Sayali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 977 OF 2026

SAYALI DEEPAK UPASANI
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Date: 2026.02.06 12:21:19 +0530

Rajanialias Prabhavati Chittaranjan Patil Nee Rajani alias Prabhavati Laxman Thakur, Age: 83, Occ: Housewife
R/a Om Yogeshwar Apartment,
3rd floor, Kandarpada, Near Metro Station, Dahisar (West),
Mumbai – 400068

...**Petitioner**

V/s.

1. **Dahisar Siddhi Apartment CHSL,**
   Plot No. 1, CTS No. 1732, Prabhat Nagar, S. V. Road, Dahisar (East), Mumbai 400068 Through its Chairman/ Secretary

2. **M/s. Unique Construction Co.,**
   A Partnership Firm, Developers, having office address at Om Apartment, Carter Road No. 3, Borivali (East), Mumbai - 400 066

3. **Mr. H. A. Mainkar (old Developer)**
   Age: Occ: Developer Namrata, Top Floor, Aare Road, Goregaon (East), Mumbai - 400 066

4. **Shri Ramchandra Laxman Thakur**
   since Deceased through his legal heirs

   a) Manish Ramchandra Thakur
   Age: 48 approx, Occ: Service

b) Bhavana Patil Nee Bhavana
Ramchandra Thakur
Age: 53 approx, Occ: Housewife

c) Meena Bhagat Nee Meena
Ramchandra Thakur;
Age: 55 approx, Occ: Professional

d) Mrs. Shilpa Milind Patil
Nee Ms. Shilpa Ramchandra Thakur
Age: 49 approx, Occ: Housewife

all having their last known address at Flat No. 3, Dahisar Siddhi Apartment CHSL, Plot No. 1, CTS No. 1732, Parbat Nagar,S. V. Road,Dahisar (East Mumbai - 400 068

e)Sangeeta Jagdish Patil Nee Sangeeta Ramchandra Thakur
Age: 59 Approx, Occ: Housewife C-504, Vitthal Apt, Mithagar Road,
Behind DMart, Kandarpada,
Dahisar (West), Mumbai 400068

... Respondents

5. Shri Gajanan Laxman Thakur
Age: 68, Occ: Retired
Flat No. 10, Dahisar Siddhi Apartment CHSL, Plot No. 1, CTS No. 1732, Parbat Nagar, S. V. Road, Dahisar (East), Mumbai 400 068

6. Shri. Atul Dattaram Patil
Age: 45 approx, Occ: Service
4, Maruti Vadi, Thakur Chawl, Parbat Nagar, S. V. Road, Dahisar (East), Mumbai - 400 068

7. Shri. Tushar Dattaram Patil
Age: 43 approx, Occ: Service 4, Maruti Vadi, Thakur Chawl, Parbat Nagar, S. V. Road, Dahisar (East), Mumbai - 400 068

8. Shri. Dattaram Sakharam Patil
since Deceased through his legal heirs

a) Shri. Atul Dattaram Patil
Respondent No. 6 herein

b) Shri. Tushar Dattaram Patil
Respondent No. 7 herein

c) Smt. Savita Pankaj Madhvi
Respondent No. 9 herein

9. Smt. Savita Pankaj Madhvi
Age: 41 approx, Occ: Housewife Flat No. 1004, Pawanputra CHS Ltd., Narali Agarepad, Road No. 18, Near Rustomji Paramount, Khar (West), Mumbai 400 052

10.Mr. Kamlakar Ramchandra Patil
since deceased through his legal heirs

a) Mr. Naval Kamlakar Patil
Respondent No. 11 herein

b) Mr. Ganesh Kamlakar Patil
Respondent No. 12 herein

c) Smt. Asha Naresh Mali
Respondent No. 13 herein

d) Mrs. Seema Manoj Patil
Respondent No. 14 herein

e) Mrs. Rajeshri Vikas Taware
Respondent No. 15 herein

f) Mrs. Nutan Sharad Patil
Respondent No. 16 herein

11.Mr. Naval Kamlakar Patil
Age: 43 approx, Occ: Business
18, Laxman Tower, 18th floor, link road, Kandarpada, Near Metro Station, Dahisar (West), Mumbai-400068

