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

WRIT PETITION NO.9658 OF 2014

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Municipal Corporation of Greater Mumbai,
through Municipal Commissioner, having
Head Office at Mahanagarpalika Marg,
Mumbai 400 001

... Petitioner

V/s.

1. **Shubh Apartments CHS Limited,**
Plot No.9, Scheme No.58, Worli,
B.G. Kher Marg, Worli, Mumbai 18.
2. **Esha Ekta Apartments CHS Limited,**
Plot No.9, Scheme No.58, Worli,
B.G. Kher Marg, Worli, Mumbai 18.
3. **B. Y. Apartments CHS Limited,**
Plot No.9, Scheme No.58, Worli,
B.G. Kher Marg, Worli, Mumbai 18.
4. **Mid-Town Apartments CHS Limited,**
Plot No.9, Scheme No.58, Worli,
B.G. Kher Marg, Worli, Mumbai 18.
5. **Patel Apartments CHS Limited,**
Plot No.9, Scheme No.58, Worli,
B.G. Kher Marg, Worli, Mumbai 18.
6. **Orchid Apartments CHS Limited,**
Plot No.9, Scheme No.58, Worli,
B.G. Kher Marg, Worli, Mumbai 18.
7. **Pure Drinks Private Limited,**
60, Yadvindra Colony, The Mall,
Patiyala, Punjab 147 001
8. **The PSB Construction Co. Limited,**

L-40, Cannot Place, New Delhi 110 000

9. **B.Y. Builders Private Limited,**
212, 618 Tulsyani Chambers,
6th Floor, Nariman Point,
Mumbai 400 021
10. **Mohammed Yusuf Abdulla,**
Shri Yusuf Patel, 53/57, Narayan
DhuruStreet, Mumbai 400 003
11. **District Deputy Registrar,** Cooperative
Societies, Mumbai City 1, Malhotra
House, 6th Floor, Opposite GPO,
Fort, Mumbai 400 001
12. **The State of Maharashtra,**
Revenue Department, Mantralaya,
Mumbai

... Respondents

Mr. Suresh S. Pakale, Senior Advocate with Mr. Santosh Mali for the petitioner.

Mr. Rajiv Narula with Ms. Nidhi Loya i/by Jhangiani, Narula & Associates for respondent No.1.

Mr. Bhushan Deshmukh with Mr. Hamza Lakhani & Ms. Tina Surela i/by India Law Alliance for respondent No.4.

Mr. P.V. Nelson Rajan, AGP for respondent Nos.11 & 12-State.

CORAM : **AMIT BORKAR, J.**

RESERVED ON : **FEBRUARY 16, 2026.**

PRONOUNCED ON : **MARCH 5, 2026**

JUDGMENT:

1. By the present writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner challenges the

Judgment and Order passed by the District Deputy Registrar, Co-operative Societies, Mumbai City-I, Respondent No.11 herein, in Deemed Conveyance Application No.76 of 2013, whereby deemed conveyance has been granted in favour of the respondent-societies.

2. The facts according to petitioner giving rise to the present writ petition, stated briefly, are as follows. The petitioner-Corporation is the absolute owner of land admeasuring 17,908.17 square metres, being Plot No.9, Scheme No.58, Worli Estate. The said land was leased to M/s. Pure Drinks Private Limited, Respondent No.7, under a registered lease deed dated 17 January 1962. Clause 11 of the lease deed restricts the user of the structures standing on the demised premises to office, film studio, laboratories, godown, workshop connected therewith, and residential use for employees working on the premises, and further stipulates that no other business, trade, occupation, or purpose shall be carried out without prior written consent of the Commissioner. In the year 1979, M/s. Pure Drinks Private Limited applied for change of user from industrial to residential in respect of a portion of land admeasuring 13,049.45 square metres. By order dated 22 January 1981, the Government of Maharashtra granted such change of user subject to the condition that development shall be carried out in accordance with the Development Control Rules, 1967. Subsequently, revised plans proposing construction of separate buildings comprising stilt plus 24 upper floors, stilt plus 16 upper floors with additional sixth and seventh floors in Building No.2, and an additional sixth floor in Building No.3 were submitted. The Corporation rejected the said

revised plans by order dated 6 September 1984.

