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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8150 OF 2021

Jai Santoshi Maa Tower Cooperative Housing Society Limited, A cooperative housing society, registered under the provisions of Maharashtra Cooperative Societies Act, 1960, and having address at: Pipeline Road, Louiswadi, Thane (West) 400 604, through it's Secretary Mohan Raghunath Wade

... Petitioner

ATUL
GANESH
KULKARNI

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V/s.

1. **The Competent Authority & District Deputy Registrar, Coop. Societies,** Thane District, Thane, First Floor, Gaondevi Mandal Building, Gaondevi, Thane West 400 602
2. **Solanki Developers,** through its partners
 - (i) Nirmal Devichand Solanki
 - (ii) Uttamchandra Umedmal Solanki, having its office at Nirmal House, Tembi Naka, Thane West 400 602
3. **Amirata Markandey Yadav**
4. **Lallan Bhandari Yadav**
5. **Vijay Bhandari Yadav**
6. **Dasharath Baban Yadav**
7. **Ramdular Ramharak Yadav**
8. **Chandravati Baban Yadav**
9. **Ramlal Ramharak Yadav,**



Nos.3 to 9, r/at Louis Wadi,
Thane (West) 400 604

10. Tulsi Enterprises, a partnership firm
through it's partner

- (i) Birbal T. Yadav,
- (ii) Matsyagandha G. Vaity,
- (iii) Radha S. Yadav,
- (iv) Sandip Indradev Yadav,
- (v) Sanjeev Indradev Yadav,
- (vi) Vishal Ganesh Vaity,
- (vii) Meena Birbal Yadav,

having its office at Shop No.3,
Suryadarshan Tower, Opp. Nitin Co.,
ESIS Road, Panchpakhadi,
Thane (West) 400 602

**11 Jai Santoshi Mata Rahiwashi Sahakari
Grunirman Sanstha (Marya) – Proposed,**

through it's promoter Sachin Ghatval,
having its office at Final Plot No.91,
Panchpakhadi, Pipeline Road,
Luiswadi, Thane (West) 400 604

... Respondents

Mr. Shriniwas S. Patwardhan i/by Mr. Sandesh
Deshpande, for the petitioner.

Mr. Ketan Joshi, 'B' panel counsel with Mrs. M.S.
Srivastava, AGP for respondent No.1-State.

Mr. Sagar A. Joshi for respondent No.2.

Mr. Mandar Limaye with Mr. Vedant Bende for
respondent No.11.

CORAM : AMIT BORKAR, J.

RESERVED ON APRIL 20, 2026

PRONOUNCED ON : APRIL 28, 2026

**JUDGMENT:**

1. By the present writ petition instituted under Articles 226 and 227 of the Constitution of India, the petitioner calls in question the order dated 4 September 2018 passed by respondent No.1 in Deemed Conveyance Application No.124 of 2018, whereby the said application came to be partly allowed.

2. The facts giving rise to the present proceedings, as set out by the petitioner, are that respondent No.2 is stated to be the owner of a piece and parcel of land bearing Final Plot No.91, admeasuring 980.82 square meters, under Town Planning Scheme No.1 (Final), situate at Village Panchpakhadi, Taluka and District Thane. Respondent Nos.3 to 9 are stated to be the owners of another adjoining parcel of land bearing Final Plot No.93/B, admeasuring 630.32 square meters, also forming part of Town Planning Scheme No.1 (Final), situated at the same Village, Taluka and District. Both the aforesaid plots, namely Final Plot Nos.91 and 93/B, being contiguous to each other, are hereinafter collectively referred to as “the said property”.

3. The petitioners were the original applicants in Deemed Conveyance Application No.124 of 2018 preferred before the learned Competent Authority and District Deputy Registrar, Co-operative Societies, Thane District, being respondent No.1 herein, under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, seeking grant of deemed conveyance in respect of the said property.