12.Mr. Ganesh Kamlakar Patil
Age: 47 approx, Occ: Business
17, Laxman Tower, 17th floor, Link road, Kandarpada, Near Metro Station, Dahisar (West), Mumbai-400068

13.Smt. Asha Naresh Mali
Age: 50 approx, Occ: Housewife
Tulasi Vihar Bunglow, EksarKolivada Road, Borivali (West), Mumbai - 400 103

14.Mrs. Seema Manoj Patil
Age: 53 approx, Occ: Housewife
Sada Anand, D. N. Mhatre Road, Sainath Nagar, Near Eksar, Borivali (West), Mumbai 400 103

15. Mrs. Rajeshri Vikas Taware
Age: 57 approx, Occ: Housewife
G.I., Ramchandra Niwas, Near Laxminarayan Mandir, Eksar Road, Borivali (West), Mumbai - 400 091

16. Mrs. Nutan Sharad Patil
Age: 55 approx, Occ: Housewife
2nd Floor, Near Radhakrishna Mandir, B. P. Cross Road, Bhayander (East), Thane - 05

17.State of Maharashtra

Through District Deputy Registrar, Co-op Sc Mumbai City (4).
Bhandari Co-op Bank, 2nd floor, P.L. Kale Guruji Marg, Dadar (West), Mumbai - 40002

18.State of Maharashtra
Through Joint Sub-Registrar of Assurances Mumbai - 24 erstwhile known as Borivali – 9, 1st Floor, MTNL Building, Magathane, Behir Vasant Marvel Building, Borivali East, Mumbai - 400066

19.State of Maharashtra
Through City Survey Office, Borivali Taluka 4th Floor, Administrative Building, Natakwala Lane, S. V. Road, Borivali West, Mumbai - 400 092

Mr. Niranjan Mogre, for Petitioner.

Mr. P. V. Nelson Rajan, AGP for State-Respondent Nos. 17 to 19.

CORAM : AMIT BORKAR, J.

RESERVED ON : JANUARY 29, 2026

PRONOUNCED ON : FEBRUARY 6, 2026

JUDGMENT.:

1. The Petitioner one of the legal heirs of the original landowner, has invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution of India. The challenge is directed against the Deemed Conveyance Order and Certificate dated 11.05.2022, the Corrigendum Order dated 06.06.2023, the

Registered Unilateral Deemed Conveyance Deed dated 19.07.2022, the Registered Supplementary Agreement dated 10.08.2023, and the mutation entry effected on 30.11.2023. It is the case of the Petitioner that these actions were procured by fraud, misrepresentation, and suppression of material facts. It is further alleged that the Competent Authority acted without jurisdiction and in breach of the principles of natural justice. On these grounds, the Petitioner contends that the impugned actions are void from inception and result in unlawful deprivation of her property rights.

2. It is stated that prior to 27.06.1995, Late Laxman Pandurang Thakur, the predecessor in title of the Petitioner, was the absolute owner of land bearing Survey No. 239 Hissa No. 1 and Survey No. 182 Hissa No. 10, corresponding to C.T.S. No. 1732. The record indicates that on 19.02.1982, a Deed of Assignment was purportedly executed between H.A. Mainkar and Unique Construction Co., allegedly conferring certain development rights. An agreement dated 25.04.1984 is stated to have been executed between Late Laxman Pandurang Thakur and H.A. Mainkar. The Petitioner disputes both the validity and existence of this agreement. Respondent No. 1 Society came to be registered on 03.02.1989. Late Laxman Pandurang Thakur expired on 27.06.1995, leaving behind his legal heirs, including the present Petitioner.

3. On 01.04.2021, Respondent No. 1 Society filed Application No. 101 of 2021 before the District Deputy Registrar seeking unilateral deemed conveyance. The deceased landowner, Late Laxman Pandurang Thakur, was shown as a respondent despite his demise in 1995. Hearing notices dated 12.04.2021 and 22.09.2021 were issued in the name of the deceased. On 12.11.2021, the authority was informed of his death. However, no formal substitution of legal heirs was undertaken. On 20.12.2021, a legal notice was issued only to the developer and not to the landowners or their heirs. On 26.11.2021, a revised Form VII application was filed without seeking formal amendment of the original application.

