

AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No.12638 OF 2022

ATUL
GANESH
KULKARNI

Digitally signed by
ATUL GANESH
KULKARNI
Date: 2026.03.17
12:27:57 +0530

Kapil Upavan A & B Coop. Housing Society Limited, a registered housing cooperative society having address at S.No.662/1+2 & 665, Bibwewadi – Katraj, Munjeri, Chaitraban, Pune 411 037

- A. Babanrao Dharmaji Nalawade**,
Chairman, Age about 67 years,
Occupation : Retired
R/at: Flat No.A-1103, Survey No.
662/1+2 & 665, Bibwewadi – Katraj,
Munjeri, Chaitraban, Pune 411 037.
- B. Vyankatesh Balaji Deshpande**,
Chairman, Age about 48 years,
Occupation : Service
R/at: Flat No.A-701, Survey No.
662/1+2 & 665, Bibwewadi – Katraj,
Munjeri, Chaitraban, Pune 411 037. ... **Petitioners**

V/s.

- 1. Monroe Impex Private Limited**,
having its registered office at
4, Buona Casa, 2nd Floor, Opp.
Kashmir Arts Emporium, Sir P.M.
Road, Fort, Mumbai 400 001.
Through its Directors.
- A) Sharad Dattatray Bal,
Age about 64 years,
Occupation: Business,
R/at: Agarkar Bhavan, 2nd Floor,
Navi Peth, Pune 411 030.

- B) Vrinda Sharad Bal,
Age about 64 years,
Occupation: Business,
R/at: Agarkar Bhavan, 2nd Floor,
Navi Peth, Pune 411 030.
2. **Avinash Shridhar Wardekar,**
since deceased, through legal heirs
- A) Sima Hemant Shirali,
Age- Adult, Occu.: Business,
R/at – 105/25, Prabhat Road,
14th Lane, Pune 411 004.
- B) Manju Avinash Wardekar,
Age- Adult, Occu.: Business,
R/at – 105/25, Prabhat Road,
14th Lane, Pune 411 004.
- C) Soumitra Avinash Wardekar,
Age- Adult, Occu.: Business,
R/at – 105/25, Prabhat Road,
14th Lane, Pune 411 004.
3. **Pankaj Dyes & Chemicals Pvt. Ltd.,**
A private limited company, having
its registered office at 4, Buona Casa,
2nd Floor, Opp. Kashmir Arts
Emporium, Sir P.M. Road, Fort,
Mumbai 400 001.
Through its Director
Vrinda Sharad Bal,
Age about 64 years,
Occupation: Business,
R/at: Agarkar Bhavan, 2nd Floor,
Navi Peth, Pune 411 030
4. **District Deputy Registrar, Coop.
Housing Society,** Pune City, Sakhar
Sankul, Shivaji Nagar, Pune 411 005
5. **State of Maharashtra,**

through the office of Government
Pleader, High Court, Bombay

... Respondents

Mr. Anil Anturkar, Senior Advocate with Mr. Tejesh Dande, Mr. Abhang, Mr. Bharat Gadhvi, Mr. Satyajeet Salve, Mr. Jeevan Vidya Joshi, Mr. Parth Talekar and Mr. Aniket Shitole i/by Tejesh Dande & Associates for the petitioners.

Mr. Siddhesh Bhoje with Mr. Ashwin Pimpale i/by SSB Legal & Advisory for respondent Nos.1 and 3.

Mrs. M.S. Srivastava, AGP for respondent Nos.4 and 5-State.

CORAM : AMIT BORKAR, J.

RESERVED ON : FEBRUARY 12, 2026.

PRONOUNCED ON : MARCH 17, 2026

JUDGMENT:

1. The present writ petition has been filed under Article 227 of the Constitution of India challenging the judgment and order dated 22 March 2021 passed by respondent No.4 in exercise of powers under Section 11(4) of the Maharashtra Ownership Flats Act, 1963. By the said order, the competent authority partly allowed the application for deemed conveyance and modified the area of conveyance from 4100 square meters to 7269 square meters.

