IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9139 OF 2026

Beau Monde Plot No.1

Co-operative Housing Society

Through its authorized representative

Mr. Rajesh Patel ***.....Petitioner***

: Versus :

1. District Deputy Registrar

2. M/s. The Modern Construction Co. Ltd.

3. E.M.C.C. CHS Ltd.

4. M/s. Brahma Kshtriya CHS Ltd. ***....Respondents***

Mr. Jash Gandhi *with Ms. Dipti Gandhi and Mr. Atreya Tambe, for the Petitioner.*

Mr. Ramchandran Narayanan *with Mr. Aayush Ramchandran i/b. Narayanan & Narayanan, for Respondent No.3-Society.*

Ms. Savita Prabhune, *AGP for the State.*

CORAM : SANDEEP V. MARNE, J.

JUDGMENT RESD. ON: 3 SEPTEMBER 2026.

JUDGMENT PRON. ON: 21 SEPTEMBER 2026.

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JUDGMENT

1) The Petitioner-Society has filed the present Petition challenging the order dated 6 March 2025 passed by the District Deputy Registrar, Co-operative Societies, Mumbai City (4), **(Competent Authority)** rejecting Application No. 159 of 2024 filed by it for seeking deemed conveyance of the proportionate share in the layout land, as well as its building.

2) Briefly stated, facts of the case are that the original owners executed Agreement for Sale of 'Plot No.3' admeasuring 3224.69 sq.mtrs in favour of M/s. Modern Construction Co. Ltd. (*Respondent No.2)*. On 18 August 1970, another Agreement for Sale was executed in respect of adjoining 'Plot No. 2' admeasuring 3315.31 sq.mts. Respondent No. 2 constructed 5 buildings on Plot No. 3 and 5 buildings on Plot No.2. On 31 March 1971, the flat purchasers of the 10 buildings constructed on Plot Nos. 2 and 3 formed Respondent No.3-Society. On 31 March 1971 conveyance was executed in favour of Respondent No.3-Society in respect of Plots Nos. 2 and 3. There was one more plot i.e. 'Plot No.1' in which Respondent No. 2 had rights. A Package Deal Agreement was executed between Respondent No.2 and Respondent No.3-Society on 25 September 1970 under which Respondent No.2 agreed to construct a building on Plot No.1 and sell flats therein subject to the condition that flat purchasers of building on Plot No.1 would become the members of Respondent No.3-Society. Accordingly, Respondent No.2 constructed a building on Plot No.1 and sold the flats therein to flat purchasers. It appears that some of the flat purchasers applied to Respondent No.3-Society for membership and they were granted membership by

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Respondent No.3-Society. It appears that the flat purchasers of Building No.1/Plot No.1 continued managing the affairs relating to the building on their own through an ad-hoc committee where some of the flat purchasers were already members of Respondent No.3. The flat purchasers of Building No.1 applied for formation of a separate society and accordingly on 4 December 2008, Petitioner-Society was registered in respect of Building No.1. Petitioner-Society filed an application for deemed conveyance before the Competent Authority on 3 July 2024. However, by impugned order dated 6 March 2025, the application has been rejected by the Competent Authority. The order dated 6 March 2025 is the subject matter of challenge in the Petition filed by the Petitioner-Society.

3) Mr. Gandhi, the learned counsel for the Petitioner submits that the Competent Authority has grossly erred in rejecting Petitioner's application for deemed conveyance. That there is a common layout development in which buildings of Petitioner-Society and Respondent No.3-Society are distinctly sanctioned. That as per the GR dated 22 June 2018, Petitioner-Society is entitled to seek conveyance of the proportionate share in the land. That Petitioner-Society has been formed and registered on 4 December 2008, and Respondent No.3-Society cannot now raise the objections about registration of the Petitioner-Society. That Respondent No.3-Society had given a no-objection for redevelopment of Petitioner's building vide letter dated 4 April 2022 thereby accepting the factum of existence of a separate society. That the Competent Authority has recorded erroneous findings while rejecting the application of the Petitioner-Society. In support of his contention,