4. It is the case of the petitioners that respondent Nos.2 and 10, under a Joint Venture Agreement dated 8 August 2003, agreed to undertake composite development of the said property. Pursuant thereto, respondent Nos.2 and 10 are stated to have constructed the building standing on the said property. According to the sanctioned plan bearing V.P. No.95/100/TMC/TDD/719 dated 27 June 2002, initial sanction was granted for an area admeasuring 1161.570 square metres, there being an alleged unauthorised encroachment over 449.260 square metres, which came to be reckoned in Floor Space Index upon possession being taken. A commencement certificate bearing V.P. No.95/100/TMC/TDD/3875 dated 12 March 2003 was thereafter issued for construction of a building comprising stilt plus five upper floors. It is further contended that by amended commencement certificate dated 23 December 2004 and sanctioned plan bearing V.P. No.95/100/TMC/TDD/4314 of the same date, revised sanction was granted for a total area admeasuring 1610.830 square metres. As per Condition No.12 of the commencement certificate, the developers were required to furnish acknowledgment or receipt to the Slum Rehabilitation Authority showing that possession had been taken together with the encroached portion. Thereafter, sanction for sixth and seventh floors was granted. The Thane Municipal Corporation issued part occupation certificate bearing V.P. No.95/100/TMC/TDD/396 dated 12 September 2007 in respect of a building consisting of stilt plus six floors. According to Condition No.3 thereof, F.S.I. of 1 was considered for Final Plot No.91 under T.P.S. No.1. The petitioners further state that upon



obtaining the development proposal papers under the Right to Information Act, 2005, it was revealed from the noting at page 57 that the developers had agreed to convey both the plots to the society prior to issuance of occupation certificate so as to avoid misuse of F.S.I.

5. According to the petitioners, it was the obligation of the Thane Municipal Corporation to remove the encroachment existing on Final Plot No.91; however, the Corporation was unable to do so. It is further alleged that Final Plot Nos.91 and 93/B were never formally amalgamated. Nonetheless, respondent No.2 is stated to have taken possession of Final Plot No.91 together with the encroached portion, and F.S.I. of 1 was consumed for construction of the building of the petitioner society by taking such encroachment into consideration. Respondent Nos.2 and 10 constructed the building of the petitioner society comprising 35 flats. It is further stated that respondent Nos.2 and 10 executed agreements for sale with the individual flat purchasers in terms of Section 4 of MOFA, all of which were duly stamped under the Bombay Stamp Act, 1958 and duly registered under the Registration Act, 1908. The said respondents had also agreed to convey the land in favour of the petitioner society. However, they failed to execute the conveyance transferring their right, title and interest in the land and building in favour of the petitioner society within the time contemplated under MOFA.

6. The petitioners further assert that respondent Nos.2 and 10 failed to obtain occupation certificate for the seventh floor. Consequently, the petitioner society itself obtained occupation



certificate bearing V.P. No.95/100/TMC/TDD/5 dated 29 April 2015 under the Amnesty Scheme of Thane Municipal Corporation. It is reiterated that respondent Nos.2 to 10 failed to execute conveyance in respect of the said property and building in favour of the petitioner society, though the society was legally entitled thereto under MOFA. The petitioners, through their Advocate Shri Dattatray H. Daund, issued notice dated 14 December 2017 calling upon respondent Nos.2 to 10 to execute conveyance; however, despite service thereof, no steps were taken.

7. In the aforesaid circumstances, the petitioners instituted Application No.124 of 2018 under Section 11(3) of MOFA before respondent No.1 praying for grant of unilateral deemed conveyance and registration thereof. Respondent No.2 appeared in the said proceedings and filed a say contesting the claim. Respondent No.11, a proposed society, filed an application seeking impleadment as party respondent. In the said application, respondent No.11 contended that structures and shop premises existed on Final Plot No.91 and that its members had been occupying the same since the year 1974. It was further contended that respondent No.11 had 64 members. The learned respondent No.1 allowed the impleadment application, whereupon respondent No.11 filed a detailed reply reiterating the aforesaid contentions and raising further grounds. Despite service, the remaining respondents did not appear before respondent No.1, and therefore public notice came to be issued in the local newspapers namely "Prahar" and "The Afternoon" in their issues dated 4 August 2018.



8. It is the case of the petitioners that they contended before respondent No.1 that respondent No.11 was not a registered co-operative society and therefore had no legal right in respect of the said property. It was also urged that the building plans had been sanctioned by taking into account the F.S.I. relatable to both plots. However, without properly considering the said aspects, the learned Competent Authority and District Deputy Registrar, Co-operative Societies, Thane, by the impugned order dated 4 September 2018, partly allowed the application by issuing certificate of deemed conveyance only in respect of Final Plot No.93/B admeasuring 630.32 square meters, while rejecting the claim insofar as Final Plot No.91 is concerned. Being aggrieved thereby, the present writ petition has been filed.