2. The background facts, according to petitioner, giving rise to the present petition may briefly be noted. A Development Plan layout dated 20 July 2019 was prepared pursuant to Commencement Certificate No.426 of 2006 in respect of lands

bearing Survey No.662/1+2 admeasuring approximately 13 Acres and 27 Gunthas and Survey No.665 admeasuring approximately 11 Acres and 5 Gunthas situated at Village Bibwewadi, Taluka Haveli, District Pune. These lands together admeasure about 24 Acres and 32 Gunthas. The layout plan relating to the said lands was revised from time to time in accordance with the sanctioned development permissions. Under the said DP layout plan the entire land was divided into seven phases. The dispute in the present proceedings relates to Phase V of the layout. The land forming part of Phase V admeasures in all 9,607.50 square meters and constitutes a portion of the larger parcel described above.

3. The ownership history of the larger land shows that the original owner, Mr. Pandurang B. Kadam, sold the property to Western India Erectors Ltd. by a registered sale deed dated 3 June 1981. In the year 1982 the name of the said company was changed to Western India Enterprises Ltd. Subsequently, Western India Enterprises Ltd. executed a registered lease deed dated 12 April 1989 in favour of respondent No.2, Mr. Avinash Wardekar, granting leasehold rights over the entire land for a period of 999 years. Under the terms of the lease, respondent No.2 was authorized to undertake construction and development on the said land and was also entitled to transfer or assign his leasehold interest in whole or in part. By order dated 25 October 2002 the Collector, Pune permitted the use of the said land for non-agricultural purposes. It further appears that certain entities associated with respondent No.2 had obtained financial assistance from Janata Sahakari Bank Ltd., Pune. Upon failure to repay the

loan amounts, the bank instituted two proceedings before the Co-operative Court at Pune. In settlement of those proceedings respondent No.2 agreed to mortgage a portion of land admeasuring 5.60 Acres out of the larger property in favour of the bank. Accordingly, a mortgage deed was executed on 31 March 1999 and subsequently registered on 25 August 2000. Thereafter, with the consent of the bank, respondent No.2 entered into development arrangements with respondent No.1, Monroe Impex Pvt. Ltd., and respondent No.3, Pankaj Dyes and Chemicals Pvt. Ltd. In pursuance thereof, respondent No.2 executed development agreements and corresponding powers of attorney dated 31 March 2006 and 3 April 2006 in favour of respondent No.1. These documents were registered before the Joint Sub-Registrar, Haveli No.1 on 5 April 2006. Similarly, development agreements dated 29 March 2006 and 3 April 2006 together with a power of attorney were executed in favour of respondent No.3 and were also registered on 5 April 2006. The documents on behalf of respondent No.1 were executed by Mr. Sharad Bal and Mrs. Vrinda Bal as directors of the company, who were also appointed as attorneys under the powers of attorney. By virtue of these development agreements, respondent Nos.1 and 3 obtained development rights in respect of portions of the project land aggregating to about 9,607.50 square meters. Although the development rights were granted to two different corporate entities, the project land itself remained a single consolidated parcel governed by a common layout. On the said land three buildings, namely, Wing A, Wing B and Wing C, were constructed.

Wings A and B comprise residential buildings while Wing C comprises commercial premises. The layout also provides for various parking facilities including parking on the stilt floors, basement areas and podium spaces between the buildings.

4. Subsequently, building plans were sanctioned by the Pune Municipal Corporation pursuant to Commencement Certificate dated 12 February 2007, permitting construction of the residential buildings Wing A and Wing B and the commercial building Wing C. The sanctioned plans were later revised by Commencement Certificate dated 25 June 2009 which permitted construction of residential built-up area of 7,269.90 square meters for Wings A and B and commercial built-up area of 4,675.20 square meters for Wing C by applying a higher FSI permissible for IT buildings. Disputes later arose regarding conveyance of the land corresponding to the residential buildings, leading the petitioner society to seek deemed conveyance under Section 11 of the Maharashtra Ownership Flats Act. After earlier proceedings and remand by this Court, respondent No.4 by order dated 22 March 2021 partly allowed the application and granted unilateral deemed conveyance in favour of the petitioner in respect of land admeasuring 4100.60 square meters corresponding to the built-up area of 7,269.90 square meters.

5. Learned Senior Advocate Mr. Anturkar submitted that respondent No.3, namely Pankaj Dyes and Chemicals Pvt. Ltd., would fall within the extended meaning of the expression “promoter” under the Maharashtra Ownership Flats Act. He pointed out that in the affidavit in reply filed by respondent No.1,

as well as in the proceedings before the competent authority, it has been clearly acknowledged that the development of the project was undertaken on the basis of a joint layout and that the building permission plan was also obtained jointly by Monroe Impex Pvt. Ltd. and Pankaj Dyes and Chemicals Pvt. Ltd. According to him, the construction of Buildings A, B and C was carried out pursuant to a common layout and a common sanctioned building plan. The development was therefore in the nature of a joint development undertaken by both entities. He further submitted that the same individuals, namely Mr. Sharad Bal and Mrs. Vrinda Bal, are the controlling persons behind both companies. In such circumstances, even if respondent No.3 has not executed flat purchase agreements with the purchasers, its active participation in the development activity and its role in causing construction of the buildings would bring it within the statutory definition of a promoter.

