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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10961 OF 2025

Rashesh Cooperative Housing Society Limited, A society registered under the Maharahstra Cooperative Societies Act, 1963, having its address at Off 150 ft. Road, Near Maxus Mall, Bhayandar (West), Thane 401 101 ... **Petitioner**

Vs.

1. **State of Maharashtra**, through Government Pleader, Appellate Side, High Court, Bombay
2. **District Deputy Registrar, Thane** Dr. Kishore Mande, the competent authority under the Maharashtra Cooperative Societies Act, 122963, having its office address at Gamdevi Market Building, 1st Floor, Near Gaodevi Maidan, Gokhale Road, Thane (West) 400 602
3. **Shreeji Developers**, a partnership firm constituted under Indian Partnership Act, 1932 having its office address at Shop No.3, 3rd floor, Vrindavan Salasar Brijbhoomi Complex, Bhayander (West), Thane 401 101
4. **Varsha Manharlal Mehta**, Age 62 years, Occupation Business

5. **Rashesh Manharlal Mehta**,
   Age 45 years, Occupation Business
6. **Vishal Manharlal Mehta**,
   Age 40 years, Occupation Business,
   Respondent Nos.4 to 6 r/at Wing "A",
   41/42, 43, 44, 4th floor, Malhar Coop.
   Housing Society, Borsapada Road,
   Opp. Gymkhana, Near Pawar Public
   High School, Kandivali (West),
   Mumbai 400 067
7. **Shreeji Exhibitors**,
   having its office at Wing "A",
   41/42, 43, 44, 4th floor, Malhar Coop.
   Housing Society, Borsapada Road,
   Opp. Gymkhana, Near Pawar Public
   High School, Kandivali (West),
   Mumbai 400 067
8. **The Estate Investment Co. Pvt. Ltd.**
   A company incorporated under the
   Companies Act, 1913 having its
   registered office address at 139,
   Seksaria Chambers, Nagindas Master
   Road, Fort, Mumbai 400 001
9. **Vishal Cooperative Housing Society Limited**, a society registered under the
   Maharashtra Cooperative Societies
   Act, 1963, having its address at
   150 Ft. Road, Near Masux Mall,
   Bhayandar (West), Thane 401 101

... Respondents

Mr. Bhavin Gada with Mr. Deepak Shukla and Mr. Praveen Maurya i/by BNS Legal for the petitioner.

Mrs. M.S. Srivastava, AGP for respondent Nos.1 & 2-State.

Mr. Venkatesh Dhond, Senior Advocate with Mr. Akshay Patil, Mr. Suraj N. Naik, Ms. Ketkee Kamble, Ms. Rashmi Raghavan i/by Mr. R.D. Suryawanshi for respondent Nos.3 to 7.

Mr. Nimesh Bhatt for respondent No.8.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 7, 2026.

PRONOUNCED ON : APRIL 28, 2026

JUDGMENT:

1. By the present petition instituted under Articles 226 and 227 of the Constitution of India, the petitioner has called in question the legality, correctness, and propriety of the judgment and order dated 8 July 2025 passed by respondent No.2 in Application No.379 of 2023.

2. The facts giving rise to the present proceedings, as set out by the petitioner, may briefly be stated thus. The petitioner is a co-operative housing society duly registered under the provisions of the Maharashtra Co operative Societies Act, 1960. The building of the petitioner society came to be constructed by respondent No.3, of which respondent Nos.4 to 6 are stated to be the partners. It is the case of the petitioner that late Manharlal B. Mehta and Varsha M. Mehta were owners and/or otherwise entitled in respect of 23 parcels of land situated at Village Bhayandar forming part of a larger tract of land. The development plan/layout in respect of the larger property came to be sanctioned by the Mira Bhayander Municipal Corporation on 23 March 2006. Thereafter, on 5 August

2006, development rights together with FSI in relation to the entire land were granted in favour of respondent No.3. Revised commencement certificates thereafter came to be issued by the competent local authority on 23 March 2006 and 26 June 2007 respectively. Subsequently, an occupation certificate in respect of the building of the petitioner society was issued by the local authority on 2 December 2013.

3. The petitioner society came to be formed on 1 December 2015. According to the petitioner, notwithstanding such formation, respondent No.3 failed and neglected to execute conveyance in favour of the petitioner society. It is further stated that on 22 June 2018, the Government issued notification for implementation of the scheme relating to deemed conveyance. Thereafter, the petitioner obtained survey report of the subject land prepared by Mr. M.B. Rane on 4 January 2022. A legal notice through Advocate thereafter came to be issued by the petitioner society on 11 May 2023 to respondent Nos.2, 3 to 7 and one Pravin Ranchorebhai Patil and others. Respondent No.8, by communication dated 29 May 2023, granted it's no objection before respondent No.2 in respect of conveyance of the land in favour of the petitioner. On 9 June 2023, the petitioner society further obtained Architect's Certificate/Report regarding the proportionate area stated to be conveyable in favour of the petitioner society. On 19 June 2023, the petitioner society instituted Application No.379 of 2023 before respondent No.2 seeking issuance of certificate of deemed conveyance in accordance with the applicable Government Resolution. Pursuant thereto, respondent No.2 issued notice in