9. Mr. Patwardhan, learned Advocate appearing for the petitioner, invited attention to the Third Schedule forming part of the agreements executed with the flat purchasers and submitted that the entire piece and parcel of land admeasuring 1611.14 square meters comprising Final Plot Nos.91 and 93/B constituted the subject matter of the said agreements. He further invited attention to the sanctioned plan dated 12 September 2006, wherein the area statement prepared for the proposed development specifically records that the plot area consisted of Final Plot Nos.93/B and 91, and the permissible floor area was shown as 1610.830 square meters. The total built-up area was reflected as 1592.836 square meters. On the strength of these documents, he submitted that the learned Competent Authority committed error in granting conveyance only in respect of Final



Plot No.93/B admeasuring 630.32 square meters, while rejecting the claim for conveyance in respect of Final Plot No.91. Inviting attention to the submissions advanced on behalf of the erstwhile owner before the authority below, learned counsel submitted that although no specific reasons are recorded in the impugned order, it appears that the declaration of Final Plot No.91 as a slum area under Section 3C of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 weighed with the Competent Authority while declining relief. He submitted that mere declaration of Final Plot No.91 as a slum area under the provisions of the Slum Act would not divest or curtail the jurisdiction of the Competent Authority exercising powers under the Maharashtra Ownership Flats Act. It was contended that under Section 11 of MOFA, the right, title and interest of the promoter in the land are required to stand transferred in favour of the organisation of flat purchasers and, therefore, the Competent Authority could not have rejected the prayer for grant of conveyance in respect of Final Plot No.91.

10. The aforesaid submissions were opposed by Mr. Joshi, learned Advocate appearing on behalf of respondent No.2. He submitted that grant of deemed conveyance in favour of the petitioner would seriously prejudice and adversely affect implementation of the slum rehabilitation scheme contemplated under Section 3B of the Slum Act. He further submitted that under Clause 19 of the agreement, conveyance was agreed to be executed only after completion of development of the entire property, and since such development has not yet been completed,



no conveyance could presently be directed to be executed.

11. Mr. Limaye, learned Advocate appearing for respondent No.11, submitted that in the event deemed conveyance is granted, an appropriate clarification may be issued that conferment of such deemed conveyance shall not prejudice or affect the rights and claims of the proposed respondent No.11 society, stated to consist of slum dwellers occupying Plot No.91.

REASONS AND ANALYSIS:

12. I have considered the rival submissions advanced on behalf of all parties and I have also carefully gone through the documents placed on record.

13. Mr. Patwardhan, learned Advocate for the petitioner, has drawn attention of the Court to the Third Schedule appended to the agreements executed with the flat purchasers. It is seen from the said schedule that the property agreed to be developed and enjoyed was not described as only Final Plot No.93/B. There is no recital in the schedule showing that Final Plot No.91 stood excluded from the development transaction. On reading of the material indicates that the entire land admeasuring 1611.14 square meters consisting of Final Plot Nos.91 and 93/B was treated as one property for development purpose. The sanctioned plan dated 12 September 2006 and the area statement accompanying same also proceed on same basis. In the area statement, the plot area is shown by including both final plots together. The permissible floor area is mentioned as 1610.830 square meters. The total built up area is shown as 1592.836 square meters. Thus,



the documents originating from promoter side and authority side both indicate a combined development.

14. In development matters, FSI, open spaces, built up entitlement, sanctioned construction and purchaser rights all move from the land shown in sanctioned plans. If promoter himself has approached planning authority by representing both plots as development land and has obtained benefit on that footing, then later it becomes difficult to accept a case that only one plot is liable for conveyance and the other may be retained. A promoter cannot take advantage of larger land area for construction and thereafter deny corresponding benefit to flat purchasers.

15. When promoter sanctioned layout, has proceeded upon Final Plot Nos.91 and 93/B as one development block, the Court finds it difficult to accept that conveyance can thereafter be reduced to one part. Such interpretation would mean that purchasers would receive burden of construction without corresponding title benefit in land. That could not have been legislative intention of MOFA.

16. The submission therefore made on behalf of petitioner that the Competent Authority committed error in granting conveyance only in respect of Final Plot No.93/B deserves acceptance. The impugned order, to that extent, appears to have severed the two plots without recording any adequate foundation for such separation. The record further shows that the building was sanctioned and constructed by considering FSI relatable to both plots together. Once this factual position is borne out, consequences follow. If promoter has already enjoyed development



potential arising from the whole land for purpose of construction and commercial sale of flats, then purchasers through their co-operative body cannot be denied the corresponding right to obtain conveyance of the whole land which stood utilised in development exercise.