6. Learned Senior Counsel further submitted that the sanctioned building plans clearly indicate that the total area of the project plot is 9,607.50 square meters forming a single consolidated plot under the DP Layout Plan. The permissible FSI on the said plot is 9,607.50 square meters, with FSI of 1 applicable for residential construction. Out of this total FSI, residential FSI to the extent of 7,269.90 square meters has been utilised for construction of Buildings A and B belonging to the petitioner society. According to him, the land required for generation of such FSI must necessarily correspond to 7,269.90 square meters. The remaining land area of 2,337.60 square meters has been utilised for the IT building, namely Building C, which is entitled to an

incentive FSI multiplier of 2 resulting in construction of 4,675.20 square meters. He submitted that the sanctioned building plans clearly reflect this distribution of FSI and built-up area, thereby establishing that the land utilised for construction of Buildings A and B is 7,269.90 square meters and not merely 4,100.60 square meters as suggested by the respondents.

7. Learned Senior Counsel further argued that the inquiry under Section 11 of the Act is limited in scope and that the competent authority is required to consider primarily the flat purchase agreements and the sanctioned building plans. According to him, documents such as development agreements executed between the original land owner and the promoter, or other arrangements inter se between the parties, are not relevant for the limited purpose of deciding an application for deemed conveyance. He also submitted that the respondents' contention that the flat purchase agreements contemplated conveyance only of the property described as "Schedule III property" is misconceived. Clause 16 of the flat purchase agreement, which governs the obligation of conveyance, uses the expression "the land" and not "the said property". This distinction, according to him, clearly indicates that the conveyance obligation cannot be restricted to the property described in Schedule III.

8. Learned Senior Counsel further submitted that no conveyance deed has been executed either in respect of Building C or in favour of any condominium or association of apartment owners of Building C. He contended that under Section 11(1) of the Maharashtra Ownership Flats Act the promoter is under a

statutory obligation to execute a conveyance in favour of the co-operative society or the association or condominium of apartment owners. In the absence of such conveyance, title to the land does not pass. He also submitted that the deed of declaration relied upon by respondent No.3 was executed during the pendency of earlier proceedings initiated by the petitioner under Section 11 and therefore cannot defeat the petitioner's claim by reason of the doctrine of lis pendens. According to him, proceedings under Section 11 are not intended to adjudicate disputes between third parties, and the mere possibility that some third party may be affected cannot justify refusal to exercise jurisdiction under the said provision, particularly when the object of Section 11 is to provide a speedy and effective remedy to flat purchasers for securing conveyance of the land and building.

9. Learned Advocate Mr. Bhole appearing on behalf of respondent No.2 submitted that the present writ petition has been filed challenging the order dated 23 March 2021 passed by respondent No.4 in exercise of powers under Section 11(4) of the Maharashtra Ownership Flats Act, 1963. By the said order, the competent authority granted deemed conveyance in favour of the petitioner society in respect of land admeasuring 4100.60 square meters and issued the requisite certificate under the statutory provision. Learned counsel submitted that the impugned order correctly reflects the extent of land that could lawfully be conveyed to the petitioner society.