3. As the construction activity was found to be illegal and contrary to the terms of the lease agreement, a stop-work notice under Section 354A was issued on 12 November 1984. M/s. Pure Drinks also failed to secure subdivision of the plot, no separate property register card was created, and no independent lease was executed in respect of the concerned portion of land. Despite rejection of the revised building plans, the developers continued construction, compelling the Executive Engineer to issue further stop-work directions.

4. Thereafter, a further notice dated 7 August 1988 was issued calling upon M/s. Pure Drinks Private Limited to rectify the breaches. Despite repeated action by the authorities, the builders and promoters proceeded with construction in disregard of the notices and raised structures as per the modified proposal, which came to be occupied without obtaining prior permission of the Commissioner. As M/s. Pure Drinks failed to respond to the show-cause notice, a fresh inspection was carried out and several breaches were recorded. Consequently, a show-cause notice dated 16 August 2010 was issued; upon refusal to accept the same, it was affixed on Building No.3. As per the originally sanctioned plan, Building No.3 was permissible only up to basement, part stilt, part ground floor, and five upper floors. However, construction substantially exceeded the sanctioned limits. Similar unauthorized additional floors were also noticed in Buildings Nos.4, 5, 6, 7A, and 7B.

5. Upon receipt of the show-cause notice, M/s. Pure Drinks sought inspection of records, which was granted on 31 January 2011. Personal hearings were thereafter afforded between 22 March 2013 and 11 June 2013 in relation to the proposed termination. During this period, certain financial institutions initiated recovery proceedings against M/s. Pure Drinks on the basis of deposit of title deeds; however, the petitioner was not impleaded in such proceedings. In the interregnum, various societies occupying the unauthorized structures approached the Hon'ble Supreme Court seeking protection against demolition. By order dated 27 February 2013, the Apex Court declined to grant any protection.

6. The respondent-societies thereafter filed an application under Section 11(3) of the Maharashtra Ownership Flats Act on 27 September 2013 seeking deemed conveyance. One of the societies, namely Saptarshi Residents Cooperative Housing Federation, had separately filed Deemed Conveyance Application No.78 of 2013, which was subsequently withdrawn on 22 January 2014. By order dated 4 September 2014, the Competent Authority issued an ex parte deemed conveyance certificate in favour of the respondent-societies. Aggrieved thereby, the petitioner has instituted the present writ petition.

7. Learned Senior Counsel Mr. Pakale appearing for the petitioner submitted that no privity of contract exists between the petitioner and the respondent-societies or their members and, therefore, the provisions of Section 11 of the Maharashtra Ownership Flats Act cannot be invoked against the petitioner. It is

contended that the petitioner does not fall within the definition of a builder or promoter under the said Act. According to the petitioner, no agreement or contractual arrangement exists between the petitioner and the respondent-societies or their members in respect of the subject premises. The agreements entered into between the respondent-societies and the developers were executed without the consent or approval of the petitioner. It is further submitted that the respondent-societies consist of occupants whose possession is alleged to be illegal, and the said issue is presently pending adjudication before competent courts.

8. It is further submitted that the plot in question has not been subdivided and no separate Property Register Card has been issued. According to the petitioner, had such subdivision been effected, permission for transfer of lease could have been considered under the provisions of the Mumbai Municipal Corporation Act, 1888. It is contended that municipal property can be disposed of only in accordance with the procedure prescribed under the said Act and in no other manner. On this basis, it is argued that the order passed by the Competent Authority is manifestly illegal and unsustainable in law. The petitioner further contends that the application for deemed conveyance ought to have been rejected for non-compliance with the requirements of Section 11(3) read with Clause 12 and Form VII of the MOFA Rules, 1964. It is submitted that no proper explanation was furnished by the applicant-society and that the Competent Authority failed to apply its mind as mandated under Clause 13 of the said Rules. According to the petitioner, the Competent

Authority has, in a casual manner, recorded that the applicant had complied with all necessary documentary requirements for the purpose of enquiry, though such observation is alleged to be perverse and contrary to the material on record.