Form X on 6 July 2023 and also caused public notice to be published on 11 July 2023. Respondent No.4 filed reply affidavit on 31 July 2023. Thereafter, respondent Nos.3, 4 and 7 filed joint reply affidavit on 4 September 2023. The petitioner filed rejoinder affidavits to the replies of the respondents on 21 August 2023 and 11 September 2023. Written submissions also came to be tendered by the petitioner on 25 September 2023. It appears that respondent No.2 thereafter passed an order dated 11 October 2023 granting conveyance only to the extent of plinth area. Being aggrieved thereby, the petitioner approached this Court by filing writ petition challenging the said order. By judgment and order dated 11 February 2025, this Court was pleased to set aside the aforesaid order and remand the matter for fresh consideration.

4. After remand of the proceedings, the petitioner obtained fresh Architect's Certificate dated 15 April 2025. Based thereon, the petitioner preferred amendment application on 28 April 2025 placing on record the fresh Architect's Certificate. The respondents filed reply to the said amendment application on 22 May 2025, to which the petitioner filed rejoinder on 12 June 2025. According to the petitioner, respondent No.2, on 24 June 2025, orally declined to hear the amendment application and instead directed the parties to place on record further fresh Architect's Certificate in addition to the amendment application already filed. In compliance thereof, the petitioner obtained another fresh Architect's Certificate dated 26 June 2025. The petitioner thereafter tendered written submissions along with judgments and the further Architect's Certificate before respondent No.2 on 1 July

2025. By the impugned order dated 8 July 2025, respondent No.2 rejected Application No.379 of 2023 and thereby declined grant of deemed conveyance in respect of the subject land together with the building standing thereon. Being aggrieved by the said order, the petitioner has preferred the present writ petition.

5. Mr. Gada, learned Advocate appearing for the petitioner, invited the attention of this Court to the earlier order dated 11 February 2025 and submitted that this Court had specifically directed respondent No.2 to pass a fresh order while keeping in view the guidelines contained in the Government Resolution dated 22 June 2018. He submitted that while remanding the proceedings, this Court had expressly kept open all rights and contentions of the parties regarding the entitlement of the petitioner to conveyance of plinth area and appurtenant area, and had directed respondent No.2 to decide the application afresh in accordance with the said guidelines of 2018. Learned counsel further submitted that this Court had also expressly recorded the statement made on behalf of the petitioner that the society would substantially claim conveyance in respect of appurtenant area in terms of Guideline No.(iv)(2) of the Government Resolution dated 22 June 2018. He further pointed out that liberty was also granted to the petitioner to urge before respondent No.2 that the appurtenant area of the building would include proportionate share in the recreational ground.

6. Learned counsel further submitted that under the Government Resolution dated 22 June 2018, along with the undivided share in occupancy rights proportionate to the

construction area of the building of the society, or with reference to ground coverage/plinth area, the completed building or its co-operative society is also entitled to open spaces, common services, common facilities and access roads. According to him, such benefits were not granted in the present case. He further submitted that even as per the pleadings of respondent Nos.3, 4 and 7, as also the Architect's Certificate relied upon by them, the petitioner was entitled to setback area admeasuring 2201.56 square meters in addition to the plinth area. It was therefore contended that despite such clear and categorical admission on the part of the said respondents, respondent No.2 has restricted the conveyance only to the plinth area of the petitioner's building.

7. Learned counsel next submitted that respondent No.3 had obtained revised sanctioned plans during the period 2018 to 2019 without obtaining prior consent of the petitioner society and thereby acted in breach of the mandatory procedure requiring consent of two thirds of the allottees as contemplated under Section 14 of the MahaRERA. He submitted that the application in the present case had been preferred by the petitioner society itself and not by any federal society or apex body, and therefore the objection founded on such ground was misconceived. According to him, once the petitioner society came to be formed, a statutory obligation arose under the provisions of the Maharashtra Ownership Flats Act upon respondent No.3, being promoter/developer, to execute conveyance in favour of the petitioner society. It was urged that the concept of a federal society or apex body cannot be invoked so as to defeat or circumvent the

statutory obligation of granting conveyance in favour of an individual society in respect of that portion of the land to which it is lawfully entitled.

8. Learned counsel further submitted that reliance placed upon the certificate produced by the respondents restricts the appurtenant area to 1050 square meters, whereas the correct quantification, according to the petitioner, based upon sanctioned plans and proportionate built-up area, comes to 3289.80 square meters as certified under the Architect's Certificate dated 26 June 2025. He submitted that such substantial discrepancy materially affects the ownership rights of the petitioner society as well as its future redevelopment potential. According to him, the impugned order neither explains nor justifies the said discrepancy and contains no rational analysis in that regard. It was further contended that respondent No.2 has narrowly construed the remand order of this Court as if it merely required acceptance of the respondents' certificate, without giving due effect to the specific direction to pass a fresh order while considering the Government Resolution dated 22 June 2018. According to the petitioner, such restrictive interpretation defeats the very purpose of remand and renders the earlier order of this Court ineffective.