17. Mr. Patwardhan has submitted that though impugned order does not expressly state so, it appears that declaration of Final Plot No.91 under the Slum Act may have weighed with authority while declining relief. I am unable to hold that slum declaration by itself destroys, suspends or exhausts the jurisdiction of Competent Authority under MOFA. The two enactments operate in separate fields. The Slum Act is enacted for improvement, clearance, redevelopment, and protection of occupiers in slum areas. Its concern is housing and rehabilitation. MOFA is consumer protective legislation intended to regulate promotion, sale, and transfer of flats and to secure conveyance of title in favour of flat purchasers. The object of one statute cannot nullify the mandate of another unless legislature expressly so provides. Harmonious construction is therefore necessary. A declaration under the Slum Act may certainly create obligations, restrictions, and control over the land. It may affect manner of redevelopment. It may require implementation of rehabilitation scheme. It may recognise rights of eligible occupants. But such declaration does not wipe away the promoter's obligation already arising under sale agreements and statutory scheme of MOFA. Unless there is clear inconsistency making their operation impossible, both statutes must be allowed to function together.



18. Section 11 of MOFA imposes consequence where promoter fails to execute conveyance. Once promoter has developed property, sold flats, received consideration and enabled occupation, the right, title, and interest of promoter in the land are required to be transferred to the organisation of purchasers. The Competent Authority acts to enforce that obligation when promoter defaults. Therefore, prayer for conveyance in respect of Final Plot No.91 could not have been rejected merely on assumption that the land is touched by slum declaration.

19. Mr. Joshi is justified in pointing out that if conveyance is read in unqualified terms, implementation of a slum rehabilitation scheme under Section 3B of the Slum Act may face difficulty. Rights of occupiers and rehabilitation cannot be ignored by grant of conveyance. Court must therefore balance statutes.

20. The submission of Mr. Limaye for respondent No.11 also deserves consideration. The proposed society states that structures and shop premises exist on Final Plot No.91 and that its members are in occupation since year 1974. It therefore seeks clarification that deemed conveyance shall not prejudice its rights. If persons are claiming independent rights under special statute, those claims should not be defeated by an order in conveyance proceedings. The claim of petitioner society for conveyance and the claim of respondent No.11 for occupancy or rehabilitation are not destructive of each other. Both can coexist. Title transferable by promoter can pass to petitioner society, while lawful rights of occupiers continue subject to statutory adjudication. Conveyance proceeding is not forum for extinguishing slum rights.



21. Grant of deemed conveyance does not mean that occupants stand removed by operation of one certificate. Nor does it mean that machinery under Slum Act becomes redundant. It means that promoter ceases to hold transferable interest which law required him to pass to purchasers. That interest passes with all encumbrances and restrictions attaching to land. Whoever takes conveyance takes it subject to law.

22. Thus, proper legal position would be that promoter's title cannot be retained by him by taking shelter of claims of others. Purchasers obtaining conveyance cannot use same as means to take away protected occupants contrary to statute.

23. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

(i) The writ petition is allowed;

(ii) The order dated 4 September 2018 passed by respondent No.1 in Deemed Conveyance Application No.124 of 2018 is quashed and set aside to the extent it refuses grant of deemed conveyance in respect of Final Plot No.91;

(iii) It is declared that the petitioner society is entitled to deemed conveyance in respect of the entire property forming subject matter of development, namely Final Plot No.91 admeasuring 980.82 square metres and Final Plot No.93/B admeasuring 630.32 square metres, aggregating approximately 1611.14 square metres, situated at Village Panchpakhadi, Taluka and District Thane;



(iv) Respondent No.1, being the Competent Authority under Section 11 of the Maharashtra Ownership Flats (Regulation of Promotion, Construction, Sale, Management and Transfer) Act, 1963, shall issue fresh certificate of deemed conveyance in favour of the petitioner society in respect of the aforesaid entire property and shall complete all consequential steps, including execution and registration of unilateral conveyance deed, within a period of eight weeks from the date of receipt of authenticated copy of this order;

(v) It is clarified that grant of deemed conveyance in favour of the petitioner society shall remain subject to rights, if any, of respondent Nos.2 & 11, its alleged members or any other eligible occupants under the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, and subject further to any sanctioned slum rehabilitation scheme, order or proceedings competent in law;

(vi) It is further clarified that this order does not adjudicate finally upon inter se claims of possession, eligibility, tenancy, occupancy, rehabilitation entitlement or any independent title claim of respondent Nos.2 & 11 or any third party, and all such contentions are expressly kept open to be decided by competent forum in accordance with law;

(vii) Rule is made absolute in the above terms. There shall be no order as to costs;

(AMIT BORKAR, J.)