9. It is further argued that the Competent Authority ought not to have entertained the application when M/s. Pure Drinks itself had asserted that the buildings were constructed without authorization and that the issue was sub judice before competent courts. Despite these admitted circumstances, the Competent Authority is stated to have exceeded its jurisdiction by recording findings that the buildings of the applicant-societies were not unauthorized and that construction beyond the fifth floor stood authorized. According to the petitioner, the Competent Authority had no jurisdiction to adjudicate upon or determine such issues.

10. The petitioner also challenges the observation of the Competent Authority that filing of the application for deemed conveyance does not amount to violation of the orders passed by the Supreme Court concerning demolition of unauthorized structures. It is further submitted that the constructions in question were carried out despite notices issued by the petitioner-Corporation alleging that the development was illegal and unauthorized. It is not disputed that the approval granted by the State Government under Section 37(2) of the Maharashtra Regional and Town Planning Act, 1966 for change of user from general industrial to residential was conditional. The revised plans were rejected by the Corporation by order dated 6 September 1984. Notwithstanding such rejection, the developer and builder

continued construction, resulting in issuance of a stop-work notice dated 12 November 1984 under Section 354A of the Mumbai Municipal Corporation Act. It is further submitted that no occupation certificate has been granted by the Corporation to any building within the Campa Cola Compound till date. According to the petitioner, the members of the respondent-societies were fully aware of the alleged illegal construction, and both the societies and the developers had challenged the notices issued by the Corporation from time to time. Reliance is placed on observations made by the Supreme Court in related proceedings, wherein it was held that development or change of user without permission attracts penal consequences, and that the planning authority is empowered to require restoration of the land to its original condition. The Supreme Court further observed that the statutory scheme does not mandate regularization of unauthorized construction and that, although developers may be responsible for such illegality, flat purchasers or housing societies cannot claim continuation or regularization of unauthorized structures. The Court also noted that the promoter is under a statutory obligation under Sections 3 and 4 of MOFA to obtain necessary sanctions and disclose the same to flat purchasers, and that while penalties may be imposed on promoters for breach, the provisions do not confer a right upon flat purchasers to seek a writ of mandamus for regularization of illegal or unauthorized construction.

11. Learned Advocate Mr. Deshmukh appearing for Respondent No.1, while inviting attention to the Government order dated 25 December 1980, submitted that the State Government had granted

permission for change of user of the land from industrial to residential purposes. Referring to Clause 12 of the lease deed, it is contended that the said clause permits assignment by the lessee, and the requirement contemplated therein is only that a deed of assignment be deposited with the petitioner. It is submitted that the construction up to the fifth floor stands sanctioned by the petitioner and, therefore, the legality of the structure up to that level is not in dispute. Learned counsel further submitted that the petitioner issued an Intimation of Disapproval (IOD) on 8 June 1981 and granted a commencement certificate on 10 June 1981. On the date of sanction, the plot had an available Floor Space Index of 1,82,473 square feet. It is further submitted that the certificate issued under Section 11(4) of the Maharashtra Ownership of Flats Act clarifies that leasehold rights of Opponent No.1, being the promoter, and development rights of Opponent Nos.2 to 4 were to be transferred in favour of the organisation of purchasers, without prejudice to the ownership rights of the petitioner and subject to the terms and conditions of the lease deed dated 17 January 1962, insofar as the area converted for residential use admeasuring 13,049.45 square metres out of the total plot area of 17,719.58 square metres is concerned. According to the respondent, the area conveyed in favour of the societies pertains only to the authorised portions of the buildings comprising ground plus five upper floors.