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Mr. Gandhi relies on judgments of this Court in ***Veer Tower Co-operative Housing Society Limited Versus. District Deputy Registrar, Co-operative Societies and others***[1], ***Upvan Co-operative Housing Society Limited Versus. M/s. Upvan Developers*** [2] and ***M/s. Blue Heavens Co-operative Housing Society Limited Versus. M/s. Punit Construction Company Pvt. Ltd.***[3] **.**

4) Mr. Narayanan, the learned counsel appearing for Respondent No.3-Society, opposes the Petition submitting that the Competent Authority has rightly rejected Petitioner's application for deemed conveyance. That the contractual agreement between the parties was that flat purchasers of Building No.1 needed to become members of Respondent No.3-Society. He submits that several flat purchasers of Building No.1 are in fact members of Respondent No.3-Society. That the flat purchase agreements specifically stipulated condition of becoming the members of Respondent No.3-Society. That Building No.1 has been constructed by Respondent No.2 for Respondent No.3 in terms of Agreement dated 25 September 1970, under which Respondent No.3-Society alone is entitled to secure conveyance even in respect of Building No.1 and the land on which the same is constructed.

5) Mr. Narayanan further submits that the Competent Authority otherwise does not have jurisdiction to decide the application for deemed conveyance filed by the Petitioner-Society. That what is executed with flat purchasers of Building No.1 are not Section 4 Agreements. On the other hand, it is just an arrangement for cause of

1 WP No. 211 OF 2023 decided on 18 February 2025
2 WP No. 11551 OF 2025 decided on 15 June 2026
3 WP No. 2455 OF 2023 decided on 21 November 2024

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construction by a developer at the behest of the society with contractual obligation for flat purchasers of Building No.1 to become members of Respondent No.3-Society. He submits that there is substantial delay in filing the Petition. That Respondent No.3-Society is always willing to admit flat purchasers of Building No.1 as their members. That even otherwise, the demand of Petitioner-Society for conveyance of land admeasuring 2139.14 sq. mts. is without any basis as Building No.1 is constructed on Plot No.1 which admeasures only 1219 sq.mts. He submits that in similar circumstances where the land was already conveyed to another society, this Court has set aside the order of deemed conveyance passed by the Competent Authority in ***Deep Sadan Co-operative Housing Society Limited Versus. The State of Maharashtra and others*** [4]. He prays for dismissal of the petition.

6) Rival contentions urged on behalf of the parties now fall for my consideration.

7) The case involves a unique circumstance where Plot Nos. 2 and 3 were initially taken up for development by Respondent No. 2 for construction of 10 buildings (*five on each plot*). The flat purchasers of those 10 buildings have formed Respondent No.3-Society, which has already secured conveyance of the entire Plot Nos. 2 and 3 on 31 March 1971. Respondent No.3-Society decided to additionally acquire rights in Plot No.1 from Respondent No. 2 on payment of consideration. Accordingly Agreement dated 25 September 1970 was executed between Respondent No.2 and Respondent No.3-Society, under which Respondent No.2 agreed to sell Plot No.1 to Respondent No.3-Society for

4 WP No. 3727 OF 2023 decided on 19 December 2025.

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consideration. The consideration was payable partly in money and partly by granting development rights in the plot to Respondent No. 2. Therefore while agreeing to sell the plot, Respondent No.2 secured right to construct a building on Plot No. 1 and to sell the flats therein. Thus, a composite arrangement was made on 25 September 1970, under which Respondent No.3-Society agreed to acquire ownership in respect of Plot No.1, but simultaneously granted development rights to Respondent No.2 for construction of a building thereon.