9. Learned counsel submitted that, as per the Architect's Certificate relied upon by the petitioner, the area liable to be conveyed in favour of the applicant society, namely, Rashesh Co Operative Housing Society Limited, aggregates to 3987.16 square meters together with proportionate undivided rights in the recreational ground area admeasuring 703.62 square meters,

making a total of 4690.78 square meters out of the larger area admeasuring 23464.93 square meters. The said claim is stated to comprise 565.07 square meters from old Survey No.661 corresponding to new Survey No.262 Hissa No.1 (Part), 787.78 square meters from old Survey No.661 corresponding to new Survey No.262 Hissa No.3 (Part), 52.13 square meters from old Survey No.776 corresponding to new Survey No.278 Hissa No.1B (Part), 257.00 square meters from old Survey No.677 corresponding to new Survey No.277 Hissa No.1 (Part), 1932.00 square meters from old Survey No.677 corresponding to new Survey No.277 Hissa No.2 (Part), 23.00 square meters from old Survey No.677 corresponding to new Survey No.277 Hissa No.4, and 1073.80 square meters from old Survey No.677 corresponding to new Survey No.277 Hissa No.5, all situated at Village Bhayander, Taluka Thane, District Thane. In addition thereto, the petitioner claims entitlement to 1498.41 square metres out of 7495.57 square metres towards proportionate rights in the Development Plan road area so as to avail FSI benefits in terms of the sanctioned plan.

10. Per contra, Mr. Dhond, learned Senior Advocate, and Mr. Akshay Patil, learned Advocate appearing for respondent Nos. 3 to 7, submitted that upon a conjoint reading of the statutory provisions and the judicial precedents cited at the Bar, certain settled principles emerge in relation to the concept of appurtenant area. Firstly, according to them, appurtenant area must be such area upon which the building is dependent for its use and enjoyment as a building. The governing test, according to them, is

one of functional dependence and not mere convenience or commercial utility. In support thereof, reliance was placed upon the decisions in *Maharaj Singh vs. State of Uttar Pradesh & Others,* (1977) 1 SCC 155, *and Larsen & Toubro Limited, Club House Road, Madras vs. Trustees of Dharmamurthy Rao Bahadur Calavala Cunnan Chetty's Charities,* (1988) 4 SCC 260. Secondly, they submitted that where building regulations operate, the appurtenant area would stand confined to such open space as is required under those regulations to be kept open for enjoyment of the building. For this proposition, reliance was placed upon *State of U.P. vs. L.J. Johnson,* (1983) 4 SCC 110, *Marathon Era Co operative Housing Society Ltd. vs. Competent Authority & Others,* Writ Petition No.180 of 2018 decided on 18 April 2024, and *Property Owners Association & Others vs. State of Maharashtra & Others,* 1992 (I) Bom.C.R. 152. Thirdly, they submitted that appurtenant area must be physically contiguous and adjoining to the building and cannot comprise distant or separated parcels of land. Fourthly, such area must be reserved as open space for enjoyment of the building and not for independent commercial or unrelated purposes. Fifthly, the area is necessarily subsidiary and ancillary to the principal structure and cannot assume an equal or independent character. Sixthly, by operation of Section 8 of the Transfer of Property Act and Section 2(zn) of the RERA enactment, appurtenant area passes as a legal incident of the building upon conveyance and does not require separate specification. Lastly, they submitted that what constitutes appurtenant area in a given case is essentially a question of fact to be determined with

reference to the applicable building regulations, sanctioned plans and actual user. Reliance in that regard was placed upon *Larsen & Toubro Limited (supra) and Commissioner of Income Tax, A.P. vs. Rishi Raj Jain,* (2006) 13 SCC 246.

11. Learned Senior Counsel further submitted that in so far as planning regulations are concerned, the concept of appurtenant area cannot be construed in isolation or in abstract terms. According to them, the same must necessarily be read in conjunction with the building plans submitted by the developer while seeking development permission and commencement certificates from the planning authority. Elaborating the said submission, learned counsel invited attention to Clause 10(3)(vi) of the Development Control and Promotion Regulations, 2034 applicable to Greater Mumbai, which explains the contents of a building plan. They submitted that the building plan is required, inter alia, to indicate details of parking spaces, loading and unloading spaces wherever required around and within the building, access ways, appurtenant open spaces shown in dotted lines, the distance from any existing building on the plot in figured dimensions, together with accessory buildings. According to them, the statutory requirement itself demonstrates the limited and identifiable nature of appurtenant space.

