



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3504 OF 2026

Nav Mangal Co-operative Housing
Society Ltd.

...Petitioner

V/s.

District Deputy Registrar, Co-operative
Societies, Mumbai-2 alias Competent
Authority under Section 5A of the
MOFA Act and Ors.

...Respondents

Mr. Pradeep Thorat with *Mr. Nilesh Gala, Mr. Manish Gala and Minil Shah for the Petitioner.*

Mr. Dhrumil Shah & Mr. Pranay Kothari i/b. M/s. Lex Services for Respondent No.6.

Ms. Snehal Jadhav, AGP for Respondent-State.

CORAM: SANDEEP V. MARNE, J.

DATED: 8 JUNE 2026.

P.C.:

1) Petition challenges order dated 30 July 2025 passed by the District Deputy Registrar, Co-operative Society and Competent Authority (**Competent Authority**) rejecting the application preferred by the Petitioner-Society for grant of certificate of Unilateral Deemed Conveyance under Section 11 of the Maharashtra Ownership Flats

(Regulation of the Promotion of construction, sale, management and transfer) Act, 1963 (**MOFA**).

2) I have heard Mr. Thorat, the learned counsel appearing for the Petitioner, Mr. Shah, the learned counsel appearing for Respondent No.6 and Ms. Jadhav, the learned AGP appearing for Respondent No.1-State and considered the submissions canvassed by them.

3) Perusal of the impugned order would indicate that the only reason for which the Competent Authority has rejected Petitioner-Society's application for deemed conveyance is as under:-

12(b) It is further observed from the reply of the Opponent No.6 that the Opponent No.1, who built the Applicant's building and got its Occupation Certificate in 1983, didn't pay property taxes on the land. Because of these unpaid taxes, the Mumbai city authority (BMC) auctioned the land off in 1987. The land was bought at this auction by Opponent No.2 in 1988. Neither the Applicant nor Opponent No.1 challenged this sale. Opponent No.2 then sold the land to Opponent No.3 in 1988. When Opponent No.3 passed away, his children, Opponent No.4 and Opponent No.5, inherited the land. It is further observed that after a court case between them, Opponent No.4 became the single, full owner of the land through a court order in 2003. That the Opponent No.6 then legally bought the land from Opponent No.4 in 2009 and the official records were updated to show Opponent No.6 as the owner. It is further observed that Opponent No.6 has several ongoing lawsuits against members of the Applicant to claim possession, and court orders prevent them from selling or transferring their units. That the Applicant has waited over 40 years (since 1983) to claim rights to the land. They never challenged the original auction. It is further observed that there are multiple legal issues involved in this matter which should be adjudicated by the City Civil Court as this Competent Authority has limited role to grant conveyance in favour of the registered societies under section 11 of MOF, Act, 1963. Therefore, the Application is liable to reject.

Thus auction of the land appears to be the main reason why Society's application is rejected by the Competent Authority.

4) In similar circumstances, in *Ravi Jagganath Agarwal V/s. Prince Tower Co-operative Housing Society Limited and Others*¹ this Court has taken a view that mere auction of the property in question does not nullify the obligations of a promoter under MOFA. This Court held in paragraphs 24 to 28 of the judgment as under:

24. When Petitioner decided to purchase the land and the building put up for auction by MCGM, he ought to have verified whether the promoter was under obligation to convey his right, title and interest in the land and the building in favour of the Society. Petitioner purchased something which was already promoter's liability under Section 11 of MOFA to be transferred in favour of the Society. The Petitioner however took a calculated chance and purchased promoter's right, title and interest in the land and the building for sum of Rs.6,82,500/-. If this purchase price paid by Petitioner to MCGM is compared with the consideration paid by one of the flat purchasers for Flat No.402 under Agreement dated 7 June 1990, it is seen that one flat in the building admeasuring 850 sq.ft built up area had costed Rs.4,15,500/- in the year 1990, whereas the Petitioner purchased the entire land and the building for a paltry consideration of Rs.6,82,500/-. Be that as it may. It is not necessary to undertake an enquiry into the price at which the land and the building was auctioned. Suffice it to state that the land and the building was purchased by Petitioner at insignificant consideration of Rs.6,82,500/- possibly after noticing that he would be entitled to enjoy title in respect thereof only till the same was conveyed to the Society. Alternatively, the Petitioner was apparently advised that the occupiers of the flats were merely tenants and that he can seek possession of such flats from those occupiers by seeking their eviction. Accordingly, Petitioner has filed evictions suits seeking recovery of possession from the occupiers. I do not wish to delve deeper into correctness of Petitioner's assertion that the flat occupiers are mere tenants or whether the flats are sold/allotted to them on ownership basis, since the issue would be decided by the Small Causes Court. For the purpose of present petition, all that needs to be considered is whether Petitioner's purchase of the land and the building in auction sale conducted by MCGM would affect the right of the flat purchasers to seek certificate of unilateral deemed conveyance. The answer, to my mind, appears to be in the negative.