8) Under the unique arrangement agreed between Respondent Nos.2 and 3, a building was constructed on Plot No.1 and flats therein were sold to flat purchasers. It appears that in the flat purchase agreements, the purchasers were specifically made aware that Respondent No.2 had constructed the building for Respondent No.3-Society, which is clear from the following recitals:

> (2) The Vendor has constructed the said building in which the said flat is located for one Emcace Co.operative Housing society Limited, but no conveyance is yet executed by the Vendor in favour of the said society since the society has not paid to the Vendor full purchase price.

9) The flat purchasers of building on Plot No. 1 agreed to become members of Respondent No.3-Society, which is clear from the following covenant in the flat purchase agreements:

> At the time of receiving final payment of purchaser price of the said flat, the Vendor shall hand over to the Purchaser an Instrument of transfer duly signed by the Vendor to enable the Purchaser to become member of the enable Emcace.Co.op.Housing society Ltd, The Vendor shall also handover to the Purchaser the following.

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10) It appears that several flat purchasers of the building constructed on Plot No.1 actually became members of Respondent No.3-Society. A copy of the share certificate issued in the name of Mr. M.K.P. Iyengar by Respondent No.3-Society is produced on record. The Respondent No.3-Society has also placed on record copies of some of the subsequent transactions made by the flat purchasers of Building No.1 in which what is sold is not just the flat, but also the transfer of membership of Respondent No.3-Society.

11) It does appear that several flat purchasers of building constructed on Plot No.1 did become members of Respondent No. 3-Society. However, as stated by Mr. Narayanan himself in his written note of submissions, purchasers of flats in Building No.1 had apparently formed an *ad-hoc* committee for managing the affairs relating to the building, even though some of the flat purchasers were members of the third Respondent-Society. On the other hand, in the Rejoinder filed on behalf of the Petitioner, it is contended that only few purchasers of the building constructed on Plot No.1 had initially accepted membership of the Respondent No.3-Society and that majority of flat purchasers opted not to become members of Respondent No.3-Society.

12) Be that as it may. The flat purchasers of the building constructed on Plot No.1 ultimately formed and registered their own society (*Petitioner-Society)* on 4 December 2008. Respondent No.3 did not challenge order dated 4 December 2008 by which Petitioner-Society was formed and registered. In that sense, flat purchasers of the building constructed on Plot No.1 can no longer be treated as members of

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Respondent No.3-Society, who acquiesced in the formation of separate society, *qua* the building constructed on Plot No.1.

13) Thus, the picture that emerges is as under:

(i) Plot No.1 admeasuring 1219 sq.mts in which the building of Petitioner-Society is constructed.

(ii) Plot No.2 admeasuring 3315.31 sq.mts in which 5 buildings of Respondent No.3-Society are constructed.

(iii) Plot No.3 admeasuring 3324.69 sq.mts in which 5 buildings of Respondent No.3-Society are constructed.

14) The Competent Authority has rejected the application of the Petitioner-Society by recording following findings:

> a. It is observed that the applicant has not filed this application as per the GR dated 22nd June, 2018. It is also observed that the applicant society has not submitted approved building plan, I.O.D., Commencement Certificate and Occupation Certificate as per requirement of GR dated 22/06/2018.
>
> b. It is also observed that the applicant has not specified the status of Opponent No.3, M/s. Bramhakshtriya CHS Ltd. in their application.
>
> c. It is also observed that the sample agreement submitted by the applicant society with their application is unregistered. The contents mentioned in the agreement have no basis, and it does not belong to the applicant society. Specifically, the agreement states that the flat is "located for Emcece Co-operative Housing Society Limited," indicating that it is not related to the applicant society. Furthermore, the applicant's agreement is not registered and does not comply with the MOFA Act of 1963. Consequently, section 11 does not apply to the applicant's application.
>
> d. It is also observed that the Opponent No. 2. "Emcece Co-operative Housing Society Ltd," is the owner of the land measuring 6840 square meters from land bearing C.T.S. bearing No. 33/4, which measures