12. Learned counsel further submitted that identical terminology is found in Clause 2.2.7 of the Unified Development Control and Promotion Regulations, which likewise mandates that building plans shall indicate appurtenant open spaces with projections in dotted lines. On the basis of these provisions, it was contended

that the following categories ordinarily constitute appurtenant area of a building. Firstly, spaces provided around the building such as parking, loading and unloading spaces. Secondly, spaces provided within the building precincts including parking areas, staircases, ramps, exit ways and lift wells. Thirdly, open spaces appurtenant to the building indicating the prescribed distance between the said building and another building as reflected in the sanctioned plans.

13. Learned Senior Counsel then submitted that the Unified Development Control and Promotion Regulations classify areas required to be kept open around the building, as also the prescribed distance between two buildings, under Clause 6.2.2. These are described as marginal distances and include front margin under Clause 6.2.3(a), side or rear margin under Clause 6.2.3(b), step margin under Clause 6.2.3(c), and the distance between two buildings under Clause 6.2.4. They further invited attention to Clause 2(84) of the DCPR, 2034, wherein Marginal Open Space/Distance is defined as the minimum distance measured between the front, rear, and side building lines and the respective plot boundaries. According to them, such definition lends statutory support to the contention that appurtenant area is closely linked with mandatory open margins surrounding the building.

14. Learned counsel next submitted that appurtenant area is fundamentally distinct from common area under the scheme of the UDCPR and DCPR, 2034. According to them, common areas consist of recreational and amenity spaces meant for the benefit of

the entire layout. They submitted that Clause 27(1)(g) of the DCPR, 2034 and Clause 3.4.7 of the UDCPR contemplate structures such as pavilions, gymnasia, fitness centres, club-houses, vipashyana and yoga centres, crèches, kindergartens, libraries, swimming pools, religious structures and other facilities meant for sports or recreational purposes as forming part of common areas. It was further submitted that the Regulations also require remaining open spaces to be maintained as playgrounds.

15. According to learned Senior Counsel, the essential characteristics of appurtenant area are that it is specific to an individual building, comprises marginal open spaces around that building such as front, side and rear margins, is required for compliance with building regulations, is necessary for the building's functional requirements including light, air, access, ventilation and fire safety, cannot be enclosed or built upon, and is intended to serve that particular building and its occupants.

16. In contrast, learned counsel submitted that common areas possess altogether different attributes. They are shared by all owners within the larger layout, consist of common recreational and amenity spaces such as gardens, gymnasiums and club-houses, are collectively owned by all societies or buildings forming part of the layout, are meant for common beneficial use, are governed by Clause 3.4.7(iv) of the UDCPR and Clause 27(1)(g)(ii) of the DCPR, 2034, and are intended to serve the community as a whole rather than any one individual building.

17. Learned Counsel further submitted that the statutory scheme itself clarifies ownership of such common areas. They relied upon Clause 3.4.7(iv) of the UDCPR and Clause 27(1)(g)(ii)(a) of the DCPR, 2034, which provide that ownership of common area structures and appurtenant users shall vest, by appropriate provision in the deed of conveyance, in all owners on account of whose cumulative holdings the layout open space is required to be maintained.

18. Summarising their submissions, learned Counsel contended that the expression appurtenant area is a settled legal concept consistently recognised across statutes and judicial decisions. According to them, it denotes the regulatory open space immediately surrounding a building, physically contiguous thereto, functionally necessary for use of the building, and subordinate in character. They submitted that such concept is wholly distinct from common areas, recreational spaces and layout amenities which vest collectively in all owners for common use and benefit.

19. It was further submitted on behalf of respondent No.3 that the principles emerging from the decisions of the Supreme Court, judgments of the High Courts, relevant statutory provisions, planning regulations and recognised legal sources conclusively establish that appurtenant area is of a limited, building specific and regulation dependent nature. According to the respondents, any broader construction of the expression would run contrary to the settled position in law.

20. It was further placed on record through the Architect of respondent No.3 that as per the sanctioned plan bearing No. MB/MNP/NR/7498/2018-19 dated 29 March 2019, the plinth area of Building No.1 known as “Rashesh” is 1151.56 square metres, and the appurtenant land area of the said building is 1050.00 square metres. It was stated that the layout is not one consisting of subdivided plots and that grant of individual conveyance in respect of the said building would violate the provisions of the UDCPR. The Architect accordingly opined that plinth area admeasuring 1151.56 square metres together with appurtenant land area admeasuring 1050.00 square metres, aggregating to 2201.56 square metres, as reflected in the approved building plans under order No. MB/MNP/NR/7498/2018-19 dated 29 March 2019 issued by the Mira Bhayander Municipal Corporation, ought to be conveyed in favour of Rashesh Co operative Housing Society Ltd. in respect of Building No.1 known as Rashesh. It was further stated that as all Survey Numbers and Hissa Numbers stand merged and amalgamated into a single layout, separate identification for mutation and recording the name of the petitioner society in revenue records would have to be undertaken accordingly.