1 Writ Petition (L) No.8735 of 2024, decided on 8 April 2024.

25. As observed above, the promoter who constructed the building was under statutory obligation under Section 11 to convey his right, title and interest in the land and the building in favour of the Society. The Promoter, however failed to discharge his obligation under Section 11(1) of the Act. Thus, after purchase of the land by the Petitioner, he undertook upon himself promoter's liability under Section 11(1) of MOFA. Mere purchase transaction by the Petitioner does not mean that the statutory rights created in favour of flat purchasers under Section 11(1) of MOFA get extinguished. This can be better explained by way of following illustration. In a given case, a Promoter/owner may construct a building on a plot of land and sell flats therein by executing agreements under Section 4 of MOFA. However, he does not fulfill his statutory obligation under Section 11(1) by not transferring his right, title and interest in the land and the building in favour of the Society formed by the flat purchasers. During the time gap between the date of issuance of Occupancy Certificate and the date of filing of application under Section 11(3) for issuance of Certificate of unilateral deemed conveyance, the Promoter sells his right, title and interest in the land and the building in favour of a third party. Would such sale frustrate or extinguish the right created in favour of a flat purchasers under Section 11 of MOFA ? The answer to the question would obviously be in the negative. The Promoter, cannot by his unilateral act, frustrate the statutory right of flat purchasers under Section 11 by entering into transaction of sale with a third party before the land could be conveyed to the Society.

26. The only difference between the illustration cited above and the present case is with regard to the nature of sale transaction. In the present case, instead of promoter himself alienating the land and the building in favour of the Petitioner, the sale is through auction conducted by MCGM. To my mind, such difference in the nature of sale transaction would again not have any impact on the right of the flat purchasers to seek unilateral deemed conveyance of the land and the building under Section 11 of MOFA.

27. The statutory scheme of MOFA is such that once the developer constructs a building and sells flats to purchasers under MOFA, he dilutes his right, title and interest in the land and the building with each transaction of sale. Once all the flats in the building are sold, promoter's right, title and interest in the land and the building is actually divested. The promoter is under statutory obligation under Section 11(1) to execute formal document conveying his right, title and interest in the land and the building in Society's favour. If he fails to do so, the Competent Authority can do what Promoter has failed to do by entertaining application under Section 11(3), by conducting enquiry under Section 11(4) and by issuing a certificate of unilateral deemed

conveyance, which can then be registered under Section 11(5) of the MOFA so as to constitute a document of title in favour of the Society.

28. In my view, therefore what is purchased by the Petitioner in the present case is not just right, title and interest in the land and the building but also an obligation under Section 11(1) of MOFA. Petitioner has taken a risk of purchasing the land and the building in MCGM's conducted auction sale possibly under a hope that he can recover possession from occupiers by treating them as tenants or he can enjoy his rights in respect of any excess land remaining unconveyed to the Society. While his first attempt of getting eviction orders against the flat occupiers is still pending before the Small Causes Court, no land is left to be enjoyed by the Petitioner as the Competent Authority has thought it appropriate to convey the entire land admeasuring 577.36 sq.mtrs together with road setback area of 75.59 sq.mtrs (aggregating to 652.95 sq. mtrs) alongwith common open space of larger property. If the Deed of Rectification dated 11 August 2006 executed by MCGM is perused, it is seen that the Petitioner purchased land admeasuring 630 sq.mtrs whereas what is conveyed to the Society appears to be in excess of 630 sq.mtrs. Thus, no land is left to be enjoyed by the Petitioner after issuance of certificate of unilateral deemed conveyance.

5) In my view, the decision of the Competent Authority rejecting Petitioner-Society's application for deemed conveyance appears to be in the teeth of the judgment in *Ravi Jagganath Agarwal* (supra). Therefore, the application deserved to be reconsidered in the light of the ratio laid down by this Court in *Ravi Jagganath Agarwal* (supra).

6) Mr. Shah raises several other objections to grant of deemed conveyance in favour of the Petitioner-Society. In my view, since the application is being remanded to the Competent Authority for being decided afresh, it would be open to Respondent No.6 to raise all objections before the Competent Authority.

7) In view of the above, the impugned order of the Competent Authority dated 30 July 2025 is set aside. Application No.37 of 2025 is

restored on the file of the Competent Authority to be decided afresh after taking into consideration ratio of the judgment of this Court in ***Ravi Jagganath Agarwal*** (supra). Remanded proceedings shall be decided by the Competent Authority as expeditiously as possible, preferably within a period of six months. All rights and contentions of parties are expressly kept open to be decided by the Competent Authority. Petitioner and Respondent No.6 shall appear before the Competent Authority on 22 June 2026 and secure directions for fixation of dates of hearing.

8) With the above directions, Petition is partly allowed and **disposed of**.

[SANDEEP V. MARNE, J.]