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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13649 OF 2025

1. Dev Ashish Co-operative
   Housing Society Ltd.
2. Sharma Developers Pvt. Ltd.
   Mulund (East), Mumbai ....Petitioners

V/S

1. State of Maharashtra
   through its Urban Development Department
2. Shri Varad Co-operative Housing
   Society Ltd.
3. District Deputy Registrar (T) Ward
   Co-operative Societies (2) East Suburban,
4. Sub-Registrar of Assurances,
   Kurla 1,2,3,4, Mumbai.
5. Inspector General of Registration &
   Chief Controlling Revenue Authority ....Respondents

Mr. Aditya Pimple with Mr. Kunal Chheda *for the Petitioners.*
Ms. Sulbha Chipade, AGP *for Respondents/State.*
Mr. Pushkar H. Naik i/b Mr. Karan Vaity *for Respondent No.2.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 01 JULY 2026.
PRONOUNCED ON: 07 JULY 2026.

J U D G M E N T

1. Petitioner-Society has filed the present Petition challenging order dated 17 July 2023 passed by the District Deputy Registrar, Co-operative Societies (2), East Suburban, Mumbai and the Competent

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Authority (**Competent Authority**) issuing certificate of unilateral deemed conveyance in favour of Respondent No.2-Society. The challenge by Petitioners to conveyance granted in favour of Respondent No.2 is restricted to conveyance of land admeasuring 49.43 square meters out of land forming part of CTS No.872 of Village Mulund (East), Taluka Kurla, District Mumbai Suburban. Petitioner-Society contends that the entire CTS No.872 admeasuring 284.10 square meters has already been conveyed to it vide order of the Competent Authority dated 9 May 2014. Petitioner-Society contends that without impleading it to the Application filed by Respondent No.2-Society, land admeasuring 49.43 square meters out of CTS No.872, which is already owned by the Petitioner-Society, is erroneously conveyed in favour of Respondent No.2-Society. Petitioner-Society has accordingly challenged the order of deemed conveyance dated 17 July 2023, registered deed of unilateral deemed conveyance dated 19 December 2023 as well as Mutation Entry No.1346 of 2024 dated 21 June 2024.

2. Petitioner No.1 is a Co-operative Housing Society formed by purchasers of units in the building constructed on land bearing Survey No.135, Hissa No.1 and CTS Nos.872, 872/1 to 11 of Village Mulund, Taluka Kurla, Mumbai Suburban District. Petitioner No.1-Society applied to the Competent Authority for grant of deemed conveyance in respect of land and building by filing Application No.477 of 2014. To that Application, Petitioner No.1-Society impleaded the erstwhile land owners as well as their Developer-M/s. Ashish Builders as party Respondents. By order dated 9 May 2014, the Competent Authority allowed the Application of Petitioner No.1-Society and issued certificate

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of unilateral deemed conveyance of land admeasuring 445 square meters bearing Survey No.135, Hissa No.1 and CTS No.872, 872/1 to 11, Village Mulund (East), Taluka Kurla, Mumbai Suburban District. Accordingly, a Deed of Conveyance dated 18 December 2014 has been executed and registered in the office of the Sub-Registrar of Assurances, Kurla (1).

3. Petitioner No.1-Society has undertaken redevelopment of its building and has accordingly entered into Development Agreement dated 5 June 2025 with Petitioner No.2-Sharma Developers Private Limited. This is how both the Petitioners claim rights in respect of entire land admeasuring 445 square meters forming part of CTS Nos.872, 872/1 to 11.

4. Respondent No.2 is also a Co-operative Housing Society formed by purchasers of adjoining land bearing essentially CTS No.871. Respondent No.2-Society filed Application No.29 of 2023 for grant of deemed conveyance of land and building and impleaded to its application the erstwhile land owners as well as Mr. Rajnikant Deshmukh, Promoter, who constructed the building. Application No.29 of 2023 filed by Respondent No.2-Society has been allowed by the Competent Authority by order dated 17 July 2023 issuing certificate of unilateral deemed conveyance in respect of land admeasuring 750.39 square meters comprising of 700.95 square meters from CTS No.871 and 49.43 square meters from CTS No.872 of Village Mulund, Taluka Kurla, Mumbai Suburban District. Respondent No.2-Society has thus secured conveyance of portion of land admeasuring 49.43 square meters out of CTS No.872, whole of which was already conveyed to the Petitioner-

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Society by the Competent Authority vide certificate dated 9 May 2014. Respondent No.2-Society has accordingly executed and registered deed of unilateral deemed conveyance dated 19 December 2023. Consequently, Mutation Entry No.1346 of 2024 is certified on 21 June 2024 recording the name of Respondent No.2-Society in the revenue records.