REASONS AND ANALYSIS:

21. Having heard the learned advocates appearing for the respective parties at considerable length, and having perused the pleadings, documents, sanctioned plans, commencement certificates, occupation records, correspondence exchanged between parties, and the statutory provisions pressed into service,

the following issues arise for determination in the present petition:

Issues for Determination:

Scope of 'appurtenant area': Under MOFA, building bye-laws and the 2018 GR, what open lands are appurtenant to the petitioner's building and must pass in conveyance? Does it include only the marginal setbacks or a wider open-space and amenities share?

Proportionate share formula: In a TDR-loaded layout, should the society's land share be computed by plinth area alone (as petitioner urges) or by total built-up FSI (as respondents fear)?

Recreational Ground (RG) entitlement: Is the society entitled to a share of the layout's RG, and if so how much?

(i) Scope of 'appurtenant area'

22. The present dispute is required to be examined in light of the provisions of the Maharashtra Ownership Flats Act, 1963, commonly known as MOFA, together with the applicable Development Control Regulations, layout approval, open spaces, setbacks, access, amenities and permissible construction. MOFA protects flat purchasers against withholding of title by promoters, whereas the Development Control Regulations determine how land is to be used, what minimum open spaces are compulsory, what recreational areas are to be maintained, and what portion of land remains attached to a building for occupation. In addition to these, reliance is also placed on the Government Resolution dated June

2018, which has been issued for guidance in matters of deemed conveyance and determination of land appurtenant to buildings in layouts. Therefore, the controversy before this Court requires a combined reading so that purchaser rights are not defeated by technical objections by the promoters.

23. It is required to be noted that MOFA is a welfare legislation enacted with object of controlling malpractices in sale of flats and to secure title for persons who invest life savings in residential premises. Before such legislation, many promoters used to construct buildings, sell flats, collect full consideration, yet continue to retain ownership of land and common areas for indefinite period. Purchasers were left in occupation without complete title. It is to remove such injustice that MOFA casts binding obligations upon the promoter. Therefore, while interpreting any provision under MOFA, the Court must lean in favour of protecting legitimate rights of flat purchasers rather than permitting methods by which conveyance is delayed.

24. Section 11(1) of MOFA requires the promoter to take all steps for conveying the right, title and interest in the land and building in favour of the co-operative society, company or association of flat purchasers, and to execute conveyance within the period prescribed by rules and in accordance with the agreement for sale. The language used by the legislature show that once the conditions contemplated by law are fulfilled, the promoter cannot postpone conveyance on ground that he may have proposed additional construction, possible redevelopment, or internal disputes regarding layout potential. The words “right, title

and interest in land and building" occurring in Section 11(1) are of wide amplitude and cannot be reduced to transfer of only superstructure standing upon land. Ownership of a building in law includes beneficial rights necessary for its use, such as ingress, egress, open setbacks required by regulation, utility connections, access for repairs, safety movement, ventilation zones and such portions of land. A building stands upon land and draws its use from surrounding spaces as required by planning law. Hence, conveyance under Section 11 must include such land as is appurtenant.

25. The submission raised by promoters that conveyance remains suspended till all future development in entire layout is exhausted cannot be accepted. Section 11 does not say that statutory transfer can be postponed till promoter uses every inch of land. If rights were reserved in agreements and sanctioned by way of informed consent, that may stand on separate footing. But in absence of informed consent, the duty under Section 11 remains enforceable. Otherwise, the promoter would continue as owner while purchasers remain perpetual consumers, which is contrary to the legislative scheme.

26. Assistance may also be taken from Section 8 of the Transfer of Property Act, 1882, though the present matter arises under MOFA. Section 8 recognises that unless contrary intention appears, transfer of property passes to the transferee all legal incidents attached thereto. In relation to a dwelling house, the land appurtenant thereto also passes with the conveyance. One does not transfer a house while retaining those incidents without which

the house cannot be enjoyed. The expression “appurtenant” ordinarily means attached to, belonging to, or necessary for beneficial enjoyment of the main property. It does not always mean land touching every wall. Nor does it include unlimited surrounding land. Its meaning depends on purpose, user, sanctioned layout, planning norms and factual necessity. Therefore, in housing matters, appurtenant land may include compulsory marginal open spaces, access roads, passages, fire tender movement areas, common utility strips, parking areas if earmarked, gardens or amenities linked with building use, and other areas which by regulation are intended for occupants of that building or group of buildings.

27. A promoter cannot convey only the footprint beneath columns and staircase and retain all open areas despite those open areas being mandatory under building rules. Such open lands are the reason why occupation certificate could be granted. If setback, access width, recreational reservation or ventilation distance were necessary to sanction the building, then such spaces cannot later be treated as inalienable right of the promoter.

28. The Development Control Regulations become relevant for this reason. Planning regulations prescribe minimum front, side and rear margins, distance between buildings, internal roads, amenity spaces, Recreational Ground reservations, parking norms, drainage corridors and other planning controls. They define how the building can exist. Therefore, while deciding extent of conveyance, the Court must examine sanctioned plans and applicable regulations. Land which planning law links to the use of

the building may constitute part of the appurtenant entitlement, subject to layout and rights of other buildings.