12. Learned counsel further submitted that the petitioner has failed to demonstrate any legal prejudice caused by grant of deemed conveyance, as the ownership rights of the petitioner over

the property remain unaffected. Reliance is placed on the judgment of this Court in *Yogesh Jayant Khadilkar v. State of Maharashtra in Writ Petition No.13755 of 2022*, wherein it was observed that upon issuance of unilateral deemed conveyance, the collective body of flat purchasers secures title in respect of the land and building, and that absence of an occupancy certificate cannot be linked to the statutory obligation of the promoter to transfer right, title and interest under Section 11 of the Maharashtra Ownership of Flats Act, 1963. On this basis, it is submitted that the present petition is devoid of merit and deserves dismissal.

13. Learned Advocate Mr. Narula appearing for Respondent No.4 submitted that the impugned order records a finding that construction up to the fifth floor in the subject building is authorized, and a similar position obtains in respect of the other buildings. It is submitted that there is no dispute regarding the sanctioned plans insofar as construction up to five floors in each building is concerned. Learned counsel further contended that if any civil rights of the petitioner are alleged to be affected, the appropriate remedy would be to institute a civil suit. According to him, the petitioner cannot challenge the order granting deemed conveyance, which merely transfers the rights of the developer in favour of the association of purchasers. He therefore prayed for dismissal of the writ petition.

REASONS AND ANALYSIS:

14. Section 11 of the Maharashtra Ownership Flats Act creates a clear statutory obligation upon the promoter to transfer his right,

title and interest in the land and building in favour of the organisation of flat purchasers. The purpose behind this provision is protective. In many housing projects, purchasers pay full consideration, take possession, and form a organisation, yet the promoter does not execute the final conveyance. In such a situation, the society remains without legal title even though the members are in occupation. The legislature introduced Section 11 to prevent this uncertainty. The provision ensures that ownership rights are not indefinitely withheld at the instance of the promoter and that the purchasers are not left in a legally defenceless position despite having fulfilled their obligations. The concept of deemed conveyance recognizes that delay or refusal by the promoter cannot be permitted to defeat the collective rights of purchasers. Once the statutory requirements are satisfied, the law enables the Competent Authority to step in and facilitate transfer of rights which the promoter was otherwise bound to convey. This scheme does not create new rights in favour of purchasers. It only secures the transfer of rights that already exist in law but remain unexecuted due to inaction or resistance by the promoter.

15. The role of the Competent Authority under Section 11 is well defined. The Authority is required to examine whether the conditions prescribed under the statute are fulfilled. It must verify the existence of the project, the formation of the organization of purchasers, the agreements entered into, and the extent of the promoter's transferable rights. After such examination, the Authority records the nature and extent of the rights that stand transferred through deemed conveyance. The exercise is essentially

statutory in character. The Authority does not undertake a full-scale adjudication of disputed title as a civil court would do.

16. In the present case the record shows that change of user was granted by Government order in 1980. The petitioner sanctioned a plan which authorized construction up to the fifth floor. The petitioner's own correspondence includes an Intimation of Disapproval and a commencement certificate around June 1981. Those steps show that the development, as sanctioned at the time, included a plinth and built area which the purchaser associations relied upon. The Competent Authority examined the record and recorded that the applicant societies had produced the required documents necessary for the enquiry.

17. The material placed on record shows that the Competent Authority proceeded on the basis of the authorised development alone while determining the extent of conveyance. The documents forming part of the proceedings show that the authority did not undertake a blanket transfer of the entire property or of all existing construction. Instead, the area considered for conveyance was specifically linked to the portion of land which had been converted for residential use under the Government permission. This shows that the authority was conscious of the limits of its jurisdiction and of the nature of rights that could lawfully be transferred.

18. The language of the certificate itself supports this conclusion. It records that the transfer of leasehold and development rights is subject to the ownership rights of the petitioner and further subject

to the terms and conditions of the original lease deed. Such wording indicates that the Competent Authority did not intend to disturb the underlying title of the petitioner nor enlarge the rights of the societies beyond what the promoter was legally capable of conveying. If the intention had been to transfer rights over all existing structures irrespective of legality, the certificate would not have contained these clear qualifications. The express reservation of ownership rights shows a restriction placed on the scope of conveyance.