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> approximately 8059.50 square Meters in the Revenue Village-Chinchvali, Taluka-Borivali. The area claimed by the applicant society is the layout land. Therefore, giving the Applicant Society Deemed Conveyance will result in a significant imbalance and complications in the Opponent's Society's F.S.I. in the aforementioned suit plot. In spite being aware of the dispute, the Applicant Society has not verified how the proposed deemed conveyance of the Applicant Society's Suit Premises will prevent the imbalance of F.S.I. for other existing buildings in the layout and all of the sub-divided plots in the layout. It is also observed that the applicant has not clarified the objections raised by the opponents in their reply. Therefore, in this case I am not in position to give Deemed conveyance to Applicant society.
>
> e. It is observed that the Applicant society is standing on larger land alongwith the Opponent No. 2 and the applicant society has not clarified the area properly.
>
> f. It has been also observed that the structure of the applicant society has been integrated with the Adani Electricity substation which is essential utility in the layout and can't be bifurcated as its shown attached to the building of the applicant society and therefore, the applicant society's area cannot be defined.

15) Thus, the Competent Authority apparently got swayed by the fact that Respondent No.3-Society claims ownership in respect of the entire layout plan comprising of Plot Nos. 1, 2 and 3 and that therefore it is not possible to grant conveyance of any part of the land in favour of the Petitioner-Society.

16) As observed above, the case involves unique circumstance where Respondent No.3-Society became owner of Plot Nos.2 and 3 vide conveyance dated 31 March 1971. It also decided to acquire ownership in respect of land bearing Plot No.1 admeasuring 1219 sq.mts. It paid part consideration to the land owner/Respondent No. 2 and an agreement dated 25 September 1970 was executed. Part of the consideration was also in the form of grant of development rights to Respondent No. 2-

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Developer. It however appears that full consideration towards conveyance was not paid by Respondent No.3-Society, which is apparent from the above quoted recital no.2 in the flat purchase agreements. Therefore, though agreement was executed with Respondent No.3-Society for conveyance of the land, the actual conveyance did not take place. As observed above, the Agreement dated 25 September 1970 envisaged composite arrangement of purchase of Plot No.1 by Respondent No.3-Society while simultaneously granting development rights in favour of Respondent No.2-Developer. The development rights were granted in contemplation of Respondent No.3-Society acquiring ownership rights in respect of Plot No.1. Ideally, the arrangement was that flat purchasers of the building constructed on Plot No.1 ought to have become members of Respondent No.3-Society and accordingly conveyance for Plot No.1 would have been either contractually executed in favour of Respondent No.3-Society by Respondent No.2 or Respondent No.3-Society could have secured deemed conveyance of Plot No.1 on account of sale of all flats in the building constructed on Plot No.1. However, the arrangement got disturbed when the flat purchasers of building constructed on Plot No.1 did not desire to become members of Respondent No.3-Society and formed and registered their own cooperative housing society on 4 December 2008.

17) If Respondent No.3-Society believes that it alone is entitled to own the entire land comprising of Plot Nos.1, 2 and 3 on account of contractual stipulation for mandatory membership to the flat purchasers of building constructed on Plot No.1, it ought to have opposed formation and registration of Petitioner-Society. It could have challenged the order