29. The June 2018 Government Resolution has also been placed before the Court to indicate guidance for determining unilateral conveyance claims in layouts comprising multiple buildings. Though such Government Resolution cannot override statute, it can assist in implementation where ambiguity exists. If the Resolution recognises proportionate land sharing, common amenities, or method for identifying appurtenant areas, such guidance may be relevant so long as it remains consistent with MOFA and rules and planning law.

30. In the present case the issue is what land component, open spaces, and common shares must accompany such conveyance. A conveyance of building plinth without usable rights would defeat purpose.

31. Thus, on combined reading of MOFA Section 11(1), Section 8 of the Transfer of Property Act, and the Development Control Regulations, this Court is of opinion that where a building is conveyed to a society of flat purchasers, the transfer carries with it those surrounding lands and open spaces which are appurtenant, necessary or incidental to the beneficial enjoyment of that building. Any contrary claim by promoter must be established from sanctioned reservations.

32. Learned Advocate appearing for respondent Nos.3 to 7 have made submissions on the concept of appurtenant area and have urged that the controversy must be resolved on principles

emerging from statute, planning regulations and judicial precedents. According to them, the petitioner seeks to enlarge the meaning of appurtenant land beyond what law permits. It is therefore necessary to carefully examine each submission.

33. The first submission concerns dependence. Learned counsel contend that appurtenant area means only such land upon which the building depends for its use as a building. In this context, they rightly rely upon the principle that the test is functional dependence. There is substance in the proposition that every open land around a building does not become appurtenant. A society may prefer larger grounds, wider spaces or more development rights. The decision in *Maharaj Singh* has been cited to show that lands used for fairs, bazaars or independent activities do not become appurtenant merely because they are near the main structure. If a land has separate standing disconnected from enjoyment of the building, it may not be annexed by mere proximity. Therefore, where an open area is independently reserved for larger layout use based on informed consent, the claim of one building over the same requires deeper examination. Reliance on *Larsen & Toubro Limited* is also relevant insofar as the Supreme Court recognised that appurtenance depends on facts and actual use. The case indicates that a yard used for ingress, circulation, parking or service may well be appurtenant because the building functionally depends on it. Thus, respondent's submission on dependence cannot be read to mean the four walls and staircase. Functional dependence may include many open components necessary for occupation.

34. The second submission is in relation to areas governed by building regulations, appurtenant area is limited to what those regulations require to be kept open for the building's enjoyment. Planning law prescribes front margins, side setbacks, rear spaces, access width, fire tender movement areas, parking norms and spacing between buildings. These are indicators of land attached to the building. However, the Court is unable to accept absolute proposition that only minimum statutory setback can be appurtenant area. Building regulations prescribe minimum area. A sanctioned plan may specify additional circulation space, parking area, utility areas or access area for one building. Such user may also acquire appurtenant character if shown on plan and intended for building use. Learned counsel relies upon *L.J. Johnson, Marathon Era Co operative Housing Society Ltd.,* and *Property Owners Association.* These authorities support the principle that appurtenant claims must remain connected to sanctioned norms.

35. The third submission concerns contiguity. According to respondents, appurtenant land must be physically adjoining and contiguous to the building, and cannot consist of distant parcels. In general, contiguity is a relevant factor. Land immediately surrounding the structure bears appurtenant character than a remote parcel in another zone. This Court accepts that remoteness weakens the claim. Even then, contiguity cannot be treated as a mechanical rule. A driveway leading from gate to building entrance, a parking area slightly away from plinth line, a transformer space, water tank zone may not touch every side of the building, yet may remain connected with its use. Hence,

contiguity must be understood in planning sense.

36. The fourth submission is in relation to limited purpose. It is contended that the land must be kept as open space for enjoyment of the building and not for commercial purpose. This proposition is correct. If land is reserved for separate shops, another tower or unrelated activity, one building cannot claim it as appurtenant merely because it lies in same plot. But "enjoyment of the building" includes access, parking where sanctioned, children movement, ventilation, emergency services, utility maintenance, common entry and lawful amenities attached to occupation.

37. The fifth submission relates to subsidiary nature. Respondents contend that appurtenant land must remain ancillary to the main building and cannot be independent. This proposition also correct. A small building cannot claim major area under guise of appurtenance.

38. But one must remember that in layouts, open spaces required for safety, circulation, and recreation may exceed plinth area. Their measurement alone does not take away ancillary character. A tower may occupy small plinth but require more open margins and fire access under regulations. Therefore, size comparison by itself is not conclusive.

39. Learned counsel then relies upon transfer under Section 8 of the Transfer of Property Act and provisions of the real estate enactment, submitting that appurtenant area passes as incident of the building even without recital. This proposition supports transfer of appropriate appurtenant land. But it weakens the

respondents to the extent they seek to confine conveyance only to plinth area. If appurtenant rights pass by operation of law, then once such rights are identified, they stand transferred along with conveyance.

