line. By order dated 3 March 2025, the Competent Authority partly allowed the application and granted unilateral deemed conveyance in respect of 41,283.84 square meters of land together with construction admeasuring 58,788.14 square meters. The Authority declined conveyance of the land within the 457 meter setback line. Being aggrieved, the petitioner has invoked supervisory jurisdiction of this Court.

7. Learned counsel for the petitioner submitted that the order under Section 44 of the Maharashtra Land Revenue Code merely imposes restrictions on construction and user. It does not divest Respondent No.1 of ownership. He contended that once the Floor Space Index of the affected portion has been fully consumed on the contiguous land, the said land assumes the character of open space and is liable to be conveyed to the society.

8. It was further submitted that the Competent Authority failed to consider Regulation 19.14 of the Development Control Regulations, 2018 framed by the Pune Metropolitan Region

Development Authority, under which development permission was granted. According to the petitioner, the regulation treats areas restricted under the Works of Defence Act, 1903 as marginal open spaces for the purpose of computation of buildable area on adjoining land. The Floor Space Index of such restricted land can be utilized on other contiguous and non affected land.

9. The petitioner also contended that the deemed conveyance ought to have been apportioned in the ratio specified in the impugned order, namely 94.34 percent in favour of the petitioner society and 5.66 percent in favour of Pebbles Plaza Condominium. On this basis, modification of the impugned order was sought.

10. In reply, learned counsel for Respondent No.1 submitted that the project was executed in phases. In Phase I, Buildings A, B, C and D were constructed. In Phase II, Buildings E and F were constructed. In Phase III, Buildings G, H and I were constructed. In Phase IV, Building K was constructed.

11. It was contended that the land affected by the High Energy Materials Research Laboratory continues to vest in Respondent No.1. By virtue of the order under Section 44 of the Maharashtra Land Revenue Code, certain conditions and restrictions have been imposed, including restrictions on transfer by sale. It was submitted that in the event the Government or the Pune Municipal Corporation requires the affected land, the same is liable to be transferred without compensation. Mere exhaustion of Floor Space Index, it was argued, cannot by itself entitle the society to deemed conveyance. The extent of conveyance must be determined with

reference to ground coverage or plinth area of the buildings.

12. Learned counsel further submitted that as per the revenue record, the area of land affected by the High Energy Materials Research Laboratory is 5,996.55 square meters. It was alleged that the petitioner has installed a gate on the internal road leading to the Sai Baba Temple, thereby obstructing residents of other buildings within the layout from using the said internal road. A direction was sought to remove the gate on the ground that internal roads and common areas are to be enjoyed proportionately by all buildings, including Building K, as part of their undivided share. On these grounds, dismissal of the petition was prayed for.

13. The members of the condominium of Building K filed an intervention application seeking leave to intervene and to place material on record in relation to Floor Space Index so as to safeguard their proportionate rights in the land affected by the High Energy Materials Research Laboratory. Vatvruksh Pebbles Cooperative Housing Society Limited also preferred an intervention application asserting rights in respect of common areas over which the petitioner claims deemed conveyance.

Analysis :

14. The petitioner challenges the Competent Authority's order of 3 March 2025 that denied conveyance of the portion of land falling within the setback of the High Energy Materials Research Laboratory. The Authority granted unilateral deemed conveyance in part but excluded the HEMRL setback area. The main questions

are these. Does the order under Section 44 of the Maharashtra Land Revenue Code affect ownership or only restrict use and construction. If it only restricts use, can the owner retain the land where the Floor Space Index attributable to that land has already been consumed elsewhere. What is the effect of Regulation 19.14 of the Pune Metropolitan Region Development Authority on FSI and restricted lands. What are the rights of intervenors and other societies, and what relief follows.

15. Orders under Section 44 of the Maharashtra Land Revenue Code impose conditions and restrictions. Those orders regulate the user and development of land on grounds of public interest and safety. They do not, by their nature, extinguish ownership. Ownership remains with the registered owner unless the statute expressly provides for transfer of title. The order may restrict construction, transfer by sale, or impose vesting in government in certain contingencies; but the order itself does not automatically convert ownership into public ownership. I therefore hold that the Section 44 order affected user and development rights; it did not, by itself, extinguish Respondent No.1's title.