4. The proceedings were closed for orders. Thereafter, on 18.02.2022, the Society moved an application to reopen and amend the conveyance application, stating that the addresses of the legal heirs were incorrectly mentioned. On 04.03.2022, notice was issued to H.A. Mainkar despite earlier proceedings showing another person as Opponent No. 2. Objections were filed by one of the legal heirs in April 2022. On 11.05.2022, the District Deputy Registrar passed the Deemed Conveyance Order and issued the Certificate. The Unilateral Deemed Conveyance Deed was registered on 19.07.2022. A corrigendum in respect of the property schedule was issued on 16.09.2022, followed by a Corrigendum Order dated 06.06.2023. A Supplementary Agreement was executed on 10.08.2023.

5. On 30.11.2023, mutation was effected in the Property Card in favour of Respondent No. 1 Society. The Petitioner states that she became aware of the redevelopment and the deemed conveyance only in October 2025, upon which she initiated appropriate legal steps, leading to the present petition.

6. Learned counsel for the Petitioner submitted that the jurisdiction of the Competent Authority under Section 11 of the Maharashtra Ownership Flats Act, 1963 is summary and limited. It was contended that the Authority cannot travel beyond the MOFA agreements executed with the flat purchasers. The agreements pertain to C.T.S. No. 1732/11 admeasuring 1074.60 sq. mtrs., whereas the impugned order grants conveyance of C.T.S. No. 1732 admeasuring 835.60 sq. mtrs. It was argued that the Authority could not grant conveyance of land differing in description or extent from the contractual documents. It was further submitted that the Society had admitted that C.T.S. No. 1732/11 stood in the name of another society. In such circumstances, the Authority ought not to have proceeded with the application in the face of discrepancies in identification of the property. It was also submitted that the Competent Authority erroneously recorded that there was no dispute regarding title to the land proposed to be conveyed, despite serious objections on record.

7. According to the Petitioner, Respondent No. 1 failed to produce any document evidencing transfer of development rights from the original landowner to the first developer. The MOFA

agreements are stated to be silent regarding any such transfer. It is contended that the chain of title was incomplete. Despite objections raised, the Authority proceeded to grant conveyance, thereby allegedly validating a defective title. It was further submitted that the proceedings were vitiated by fraud allegedly committed by the Society through its Secretary, who is related to the Petitioner and is a son of the original landowner.

8. Instances of alleged fraud have been enumerated. First, the application was instituted against a deceased person. Second, notices were shown as served upon the deceased at the address of the Society, and service reports were allegedly fabricated. Third, changes were made in the array of parties through revised Form VII applications without formal orders on amendment. It is contended that such procedure is unknown to law and that legal heirs were impleaded without proper process and with incorrect addresses. It is further alleged that after closure of proceedings, an application for reopening and amendment was filed but never adjudicated. It is also alleged that a forged No Objection Certificate purportedly bearing the Petitioner's signature was submitted. The Petitioner disputes the signature and asserts that she signs only in Marathi. Suppression of existence of an ancestral chawl and a temple on the property is also alleged. Learned counsel submitted that the Petitioner was never served with notice at her correct address at any stage, including during the original proceedings, the revised application, the corrigendum proceedings, and at the stage of registration of the conveyance deed under

Section 11(5) of MOFA. It is contended that the entire proceedings were conducted without affording the Petitioner an opportunity of hearing, thereby violating the principles of natural justice and rendering the order void.

9. It was argued that once the principal order dated 11.05.2022 is held to be void on account of fraud, lack of jurisdiction, and violation of natural justice, all consequential actions including the registered deed, corrigendum order, supplementary agreement, and mutation entry must also fail as being dependent upon the parent order.