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of registration of Petitioner-Society. As observed above, Respondent No.3 has however acquiesced in formation and registration of a separate organization of flat purchasers. Once formation of separate organization of flat purchasers of a building is accepted and acknowledged, what also gets accepted and acknowledged is the right of such organization to seek conveyance of the land and building. It cannot be that a separate housing society is registered *qua* a building, but the ownership of that building and the land beneath it would be with some other society. Such an arrangement would give rise to an anomalous situation. Therefore, the correct remedy for Respondent No.3-Society was to oppose formation of Petitioner-Society. Even if the society was formed, there was a remedy of filing appeal under Section 152 of the Maharashtra Co-operative Societies Act, 1960 **(MCS Act)** challenging the order of registration. If there was misrepresentation in registration of Petitioner-Society, there was also a remedy under Section 21A of the MCS Act seeking de-registration of the Petitioner-Society. Respondent No.3 however did not exercise any of the above remedies possibly because it had no objection about formation of the Petitioner-Society. This is also apparent from the conduct exhibited by Respondent No.3-Society. It appears that Respondent No.3-Society decided to go for redevelopment of its buildings. It called upon the Petitioner-Society to participate in joint redevelopment process with Respondent No.3-Society. Accordingly, a letter dated 4 April 2022 was addressed to the Petitioner-Society, which reads thus :

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Date April 4, 2022

To,
The Managing Committee
Attn: Chairman/ Secretary
Beaumonde CHS. LTD. Plot-A

Respected Sir,

We refer to the Resolution passed in the AGM at The EMCECE Co-Op. Housing Society Ltd., Unit No. A & B held on 13-03-2022.

Resolution: - It is unanimously resolved at the AGM that further three months' time be and is given to get the consent of Beaumonde CHS. LTD., for joining and participating in the process of redevelopment along with The EMCECE Co Op. Housing Society Ltd., failing which it will be deemed that Beaumonde CHS. LTD. has no intension to join with our society for redevelopment of the building and have no objection to redevelopment of building of and have no objection to redevelopment of The EMCECE Co Op. Housing Society Ltd., Unit A & B.

In response to above resolution, you are requested to convey your consent to The EMCECE Co-Op. Housing Society Ltd Unit A & B on or before three months period is lapsed.

Kindly do the needful and reply before 13 June 2022

Thanks and Regards,
The EMCECE Co Op. Housing Society Ltd.

18) Thus, far from questioning the registration of the Petitioner-Society, Respondent No.3-Society admitted its valid existence and called upon the Petitioner to join the process of redevelopment with Respondent No.3-Society. This conduct again exhibits an acknowledgment of the position of valid existence of the Petitioner-Society.

19) Having accepted and acknowledged the fact that Petitioner-Society can exist *qua* building constructed on Plot No.1, Respondent

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No.3 cannot deny or dispute right of the Petitioner to own the building, as well as the land required for its sustenance.

20) In my view therefore, mere agreement executed with Respondent No.2-Developer to acquire conveyance in respect of Plot No.1 by Respondent No.3-Society cannot defeat the lawful right of Petitioner-Society to seek conveyance of land and the building. Even if Respondent No.3-Society was to be an owner of the land bearing Plot No.1, the same would still have made no difference *qua* right of Petitioner-Society to seek conveyance of the land and building. In those circumstances, Respondent No.3-Society would have assumed obligations of a promoter since it caused construction of the building on Plot No.1 through Respondent No.2. It is not necessary to go that far in the present case as Respondent No.3 has not acquired ownership of the land bearing Plot No.1. It owns only Plot Nos.2 and 3 and there is neither a contractual conveyance executed nor an order of deemed conveyance is passed in favour of Respondent No.3-Society *qua* Plot No.1.

21) Once it is established that Petitioner has the right to secure independent conveyance in its favour, the next issue for consideration is about the exact area of land which can be conveyed in favour of the Petitioner-Society. The plans for construction of all 11 buildings were approved by the Municipal Corporation on 14 December 1971. The case therefore does not involve three separate sanctions *qua* Plot Nos.1, 2 and 3. A layout development was carried out in respect of the three plots by sanction of a common plan on 14 December 1971. In that sense, the individuality of Plot Nos.1, 2 and 3 is lost and the entire layout land is subjected to a common housing scheme. Therefore, the principle of