10. Elaborating the factual background, learned counsel submitted that the larger property comprises land bearing Survey

No.662 Hissa No.1+2 admeasuring 13 Acres and 24 Gunthas together with land bearing Survey No.665 admeasuring 11 Acres and 5 Gunthas situated at Village Bibwewadi, Taluka Haveli, District Pune, aggregating to 24 Acres and 32 Gunthas. The said land originally belonged to Mr. Pandurang B. Kadam and was subsequently sold to Western India Erectors Ltd. under a registered sale deed dated 3 June 1981. Thereafter, the said company executed a registered lease deed dated 12 April 1989 granting leasehold rights over the property to Mr. Avinash S. Wardekar for a period of 999 years. It was further submitted that Mr. Wardekar had mortgaged a portion of the said land to Janata Sahakari Bank Ltd., Pune and, with the consent of the bank, entered into development agreements with respondent No.1 Monroe Impex Pvt. Ltd. and respondent No.3 Pankaj Dyes and Chemicals Pvt. Ltd. The development agreements executed in favour of respondent No.1 related to a net developable area of 4100.60 square meters, whereas development rights in respect of a separate portion of land were granted to respondent No.3 for construction of the IT building. Learned counsel submitted that the FSI referred to in the development agreements corresponds with the FSI figures reflected in the flat purchase agreements and sanctioned building plans. Out of the total FSI generated for the project, 7,269.90 square meters was utilised for construction of residential buildings on the subject land and 4,675.20 square meters was utilised for construction of the IT building, part of which was generated by application of incentive FSI and TDR.

11. Learned counsel further relied upon the Government Resolution dated 22 June 2018 and submitted that the said resolution specifically clarifies that where TDR has been utilised in a layout, the conveyance of the building is to be granted only with reference to the plinth area and the appurtenant land and not proportionate to the entire built-up area generated through additional FSI. He submitted that this principle has also been recognised by this Court in *Marathon Era Co-operative Housing Society Ltd. v. Competent Authority and District Deputy Registrar, Co-operative Societies*, reported in 2024 SCC OnLine Bom 1115. Learned counsel also submitted, on instructions, that as per the prevailing Unified Development Control and Promotion Regulations additional FSI to the extent of 14,762.16 square meters is presently available on the subject land.

12. It was further contended that the jurisdiction exercised by the competent authority under Section 11 of the Maharashtra Ownership Flats Act is summary in nature and does not extend to adjudication of complicated questions relating to title. Learned counsel pointed out that respondent No.3 is not a party to the sale agreements executed with the flat purchasers and is not a signatory to such agreements. According to him, respondent No.3 cannot therefore be treated as a promoter within the meaning of the Act. He further submitted that respondent No.3 has already executed a Deed of Declaration dated 6 November 2019 under the Maharashtra Apartment Ownership Act, thereby creating undivided interests in the IT land in favour of apartment owners. In such circumstances, any conveyance in favour of the petitioner

society beyond the area of 4100.60 square meters, which corresponds to the land upon which Buildings A and B were constructed by respondent No.1, would exceed the land available with the promoter and would fall outside the jurisdiction of the competent authority under Section 11. Learned counsel therefore submitted that the impugned order does not suffer from any legal infirmity and that the writ petition is liable to be dismissed with costs.

REASONS AND ANALYSIS:

13. The record placed before the Court clearly indicates that the two companies involved in the present dispute are separate corporate entities. Monroe Impex Pvt. Ltd. is shown as one promoter in the development documents, while Pankaj Dyes and Chemicals Pvt. Ltd. is shown as another promoter. Both companies hold development agreements executed in their own names. These agreements are duly registered and relate to particular portions of the larger parcel of land. The documents do not show a single combined grant of development rights in favour of both companies together. Instead, each company appears in the record with its own agreement and with rights referable to specific parts of the project land.

14. It is true that certain individuals who represented these companies appear to be common. However, that fact by itself cannot lead to the conclusion that both companies are legally the same entity. In company law, a company has its own legal identity which is separate from the individuals who control it. The mere

fact that the same persons may act for two companies does not merge their legal existence. Therefore, on the basis of the documents on record, Monroe Impex Pvt. Ltd. and Pankaj Dyes and Chemicals Pvt. Ltd. must be treated as separate promoters for the purposes of examining the present dispute.

15. The larger land involved in the project is situated within the development plan area of Bibwewadi village in Pune district. The development of this land has taken place under permissions granted by the planning authority. The commencement certificates and sanctioned plans were issued by the Pune Municipal Corporation. They show how the development was approved and how the built-up area was distributed between different buildings. The sanctioned plans also indicate how the Floor Space Index and built area were allocated between the residential buildings and the IT building forming part of the same layout.

16. The documents show that Janata Sahakari Bank Ltd. was involved in the project because a portion of the land was mortgaged in its favour. The mortgage deeds and the bank's written consents permitting development form part of the chain of title. These documents indicate that the promoters were required to act within the limits permitted under the mortgage arrangements.