10. The Petitioner asserts that the property in question is ancestral property originally owned by Late Laxman Pandurang Thakur, comprising Survey No. 239 Hissa No. 1 and Survey No. 182 Hissa No. 10 corresponding to C.T.S. No. 1732 situated at Dahisar, Taluka Borivali, Mumbai Suburban District. Upon the demise of Late Laxman Pandurang Thakur on 27.06.1995, the Petitioner and other legal heirs are stated to have inherited undivided co-ownership rights in the property. It is further submitted that the property consists of three structures, namely the building occupied by Respondent No. 1 Society, the tenanted structure known as Krishnabai Pandurang Thakur Chawl, and a Hindu temple constructed by the family. These structures are asserted to be longstanding and supported by documentary record.

11. The grievance of the Petitioner is that the impugned order and registered deeds convey the entire land admeasuring 835.60

sq. mtrs. to Respondent No. 1 without excluding the land beneath the chawl and temple, thereby affecting her undivided share and vested proprietary rights.

Reasons and Analysis:

12. I have considered the pleadings, the documents placed on record, the submissions advanced on behalf of the petitioner and the statutory scheme governing deemed conveyance.

13. At the outset, it is necessary to bear in mind the nature of proceedings under Section 11 of MOFA. The Competent Authority exercises a limited and summary jurisdiction. Its role is confined to enforcing the statutory obligation of the promoter to execute conveyance in favour of the society in terms of the agreements executed under Section 4. It is not a civil court. It does not adjudicate complicated questions of ownership or inter se title disputes. Those questions fall within the domain of the civil court.

14. The petitioner challenges the order of deemed conveyance primarily on the ground that the Competent Authority has conveyed land and rights beyond what the flat purchasers were contractually entitled to receive. It is contended that the property described in the impugned order includes areas not forming part of the sanctioned plan, and that ancestral structures and undivided rights of the legal heirs have been improperly included. The respondents, on the other hand, submit that the order merely enforces the statutory obligation of conveyance under Section 11 of MOFA and does not adjudicate title.

15. In this context, the law is no longer res integra. The Division Bench of this Court in *Zainul Abedin Yusufali Massawala and others versus Competent Authority (2016 SCC OnLine Bom 6028)* has clearly explained the legal effect of an order passed under Section 11 of MOFA. The Court held that a deemed conveyance results only in transfer of such right, title and interest as the promoter actually possesses. It does not enlarge the promoter's title. If the promoter or landowner is of the view that the conveyance order includes a larger extent of land or rights than what could legally be conveyed, the remedy lies in filing a substantive civil suit. The civil court has full jurisdiction to examine title deeds, ascertain the true extent of property, record oral and documentary evidence, and render findings on ownership. Importantly, the findings of the Competent Authority do not bind the civil court. The civil rights of the parties remain unaffected and open for adjudication.

16. This principle has been consistently followed in subsequent decisions of this Court, including in *Shimmering Heights CHSL and others versus State of Maharashtra (Writ Petition No. 3129 of 2016 decided on 6 April 2016), in P.R. Enterprises and others versus Competent Authority (Writ Petition No. 11251 of 2016 decided on 27 November 2018), and in Mehboob Ali Humza and others versus District Sub Registrar (3), Mumbai and others (Writ Petition No. 3129 of 2016 decided on 24 June 2016)*. In all these cases, the Court declined to exercise writ jurisdiction where the dispute centred around title, extent of land, development rights or

proprietary claims. It was emphasised that writ proceedings are not meant to resolve such disputes. Questions of ownership and quantum of land require detailed examination of documents, factual scrutiny, and sometimes oral evidence. A writ court does not conduct a trial. It cannot convert its supervisory jurisdiction into a fact finding exercise.

17. Applying these settled principles to the present case, it is evident that the petitioner's challenge substantially relates to the extent of land conveyed, the inclusion of particular structures, the validity of development rights, and the alleged overreach of the society. These are not pure questions of jurisdiction. They are mixed questions of fact and law. They require examination of title documents, historical transactions, revenue records, sanctioned plans and possibly expert evidence. Such adjudication cannot be undertaken in proceedings under Article 227.

18. Even if it is assumed that the impugned order has conveyed a larger area than what was contractually agreed, the legal position remains that the petitioner's substantive rights are not extinguished. The deemed conveyance operates only to the extent of the promoter's existing interest. If the petitioner establishes before a civil court that certain portions could not have been conveyed, appropriate declaratory and consequential relief can be granted. The civil court will not be constrained by any finding recorded by the Competent Authority.