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proportionate land division as envisaged in GR dated 22 June 2018 would get attracted in the present case. Though Respondent No.3 contends that building of Petitioner-Society is constructed only on Plot No.1, conveyance cannot be restricted to the Petitioner only in respect of Plot No.1 admeasuring 1219 sq.mts. Even though Respondent No.3 was made owner of Plot Nos.2 and 3, it granted and recognized rights in favour of Respondent No.2-Developer to have a common layout plan sanctioned in respect of Plot Nos.1, 2 and 3. The Agreement between Respondent Nos.2 and 3 was executed on 25 September 1970 and thereafter a common plan for all the three plots was sanctioned by the Municipal Corporation on 14 December 1971. Thus, the BUA/FSI required for construction of building of Petitioner-Society is not restricted only to Plot No.1 admeasuring 1219 sq.mts. It has also consumed FSI from Plot Nos.2 and 3. As observed above, with sanction of a common plan for all the three plots, the individuality of Plot Nos.1, 2 and 3 was lost. The plan for construction of Petitioner's building was not separately sanctioned only *qua* Plot No.1. It is a common layout development. Therefore, Petitioner-Society is entitled to secure a conveyance of a proportionate land area forming part of the entire layout.

22) The Architect of the Petitioner has conducted the exercise of proportionate land division by taking into consideration the plan approved by MCGM on 14 December 1971. As per the Architect's Certificate dated 27 June 2024, the total area of Plot Nos.1, 2 and 3 was 8632.77 sq.mts. out of which land admeasuring 505.51 sq.mts. and 184.48 sq.mts. were acquired for roads leaving behind balance plot area of 7942.78 sq.mts. The developer was granted FSI benefit for road set-

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back area of 789.99 sq.mts. and accordingly, the total BUA sanctioned on the basis of FSI 1.00 was 8632.77 sq.mts. The total BUA of 8632.77 sq. mts was divided into the buildings as under:

(i) Building of Petitioner-Society (Plot No.1)-2174.56 sq.mts.

(ii) Buildings of Respondent No.3-Society (Plot No.2)-3290.05 sq.mts.

(iii) Buildings of Respondent No.3-Society(Plot No. 3)-3429.75 sq.mts.

23) The Architect has accordingly determined proportionate percentage share in the BUA of the two societies as under:

(i) share of Petitioner's building in the total BUA-24.45%.

(ii) share of Respondent No.3 in the total BUA-36.99% + 38.56%

24) Accordingly, the Architect has determined the proportionate land entitlement of Petitioner-Society as under:

(i) share in the land-1970.45 sq.mts.

(ii) share in the area of 44 ft Road-123.59 sq.mts.

(iii) share in area OF S.V. Road-45.10 sq.mts.

25) Accordingly, the Architect has concluded that the proportionate share of Petitioner-Society in the layout land is as under:

> Therefore, Area to be considered for Conveyance in favor of "BEAU MONDE PLOT NO. 1 CO-OPERATIVE HOUSING SOCIETY LIMITED" is 1970.45 Sq. mts, from land bearing Plot No. 1 (old), Plot No. 1, 2 & 3

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> (new), land bearing C.T.S: No. 33/4 of Village Chinchavli, Taluka Borivali, City Survey Office Malad of Mumbai Suburban District. And FSI advantage of 44-0" Road Area admeasuring 123.59 Sq. mts. out of 505.51 Sq. mts, & S. V. Road Area admeasuring 45.10 Sq. mts, out of 184.48 Sq. mts. as per Approved Plan.

26) In my view, the exercise carried out by the Architect appears to be fair and reasonable. Accordingly, the Petitioner is entitled to secure conveyance of land admeasuring 1970.45 sq. mts. in addition to FSI advantage of 123.59 sq. mts. and 45.10 sq. mts. for road advantage.