17. The legal position governing proceedings under Section 11 of the Maharashtra Ownership Flats Act is fairly settled. Proceedings under Section 11 are of a summary nature. The competent authority exercising powers under that provision is not

expected to conduct a detailed trial or adjudicate complex disputes of title. The authority examines limited issues. In doing so, it primarily looks at the sanctioned building plan and the agreements executed with the flat purchasers. These documents show the nature of the construction that was sanctioned and the rights that were promised to the purchasers at the time of sale. Other documents, such as development agreements or arrangements between different promoters, may provide background. However, they are not the material for deciding an application under Section 11.

18. The petitioner in the present case relies mainly upon the sanctioned building plans and the flat purchase agreements. On the basis of these documents, the petitioner seeks conveyance of land which, according to it, corresponds to the built-up area of the residential buildings. However, it must be noted that the competent authority has already granted a certificate of deemed conveyance in favour of the petitioner society. The certificate relates to the land corresponding to the built-up area recorded in the proceedings before the authority. The figures noted by the competent authority show that the conveyance relates to land of 4100.60 square metres and to the built-up area figure of 7263.90 square metres connected with the petitioner's buildings.

19. The material on record shows that the competent authority treated respondent No.1 and respondent No.3 as separate promoters. The development agreements executed in favour of each company are separate documents. Each agreement bears its own registration details and serial entries in the registration

records. They are executed in favour of different legal persons. In such circumstances, the competent authority could not have simply ignored these documents and treated both companies as a single promoter. To do so would have required a deeper inquiry into the relationship between the companies and their internal management.

20. It is necessary at this stage to consider the principle known as lifting the corporate veil. This principle allows a court, in exceptional circumstances, to disregard the separate legal personality of a company and examine the real persons behind it. However, this power is exercised only in limited situations where the facts clearly justify such intervention. The normal rule of law is that a company has an independent legal existence. Therefore, the corporate veil is not lifted lightly or casually. The power to lift the corporate veil is usually exercised by courts having full jurisdiction to examine complex questions of fact and law. Such examination often requires detailed evidence and a careful study of the entire chain of transactions. A competent authority acting under Section 11 does not exercise such wide powers. The authority's function is confined to deciding whether the society is entitled to conveyance of the land connected with the building constructed and sold to flat purchasers.

21. The Court must also note the deed of declaration executed by respondent No.3 during the pendency of earlier proceedings. That document relates to a separate legal arrangement concerning the IT building. The existence of that instrument may give rise to questions regarding competing claims over certain portions of the

land. In the present case, determining the legal effect of such a declaration would require a full examination of evidence and competing claims, which is the function of a civil court.

22. Another relevant aspect arises from the Government Resolution dealing with Transferable Development Rights and the applicable municipal rules. These provisions indicate that when additional FSI is generated through TDR or IT incentives, the land required to be conveyed for residential buildings must normally correspond to the plinth area and the appurtenant land connected with those buildings.

23. In view of the above reasoning, the petition cannot succeed. The Court cannot expand the scope of Section 11 proceedings so as to undertake a full restructuring of the title position of the project land or to disregard the separate legal existence of the companies involved. If the petitioner believes that additional land is legally required to be conveyed, or if it contends that the corporate structure of the promoters has been used in a manner that justifies lifting the corporate veil, the petitioner must approach a competent civil court. In such a suit, all concerned parties can be joined.

24. For the reasons recorded in the foregoing discussion, the writ petition fails and is accordingly dismissed.

(i) The Judgment and Order dated 22 March 2021 passed by respondent No.4 in exercise of powers under Section 11(4) of the Maharashtra Ownership Flats Act, 1963, granting unilateral deemed conveyance in favour of the

petitioner society in respect of land admeasuring 4100.60 square meters corresponding to 7269.90 square meters of built-up area, is hereby confirmed.

(ii) It is clarified that if the petitioner society claims entitlement to any additional land beyond 4100.60 square meters, such claim would necessarily involve adjudication of disputed questions relating to title and corporate structure. The petitioner shall be at liberty to pursue such relief by instituting appropriate civil proceedings before a competent civil court. All contentions of the parties in that regard are kept open.

(iii) The dismissal of the present petition shall not preclude the petitioner or any other party from agitating their independent rights, if any, in appropriate proceedings in accordance with law.

(iv) In the event such civil proceedings are instituted, the civil court shall decide the same on its own merits and in accordance with law, uninfluenced by any observations made in the present judgment and order.

25. In the facts and circumstances of the case, there shall be no order as to costs.

26. Rule stands discharged. Pending applications, if any, stand disposed of.

(AMIT BORKAR, J.)