40. The next submission is that what constitutes appurtenant area is ultimately a question of fact to be determined from regulations, approved plans and actual use. This Court fully agrees. No formula can decide the present petition. The sanctioned layout, building plans, occupation certificate, physical situation, parking arrangements, access pattern, RG reservation and inter se location of buildings must all be examined.

41. Learned counsel further submits that planning regulations must be understood with the building plans submitted for commencement certificates. This submission deserves acceptance. If a sanctioned plan shows certain spaces for Building, common roads for all, and RG for layout users, such marked use is material. Reliance has been placed upon clauses of DCPR and UDCPR requiring building plans to show parking spaces, loading and unloading spaces, access ways and appurtenant open spaces in dotted lines, together with distance from existing buildings. This drafting indicates that planning law itself recognises appurtenant open spaces as components on the plan. Thus respondent's contention that appurtenant area is a vague concept cannot stand.

42. The further submission that such spaces may include areas around the building, parking spaces, internal movement areas, staircases, ramps, exit ways and like facilities is correct. Many of

these are necessary for use of the building. If they are designated for the building, they may form part of entitlement subject to common use.

43. Learned counsel refers to clauses regarding front margin, side margin, rear margin, step margin and distance between buildings. These marginal distances are important. They are necessary for light, air, privacy, fire safety. Such spaces are attached to the building. Therefore, in determining petitioner's entitlement, such areas cannot be ignored. Attention is also invited to definition of Marginal Open Space as minimum distance between building line and plot boundaries. This supports that open land around structures is a planning factor. Once a building gets sanction based on such open space, the promoter cannot treat such open margin area as separate from building.

44. Respondents distinguish appurtenant area from common area. Common areas such as layout gardens, club-houses, swimming pools, playgrounds, community halls and common recreational spaces are different from setbacks around one building. They are provided for common enjoyment and vest proportionately in all owners.

45. Clauses cited from DCPR and UDCPR regarding pavilions, gymnasia, fitness centres, club-houses, crèches, libraries, pools and playgrounds indicate a planning intention. Such facilities cannot be used exclusively by one society unless the sanctioned plan specifically says so. Therefore, the petitioner's claim in such areas would be proportionate undivided share.

46. Reliance on clauses vesting ownership of common area structures in all owners collectively is important. Where regulations provide that layout open space related structures vest in all owners, the promoter cannot retain such common amenities as a owner. At the same time, one society alone cannot own it exclusively.

47. The petitioner has placed reliance upon architect certificate and has claimed entitlement to conveyance comprising 3987.16 square metres towards plinth or ground coverage area, together with 703.62 square metres towards proportionate share in Recreational Ground. These figures are required to be tested against the principles of MOFA, the Government Resolution dated 22 June 2018, sanctioned plans, Development Control Regulations and the law relating to appurtenant rights already discussed hereinabove.

(ii) Proportionate share formula:

48. I have carefully considered the two sets of architect certificates placed on record, the earlier remand directions issued by this Court in Writ Petition No.12257 of 2024, the Government Resolution dated 22 June 2018, and the rival submissions advanced by both sides. The matter has not come before this Court for first time. It had earlier travelled to this Court and was remanded back for fresh consideration on a specific deficiency noticed in the previous adjudication. Therefore, the present exercise is a determination on the precise question left undecided earlier.

49. The remand was made for a limited reason. This Court had already noticed that where development is carried out by utilising TDR, Guideline Clause (iv)(2) of the Government Resolution dated 22 June 2018 specifically requires that conveyance is to be considered in respect of plinth area and appurtenant area. These two expressions are used separately. Hence, they must be separately understood and separately measured. If one figure is given in composite manner, the requirement of the guideline remains incomplete. In the earlier proceedings, the certificate relied upon by the petitioner dealt with proportionate land entitlement, share in Recreational Ground, and share in other layout components. However, it did not demarcate the appurtenant area surrounding the petitioner's building as a separate unit. In absence of such demarcation, the Competent Authority could not correctly apply Clause (iv)(2) of the Government Resolution. Therefore, fresh adjudication became necessary.

50. The certificate produced on behalf of the petitioner adopts what may be called a proportionate rights method. It compares total built up area of all structures in the larger layout and then distribute shares in net plot area, RG area and road area proportionately. Such method may be useful in understanding layout participation, but it does not by itself answer the question as to plinth area and appurtenant land of the petitioner building.

51. In that certificate, the petitioner building known as Rashesh CHSL is shown with built up area of 6888.60 square metres out of total built up area of 34459.18 square metres. On that basis, the petitioner is assigned 19.99 percent share. Thereafter, share in net

plot area is shown as 3987.16 square metres. Similarly, proportionate RG share is shown as 703.62 square metres. Thus, the petitioner's certificates proceed on ratio and allocation method.