27) As observed above, the Petitioner would be entitled to conveyance of the main land admeasuring 1970.45 sq. mts + FSI advantage in respect of roads of 123.59 sq. mts + 45.10 sq. mts (*total area admeasuring 2139.14 sq. mts)* which exceeds the area of Plot No.1 of 1219 sq.mts. Thus, granting conveyance of proportionate land in favour of the Petitioner-Society eats into the ownership rights of Respondent No. 3-Society in respect of Plot Nos.2 and 3. However, as observed above, the individuality of Plot Nos. 1, 2 and 3 stood extinguished upon they being subjected to a common housing scheme pursuant to the sanction of a common plan dated 14 December 1971.

28) In fact, the arrangement whereby Respondent No. 3-Society acquired rights in Plot No. 1 and granted development rights therein to Respondent No. 2 was apparently agreed for execution of common layout development across all the three plots. If Respondent No. 2 was to remain the owner of Plot No. 1, he would have been required to submit a separate plan for construction of Building No. 1. The chronology of events needs to be appreciated in order to understand the exact reason

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why a composite arrangement was made by Respondent Nos. 2 and 3 *qua* Plot No. 1:

25 September 1970	Package Deal Agreement between Respondent Nos. 2 and 3 *qua* Plot No. 1
31 March 1971	Conveyance of Plot Nos. 2 and 3 to Respondent No. 3 society
	With conveyance dated 31 March 1971 and Package Deal Agreement dated 25 September 1970, Respondent No. 3 claimed ownership of all the three Plot Nos. 1,2 and 3 and decided to submit common layout plan for all the three plots.
14 December 1971	Sanction of common layout plan for Plot Nos. 1, 2 and 3.

Thus, the arrangement of Respondent No. 3 acquiring rights in all the three plots, namely of Plot Nos. 1,2 and 3 was made only for ensuring that a common plan could be sanctioned in respect of all the three plots. This is how a common plan was sanctioned in the name of Respondent No. 3 society for layout development. Upon sanction of such common layout plan, the individuality of the plots got lost as FSI/BUA utilized for construction of buildings no longer remained confined to individual plots and gross FSI arising out of all the three plots was distributed amongst the 11 buildings constructed under the layout development. This is how, for FSI computations, the area of the three plots is taken into consideration and thereafter the total BUA of 8632.77 sq.mts. is distributed in construction of buildings of both the societies.

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29) If building of Petitioner was to be constructed only on Plot No.1 admeasuring 1219 sq.mts., it would not have secured BUA of 2174.56 sq.mts. Its BUA would have been confined only to 1219 sq.mts. based on FSI 1.00. However, what has been done in the present case is to subject all the three plots to a common plan for the purpose of generation of BUA out of area of all three plots. Therefore, building of Petitioner-Society does not have any connection with or identity as part of Plot No.1 alone. It may have come up through the unique agreement executed with Respondent Nos.2 and 3 on 25 September 1970. However, Respondent No.3-Society permitted the developer to construct the building of Petitioner-Society on the basis of common plan in respect of all the three plots. Having done so, Respondent No.3-Society cannot now turn around and contend that conveyance to Petitioner-Society needs to be restricted only to an area of Plot No.1. If building of Petitioner-Society was to be constructed only on Plot No.1, Respondent No.3-Society ought to have objected to sanction of common plan and also ought to have objected to utilization of any FSI flowing out of Plot Nos.2 and 3 for construction of the building of Petitioner-Society. They did not do so and allowed sanction of a common layout plan possibly out of expectation that the building which was being constructed was for the benefit of Respondent No.3-Society and that all the flat purchasers therein would ultimately become members of Respondent No.3-Society. This expectation of the third Respondent-Society however got destroyed when a separate cooperative society was registered on 4 December 2008. This is the reason why I have repeatedly held that the real remedy for Respondent No.3-Society was to oppose formation of Petitioner-Society

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by taking necessary steps where by it could have either challenged the order of registration of Petitioner-Society or could have sought its de-registration under Section 21A if there was any misrepresentation. Now it is too late in a day to mount a challenge to formation of Petitioner-Society in collateral proceedings filed for deemed conveyance by the Petitioner-Society.