5. Petitioners are aggrieved by conveyance of portion of land admeasuring 49.43 square meters out of total area of 284.10 square meters of CTS No.872 in favour of Respondent No.2-Society and has accordingly filed the present Petition.

6. I have heard Mr. Aditya Pimple, the learned counsel appearing for Petitioners, who submits that the Competent Authority has grossly erred in conveying portion of land admeasuring 49.43 square meters from CTS No.872 which has already been conveyed by the Competent Authority in favour of Petitioner No.1-Society vide certificate of deemed conveyance dated 9 May 2014. That Petitioner No.1-Society was not impleaded by Respondent No.2-Society to its Application despite knowing the fact that the whole of CTS No.872 has already been conveyed in favour of Petitioner No.1-Society. That the impugned order is passed behind the back of the Petitioners and therefore the proceedings need to be remanded for fresh adjudication and for deletion of land admeasuring 49.43 square meters from conveyance of Respondent No.2-Society. He submits that Respondent No.2-Society itself has restricted prayer for grant of only easementary rights in CTS No.872. That predecessor in title of Respondent No.2-Society had merely easementary right in CTS No.872. That no part of CTS No.872

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was conveyed or assigned to the predecessors in title of Respondent No.2-Society. He therefore submits that the impugned order of deemed conveyance as well as the impugned deed of conveyance and the mutation entry deserve to be set aside.

7. *Per contra,* Mr. Naik, the learned counsel appearing for Respondent No.2-Society opposes the Petition submitting that there is no error in the certificate of unilateral deemed conveyance issued by the Competent Authority. That Petitioners were not necessary parties to application filed by Respondent No.2-Society. That portion of land admeasuring 49.43 square meters out of CTS No.872 was sold by Smt. Kamalabai Moreshwar Deshmukh/Pradhan while selling CTS No.871 for access road. That Shri Harishchandra Raghunath Kudaskar secured ownership rights in respect of the land sold towards road out of CTS No.872, who later on assigned the same to the Developer of Respondent No.2-Society. That therefore, the Competent Authority has rightly conveyed the land admeasuring 49.43 square meters out of CTS No.872 to Respondent No.2-Society. He submits that Competent Authority is not expected to go into complicated issue of title and the remedy, if any, for the Petitioners is to file a suit. He relies on order of this Court in ***M/s. Shree Chintamani Builders vs. State of Maharashtra & Ors.***[1]. He prays for dismissal of the Petition.

8. Rival contentions urged on behalf of all the parties now fall for my consideration.

9. The case involves overlapping of conveyance in respect of portion of land admeasuring 49.43 square meters. Land bearing CTS No.872

1 Writ Petition No.2839 of 2013, decided on 11 August 2016

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admeasures 284.10 square meters, whole of which has already been conveyed to Petitioner No.1-Society vide certificate of unilateral deemed conveyance dated 9 May 2014. However, while conveying land bearing CTS No.871 (*admeasuring 700.95 square meters*) the Competent Authority has also conveyed portion of land admeasuring 49.43 square meters from CTS No.872 in favour of Respondent No.2-Society. Thus, when certificates dated 9 May 2014 and 17 July 2023 are read together, both Petitioner No.1-Society and Respondent No.2-Society can claim ownership in respect of land admeasuring 49.43 square meters of CTS No.872. This is the incongruous situation which has arisen on account of issuance of two distinct certificates of deemed conveyance.

10. The problem has arisen on account of non-impleadment by the rival Societies in the respective proceedings. The first conveyance has been issued in favour of Petitioner No.1-Society on 9 May 2014 which was not challenged by Respondent No.2-Society. Without questioning conveyance of land admeasuring 49.43 square meters of CTS No.872 in favour of Petitioner No.1-Society, Respondent No.2-Society sought conveyance of that very land in Application No.29 of 2023. Since there is overlap in respect of portion of land admeasuring 49.43 square meters of CTS No.872, this Court could have considered remanding Application No.29 of 2023 for fresh adjudication before the Competent Authority. However, such course of action would not resolve the dispute between the parties. This is because there is no challenge to certificate dated 9 May 2014 issued in favour of Petitioner No.1-Society and merely remanding Application of Respondent No.2-Society for fresh adjudication would not resolve the dispute between the parties. The aim

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of the Petitioners is to have the order dated 17 July 2023 set aside so that the earlier order dated 9 May 2014 can survive. Though Petitioners accuse Respondent No.2-Society in not impleading Petitioner No.1-Society while securing the order dated 17 July 2023, they conveniently ignore the position that Respondent No. 2 was not impleaded in application filed by Petitioner No.1-Society.