16. The petitioner's core factual claim is that Respondent No.1 has already utilized the entire Floor Space Index relating to the HEMRL-affected portion on contiguous plot. The contemporaneous architect's certificate supports that claim. Where FSI attributable to a specific portion is consumed on contiguous land, the affected portion no longer functions as a buildable area. It becomes, for practical purposes, an open space within the scheme of the development. The law requires that open areas and common areas

be conveyed to the housing society when the statutory conditions for deemed conveyance are met. The Competent Authority may not use the fiction of a setback restriction to deny conveyance where the land has, in substance, ceased to be part of the buildable area and the statutory tests for deemed conveyance otherwise apply. On the material before me, the petitioner has made out a credible case that the FSI for the HEMRL-affected portion was consumed on the contiguous plot.

17. Regulation 19.14 treats certain restricted defence or security areas as marginal open spaces for the purpose of computing buildable area on contiguous land. It permits utilization of the FSI of restricted areas on other contiguous non-affected land where the regulation and the development permission so allow. The regulation does not create a right in the owner to permanently retain the restricted land free from conveyance obligations where the statutory scheme of MOFA applies to the society and where deemed conveyance requirements are made out. Regulation 19.14 facilitates permissible planning adjustments. It does not operate to shield the owner from conveyance obligations once the practical effect is that the affected land remains as open space for the development.

18. Respondent No.1 argued that deemed conveyance must be measured by reference to ground coverage or plinth area rather than by FSI, and that mere exhaustion of FSI is not a ground for conveyance of the affected land. That submission cannot prevail in all cases. Ground coverage and plinth area are relevant factors for measuring interest in built-up areas. But where the developer has

exploited the FSI of a portion on contiguous land and where that portion, in reality, has become an open area, a rigid focus on plinth area will produce an unjust result. The statutory scheme aims to secure conveyance of common areas and open spaces to the society that represent the collective interest of the flat purchasers. Technical metrics like plinth area must not be used to defeat the substantive right of the society to the open area which the developer has effectively rendered non-buildable by exploiting FSI elsewhere. On the facts, the Competent Authority's emphasis on plinth area alone is insufficient to deny conveyance.

19. On the Respondent's claim that the HEMRL-affected land vests with Respondent No.1 and that restrictions include transfer by sale and possible transfer to government without compensation. Those contentions reflect the statutory conditions that may attach to restricted land. They do not, however, operate to prevent the statutory remedy of deemed conveyance under MOFA where the society establishes entitlement. The possibility of future compulsory transfer to Government or the Municipal Corporation is a contingency. It cannot be used as a blanket reason to deny present conveyance where the legal tests for deemed conveyance are satisfied and where doing so would defeat the statutory right of the society. The Competent Authority must account for such contingencies when passing consequential orders, but it cannot simply withhold conveyance because of a hypothetical future requisition.

20. Respondent No.1 alleged that the petitioner installed a gate on an internal road leading to the Sai Baba Temple and thereby

obstructed other residents. Internal roads and common areas belong to the common ownership and use of all buildings in the layout in proportion to undivided shares unless a contrary arrangement appears on record. No society may unilaterally restrict use of internal roads or common areas to the prejudice of other societies. I direct that internal roads and common areas be kept open for all residents of Buildings A to K.

21. The conveyed open area shall be common open space for the use and enjoyment of all societies from Building A to Building K. All societies shall have free and proportionate access to the internal roads and common areas. No society shall erect gates or block access so as to deprive other societies of their proportionate enjoyment.

22. If the Government or the Pune Municipal Corporation requires the affected land in future under applicable law, that contingency will be dealt with in accordance with law.

23. Hence, I pass following order. The impugned order dated 3 March 2025 passed by the Competent Authority under the Maharashtra Ownership Flats Act, 1963 is modified to the extent stated herein.

24. In addition to the land admeasuring 41,283.54 square meters already granted in favour of the petitioner society under the impugned order, the petitioner society shall be entitled to conferment of further undivided share admeasuring 5,719.40 square meters representing the HEMRL-affected portion.

- 25.** The total land to be conveyed in favour of the petitioner society shall accordingly stand enhanced to 47,002.94 square meters, subject to proportionate rights of other entitled entities, if any, in accordance with the layout and applicable regulations.
- 26.** The Competent Authority shall issue a consequential order and certificate of unilateral deemed conveyance incorporating the additional undivided share of 5,719.40 square meters within a period of four weeks from the date of receipt of this order.
- 27.** The Sub Registrar concerned shall register the deemed conveyance document, if presented in accordance with law and consistent with this order, without raising objection on the ground that the HEMRL portion was excluded under the earlier order.
- 28.** The additional undivided share now directed to be conveyed shall form part of the common open area and shall be used and enjoyed in accordance with the directions contained in the judgment.
- 29.** No order as to costs.
- 30.** Pending interim applications stand disposed of as such.

(AMIT BORKAR, J.)