19. The sanctioned plan and the commencement certificate establish that the development approved by the planning authority extended only up to ground plus five floors. The approvals indicate the extent of valid development. The Competent Authority was therefore justified in treating this sanctioned development as the outer limit for the purpose of conveyance. There is nothing on record to indicate that any approval was granted for construction beyond this level.

20. When the operative portion of the order is read alongside these documents, it becomes clear that the authority confined itself to the sanctioned development. The computation of area and the description of rights transferred correspond to the approved residential portion and not to disputed structures. The reasoning reflected in the record shows that the authority focused on the lawful extent of the project and avoided entering into questions relating to disputed or allegedly unauthorized construction.

21. The cumulative effect of these factors leads to a conclusion that the conveyance granted was not an unrestricted recognition of all existing construction but a limited transfer tied to the authorised development. The Competent Authority confined the conveyance to the area corresponding to ground plus five floors as sanctioned. Any construction beyond that level does not form part of the rights conveyed under the certificate and remains outside its scope.

22. Mr. Pakale for the petitioner argued that there is no privity between the Corporation and the societies and that Section 11 cannot be invoked against the Corporation. That submission is not legally sustainable. Section 11 deals with transfer of rights in land and building where the promoter defaults. The applicant society represents a organisation of flat purchasers seeking conveyance of the promoter's rights. The absence of a separate contract between the Corporation and each member does not, by itself, disable the statutory machinery under Section 11. The statute contemplates application by a society formed by purchasers; privity between the municipal lessor and each purchaser is not an ingredient of the statutory exercise.

23. The petitioner must show legal prejudice caused by the transfer of the promoter's rights. The record fails to show any prejudice to the petitioner by reason of the deemed conveyance limited to authorised construction. The petitioner's ownership and reversionary rights under the lease continue. The Competent Authority certified transfer subject to the petitioner's ownership rights and the lease terms. The absence of separate PR card or plot

subdivision, standing alone, does not demonstrate that the petitioner has suffered a legal detriment that arises from the limited conveyance. Protecting purchasers' statutory entitlement in respect of sanctioned portions while leaving ownership challenges and enforcement against excess construction intact does not amount to legal prejudice that the writ jurisdiction must redress. When Clause 12 is read in its plain language, it does indicate that assignment by the lessee is contemplated. The clause does not treat assignment as an illegal act by itself. The clause does not support submission that no rights could ever move from the lessee to another entity. It allows the petitioner to verify the nature of the transfer and to ensure that the terms of the lease are not breached.

24. The petitioner may pursue its remedies in appropriate forums against the developer and occupiers for excess construction. These remedies remain open. The purchaser associations, on their part, have a statutory entitlement to compel transfer of promoter's rights in respect of authorised portions. Granting that entitlement does not bar the petitioner from enforcing municipal law or prevent the State from taking action against unauthorized construction, in accordance with law. If the Competent Authority considered sanction, commencement certificate and allied documents and formed a reasoned view that the flats and the building up to the sanctioned floors were entitled to be conveyed, interference is not warranted unless the finding is perverse or unsupported by record.

: O R D E R :

- (i) The writ petition stands dismissed.
- (ii) The order granting deemed conveyance in favour of the respondent-societies is upheld, subject to the clarification recorded herein.
- (iii) It is clarified that the land portion directed to be conveyed and the rights transferred thereunder shall be confined strictly to the land specified in the order and authorised development, namely the buildings to the extent of ground plus five floors, as reflected in the sanctioned plans.
- (iv) The deemed conveyance and this order shall not confer any right, protection or benefit in respect of any unauthorised construction or additional floors beyond the sanctioned structure. Such unauthorised portions shall continue to remain subject to action in accordance with law.
- (v) The ownership rights of the petitioner under the original lease deed shall remain unaffected, except to the extent of transfer of the promoter's rights lawfully conveyed under Section 11 of the Maharashtra Ownership Flats Act.
- (vi) All rights and contentions of the parties in respect of unauthorised construction and related proceedings are expressly kept open.
- (vii) Rule stands discharged. No order as to costs.

(AMIT BORKAR, J.)