11. Also, though the dispute is about a small portion of land admeasuring 49.43 sq. mtrs, the impugned order dated 17 July 2023 also conveys land of CTS No.871 admeasuring 700.95 square meters in which Petitioners admittedly do not claim any right. Therefore, for dispute over small portion of land admeasuring 49.43 sq mtrs., which dispute cannot be settled by the Competent Authority in its summary jurisdiction, it would not be appropriate to set aside the order dated 17 July 2023. The reasons for holding that the Component Authority would not be able to resolve the dispute over land admeasuring 49.43 sq. mtrs are discussed in the following part of the judgment.

12. In the present case, the overlap of conveyance of land admeasuring 49.43 square meters out of CTS No.872 has occurred on account of the said land being a part of access road for CTS No.871. It appears that originally the entire land which was subsequently assigned CTS Nos. 871 and 872 was owned by Smt. Kamalabai Moreshwar Deshmukh/Pradhan. By a registered sale deed dated 8 May 1961, Smt. Kamalabai sold land admeasuring Survey No.135, Hissa No.2 to Shri Harishchandra Raghunath Kudaskar. While selling land at Survey No.135, Hissa No.2, Smt. Kamalabai also apparently created rights in favour of Shri Harishchandra Kudaskar in respect of some portion of

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land retained by her at Survey No.135, Hissa No.2H. It appears that land sold to Shri Harishchandra Kudaskar did not have any access and therefore, Smt. Kamalabai left a road from retained land at Survey No.135, Hissa No.2H for Shri Harishchandra Kudaskar. This is clear from following portion of Sale Deed dated 18 May 1961:

> "आम्हीं आपणांस विकत दिलेली जमीन आमच्या इमारतीच्या मागील बाजूला असल्या कारणाने आमची जी पुढील बाजूला सर्व्हे नंबर १३५ हिस्सा नंबर " ह" मधये आमची जी इमारत आहे त्या इमारतीच्या पूर्व बाजूने इमारतीचा पाया पासून १० फुटांचे अंतर सोडून उरलेली जमीन, आपणांस विकत दिलेल्या प्लॉट वर जाण्याच्या रस्त्यासाठी **आपल्या ताब्यांत** दिली आहे. व ती जमीन वरील प्लॉटच्या रस्त्या साठीं कायम हक्काने **वहीवाटीचा रस्ता** म्हणून आम्ही तुमच्या ताब्यांत दिली असून **वरिल जमीनींत आमचा व आमच्या वारस हित संबंधाच्या कोणत्याही प्रकारचा हक्क व हितसंबंध राहिलेला नाहीं.** व हयापुढे आपण वा आपले वारस वगैरे कायम चे **मालक** म्हणून वरिल जमीनीचा वापर करुं शकाल. व आम्ही कोणत्याही प्रकारे आठकाठीं करणार नाहीं."
>
> *(emphasis added)*

13. There is a debate amongst the parties about nature of rights created in Survey No.135, Hissa No.2H by Smt. Kamalabai in favour of Shri Harishchandra Kudaskar. Respondent No.2-Society contends that the land forming part of the road was sold to Shri Harishchandra Kudaskar. On the other hand, it is contended by the Petitioners that mere easementary right was created by Smt. Kamalabai in favour of Shri Harishchandra Kudaskar. However, *prima facie*, it is seen that the Sale Deed uses the word वहीवाटीचा रस्ता (*easementary road*) creating an impression as if only easementary rights are created in the land. However, it appears that the land was given in possession of the purchaser as it records आपल्या ताब्यांत दिली आहे (*given in your possession*). The Sale Deed also seeks to recognise the rights of Shri Harishchandra Kudaskar as 'मालक' (*owner*) in respect of that portion of land. It further records that वरिल जमीनींत आमचा व आमच्या वारस हित संबंधाच्या कोणत्याही प्रकारचा हक्क व हितसंबंध राहिलेला नाहीं (*in the above land we and our heirs have no right or*

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interest left). What exactly is the purport of the above covenants recorded in the Sale Deed will have to be decided in a civil suit and the same cannot be decided in a summary inquiry by the Competent Authority.