30) In the present case thus, Respondent No. 3 society accepted and acknowledged two main factors viz. (i) submission and sanction of common plan for construction of all the buildings on Plot Nos.1, 2 and 3, thereby agreeing for building of Petitioner-Society consuming the FSI flowing out of Plot Nos.2 and 3 and (ii) formation and registration of Petitioner-Society. Having accepted and acquiesced in the said two factors, Respondent No.3-Society must also accept the consequence of its actions. The consequence is that the Petitioner-Society has a right to secure conveyance of a proportionate share in the layout land.

31) In view of the foregoing discussion, which clearly establishes the right of the Petitioner-Society to secure conveyance of proportionate share in the land forming part of the layout, it is not necessary to burden this judgment by discussing the ratio of the judgments in ***Veer Tower Co-operative Housing Society Limited, Upvan Co-operative Housing Society Limited*** and ***M/s. Blue Heavens Co-operative Housing Society*** relied upon by Mr. Gandhi. The present case involves peculiar circumstances as discussed above. Here, in respect of Plot No. 1, both Respondent Nos. 2 and 3 assumed the obligations of a promoter. Though Respondent No. 3-Society had agreed to purchase the land (*and even if it is assumed that it acquired ownership of Plot No. 1*), it

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acted like a typical land-purchaser and granted development rights for construction of building for itself. Since construction is caused by Respondent No. 3-Society, it became a promoter *qua* that building. The Respondent No.3 assumed obligations of being a promoter since it allowed the developer to consume FSI flowing out of Plot Nos.2 and 3 for the purpose of construction of building on Plot No.1. As a landowner, it submitted common plans in respect of Plot Nos.1, 2 and 3 for a layout development. Since Respondent No.3-Society permitted FSI of Plot Nos.2 and 3 to be consumed on building to be constructed on Plot No.1, it automatically took over the obligation to convey some portion of land in Plot Nos.2 and 3 in favour of organisation of flat purchasers in respect of Building constructed on Plot No.1. In any case, distinct identity of Plot Nos.1, 2 and 3 got lost in the unique facts of the present case. So far as ownership is concerned, Respondent No.3 was clear owner in respect of Plot Nos.2 and 3 and half-baked owner in respect of Plot No.1. It caused construction of the building in respect of which Petitioner-Society was formed and registered. In these circumstances, not just Respondent No.2-Developer, but also Respondent No.3-Society needs to fulfill the obligations under Section 11 to convey its right, title and interest in the land in favour of the Petitioner-Society.

32) In my view, therefore Petitioner-Society is entitled to receive conveyance in respect of land admeasuring 1970.45 sq.mts and FSI advantage in respect of roads of 123.59 sq.mts and 45.10 sq.mts. The Competent Authority has egregiously erred in rejecting Petitioner's application for deemed conveyance. The proceedings therefore deserve

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to be remanded to the Competent Authority for the purpose of issuance of certificate of deemed conveyance.

33) The Petition accordingly succeeds and I proceed to pass the following order:

(i) Order dated 6 March 2025 passed by the Competent Authority in Application No.159 of 2024 is set aside.

(ii) Application No. 159 of 2024 is remanded to the Competent Authority for the purpose of issuance of certificate of deemed conveyance of land admeasuring 1970.45 sq.mts and FSI advantage in respect of roads of 123.59 sq.mts and 45.10 sq.mts in favour of the Petitioner-Society.

(iii) The Competent Authority shall accordingly proceed to issue certificate of deemed conveyance in favour of the Petitioner-Society as directed above as expeditiously as possible, preferably within a period of 4 months.

(iv) Parties shall appear before the Competent Authority on 30 September 2026 and seek further directions for fixation of date(s) of hearing in the remanded proceedings.

34) With the above directions, the Writ Petition is allowed. There shall be no orders as to costs.

NEETA SHAILESH SAWANT

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[SANDEEP V. MARNE, J.]

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