19. The consistent judicial approach has been to preserve the hierarchy of remedies. Section 11 proceedings ensure that flat purchasers are not indefinitely deprived of conveyance. At the same time, they do not bar a full fledged civil adjudication on title. Entertaining the present petition and embarking upon an enquiry into disputed ownership would amount to bypassing the statutory remedy available before the civil court.

20. The petitioner has urged that the impugned order is vitiated for breach of principles of natural justice on the ground that he, being one of the legal representatives of the original owner, was not properly served and was denied an effective opportunity of hearing.

21. The legal position governing such a plea is settled by the judgment of the Supreme Court in *State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706*. In paragraphs 29 to 42.5, the Supreme Court has explained that natural justice is not an inflexible ritual. It is a means to ensure fairness, not an end in itself. A mere allegation of violation does not automatically invalidate the action. The Court must examine whether real prejudice has in fact been caused. The authority cannot assume absence of prejudice to justify non compliance. At the same time, the Court, upon examining the record, can decline to interfere if it finds that no actual prejudice has occurred. The ultimate test is whether the party had a fair opportunity to present its case and whether the result would have been different had a further opportunity,

including oral hearing, been granted. The statutory scheme does not mandate oral hearing in every case.

22. Paragraphs 31, 32 and 42.3 of the said decision further clarify that where foundational facts are undisputed and no real prejudice is demonstrated, breach of natural justice will not vitiate the order. Paragraph 36 specifically holds that the decisive question is whether the hearing would have made any difference to the outcome.

23. Applying these principles to the present case, the record indicates that Opponent No. 3A, one of the legal representatives of the deceased owner, was granted opportunity of hearing and participated in the proceedings. The other legal heirs of the original owner, namely Opponent Nos. 3B, 3C, 3D, 3E, 3N, 3G, 3L, 3K, 3H and 3J, have submitted their no objection to the grant of deemed conveyance. In that sense, the estate of the deceased owner stood sufficiently represented before the Competent Authority. The proceedings were not conducted behind the back of the estate as a whole.

24. The controversy before the Competent Authority turned on statutory obligations under MOFA, prolonged non execution of conveyance for twenty one years, existence of a registered co operative society, and the extent of proportional conveyance based on agreements executed under Section 4. These are matters determined primarily on documentary record. The proceedings under Section 11(3) are summary in nature and are based on

admitted documents such as registered agreements, society registration certificate, sanctioned plans, built up area details and correspondence. There was no adversarial factual enquiry requiring oral evidence or cross examination.

25. The petitioner has not demonstrated what additional material could have been placed on record had an oral hearing been granted. There is no indication as to how the statutory analysis would have changed. The plea of prejudice rests solely on the assertion that proper service was not effected upon him. Such assertion, without showing tangible impact on the decision, does not satisfy the test of real prejudice laid down in Sudhir Kumar Singh.

26. Paragraphs 42.4 and 42.5 of the said judgment make it clear that prejudice must be real and not speculative. In the present case, even assuming some procedural irregularity in service, the estate was represented, objections were heard through one of the legal representatives, and several heirs gave their consent. The petitioner has not established that absence of personal oral hearing altered the outcome or deprived him of placing any material fact.

27. In view of the statutory framework, the documentary nature of the proceedings under Section 11(3), and the principles laid down by the Supreme Court, the plea of breach of natural justice cannot be accepted. No real prejudice has been demonstrated. The impugned order, therefore, cannot be set aside on this ground.

28. In these circumstances, the proper course for the petitioner is

to institute a civil suit seeking declaration of title, partition if so advised, cancellation or rectification of the conveyance, and any other appropriate relief. All contentions on facts and law can be urged in such proceedings. The civil court shall decide the matter independently, without being influenced by the observations of the Competent Authority.

29. For these reasons, the petition is dismissed. The petitioner is relegated to avail remedies by way of civil suit before the competent civil court.

30. All questions are kept open.

31. There shall be no order as to costs.

(AMIT BORKAR, J.)