14. It appears that land bearing Survey No.135, Hissa No.2 was subsequently assigned CTS No.871, which did not have road access whereas the land retained by Smt. Kamalabai bearing Survey No.135, Hissa No.2H, was assigned CTS No.872, which had road access. Thus, there is no dispute to the position that land at CTS No.871 can only be accessed through land at CTS No.872. It is this land forming part of access road in CTS No.872 which is subject matter of controversy between the parties. Petitioners believe that entire Survey No.872 must belong to them and if any right got created in favour of owner of land at CTS No.871 over land at CTS No.872, the same is merely an easementary right. On the other hand, it is the contention of Respondent No.2-Society that Smt. Kamalabai had specifically sold the road land to Shri Harishchandra in CTS No.872.

15. In view of the above positions taken by rival parties, in my view, there needs to be adjudication of the dispute relating to ownership of land admeasuring 49.43 square meters of CTS No.872 by a Civil Court. The issue for consideration is which party can be driven to Civil Court. Mr. Pimple has contended that since Petitioner No.1 secured conveyance at earlier point of time, Respondent No.2-Society must be directed to approach Civil Court to claim rights in respect of CTS No.872. On the other hand, it is the contention of Respondent No.2-Society that there is concrete evidence as to the ownership of portion of land in CTS No.872

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by Shri Harishchandra Kudaskar, which was subsequently assigned to the Promoter of the Respondent No.2-Society and that therefore if Petitioners' question title of Respondent No.2-Society in that portion of land, it is Petitioners who need to approach the Civil Court.

16. By now, it is a well settled law that certificate of unilateral deemed conveyance does not finally determine rights and entitlements of parties in respect of the conveyed land. By issuing certificate of unilateral deemed conveyance, the Competent Authority merely steps into the shoes of the promoter and conveys to the organization of flat purchasers what it believed was the right, title and interest of the promoter in the land and the building. The certificate of conveyance so issued by the Competent Authority creates presumption of title in the party in whose favour the certificate is issued. This presumption is however rebuttable and the affected party can secure a declaration from Civil Court contrary to the one made in the certificate of unilateral deemed conveyance. This principle is recognised in the judgment of the Apex Court in ***Arunkumar H. Shah HUF Vs. Avon Arcade Premises CHSL***[2].

17. In the present case, there appears to be a document suggesting creation of some rights in respect of portion of land in CTS No.872 in favour of Shri Harishchandra which was subsequently assigned by him in favour of Shri Rajnikant Dattatray Deshmukh, who constructed the building of Respondent No.2-Society. In view of this position, if Petitioners believe that what is created by registered sale deed dated 18 May 1961 is mere easementary rights, they need to secure a declaration

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to that effect from a Civil Court. Petitioners do not dispute existence of some right in favour of the Respondent No.2-Society in respect of land admeasuring 49.43 sq. mtrs. Whether that right is ownership right or mere easementary right needs to be decided by the Civil Court.

18. In view of the above discussion, I am not inclined to interfere in the order passed by the Competent Authority on 17 July 2023 in Application No.29 of 2023 conveying land admeasuring 49.43 square meters of CTS No.872 in favour of Respondent No.2-Society. If Petitioners claim ownership in respect of that portion of land, they are free to secure declaration of title to that effect from Civil Court. It must however be clarified that this course of action is being followed in the peculiar facts and circumstances of the present case, where both orders of the Component Authority shall continue to subsist until one of the parties secures a contrary declaration from the Civil Court.

19. Therefore, the Petition needs to be disposed of without granting any relief in favour of the Petitioners. However, Petitioners would be at liberty to file a Civil Suit seeking a declaration of title in respect of land admeasuring 49.43 square meters out of 284.10 square meters from CTS No.872. The Civil Suit, if instituted, shall be decided by the Court on its own merits, without being influenced by any of the observations made by this Court in the present order and without being influenced by the order of deemed conveyance dated 17 July 2023. All contentions of parties on merits of title dispute are expressly kept open. The Writ Petition is accordingly **disposed of.** There shall be no order as to costs.

SUDARSHAN RAJALINGAM KATKAM
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(SANDEEP V. MARNE, J.)