52. There is nothing inherently illegal in such proportional exercise. In a multi building layout, common areas are often distributed by some rational percentage formula. However, the difficulty lies elsewhere. The formula used in the petitioner's certificates does not separate what is actual building footprint and what is appurtenant surrounding land. It aggregates rights by percentage rather than by physical classification.

53. This is precisely why the earlier remand order became necessary. The Government Resolution in TDR matters does not merely speak of proportionate rights in abstract. It uses the specific words plinth area and appurtenant area. Therefore, both components must visibly appear. If the certificate merely states a total share in net plot, then the adjudicating authority cannot know how much of that is building footprint and how much is surrounding appurtenant land.

54. The certificate produced on behalf of the respondents and prepared after remand therefore becomes material. For the first time, the petitioner building is classified into two heads. According to this certificate, based on sanctioned plan dated 29 March 2019, the plinth area of Building No.1 known as Rashesh is 1151.56 square metres and the appurtenant land area is 1050.00 square metres, making total of 2201.56 square metres. This statement repeated in the certificate and once again in tabular form. The

table records survey wise breakup and then totals the plinth component and appurtenant component separately. Such recording shows technical determination. Thus, the respondents' architect has made calculation regarding plinth and appurtenant components of the petitioner building.

55. This Court also finds no immediate reason to discard the said figures because the certificates specifically state that they are drawn from sanctioned plan bearing No. MB/MNP/NR/7498/ 2018-19 dated 29 March 2019. Where a figure is linked to sanctioned municipal plans, it receives greater reliability than unsupported estimates.

56. The petitioner has strongly argued for plinth area of 3987.16 square metres. However, on close reading of the petitioner's certificate, that figure is not described as actual footprint of the building. It is expressly derived as proportionate share in net plot area based upon built up ratio, namely: 6888.60/34459.18×19945.19=3987.16. Therefore, the figure of 3987.16 square metres is a land share allocation formula. It is not a plinth measurement. It represents proportionate entitlement in net plot area, not the covered ground area of the petitioner structure.

57. In property terms and planning law, plinth area ordinarily means the area covered by the building at ground level, namely its sanctioned footprint. It does not mean percentage share in the entire larger plot. If these two concepts are mixed, confusion follows. Hence, the figure of 3987.16 square metres cannot be

accepted as plinth area. By contrast, the Respondent's certificate uses clear language. It specifically states that "Plinth Area of the said Building No.1 known as Rashesh is 1151.56 sq.mts." This wording leaves little room for doubt. It identifies the plinth itself. Hence, for the purpose of Guideline Clause (iv)(2) of the Government Resolution dated 22 June 2018, the plinth area must be taken as 1151.56 square metres.

58. The same certificate separately states that the appurtenant land area is 1050.00 square metres. This directly satisfies the remand purpose because the missing component in the earlier proceedings was identification of appurtenant area. The respondents themselves have now supplied that figure through their architect. The petitioner contends that additional side margins and surrounding lands should enlarge the appurtenant entitlement beyond 1050 square metres. Such submission cannot be brushed aside lightly, because appurtenant area may in some cases exceed one narrow strip. However, judicial determination must proceed on evidence and not on possibility. No later technical certificate has been produced after remand by the petitioner showing separate measured appurtenant area with setback lines, side margins, rear margins, and site demarcation contradicting the sanctioned-plan-based respondent certificate. The earlier petitioner certificate only gave proportionate land share, not a appurtenant area. In such situation, where remand specifically sought determination of plinth and appurtenant area, and where the only certificate classifying both heads from sanctioned plans is the respondents' certificate, this Court is justified in accepting those

figures unless disproved by technical material. No such contrary material appears on record.

59. Accordingly, this Court determines the exact plinth area of the petitioner society building Rashesh CHSL as P A=1151.56sq.m.

60. The exact appurtenant area attached to the said building is determined as: AA=1050.00 sq.m.

61. Therefore, the total exclusive conveyable area under Clause (iv)(2), being plinth plus appurtenant area, works out to: PA+AA=1151.56+1050.00=2201.56 sq.m.

(iii) Recreational Ground (RG) entitlement

62. The next issue concerns the common Recreational Ground area. On this aspect, the petitioner's architect certificate separately computes total RG area of 3519.74 square metres and then allocates the petitioner's proportionate share as 703.62 square metres. This figure appears derived from the same 19.99 percent ratio adopted in that certificate. The respondents have not placed any contrary RG computation before this Court. They have disputed larger claims generally, but have not shown any alternate measurement of total RG or alternate ratio applicable to the petitioner. Since RG is not exclusive appurtenant land but common amenity land, the petitioner cannot receive exclusive possession of 703.62 square metres. Recreational Ground in a layout is ordinarily for common beneficial use of all entitled occupants. However, it follows that the petitioner cannot be denied beneficial participation in the RG. Once the petitioner forms part of the sanctioned layout and its purchasers acquired flats in that project,

the society becomes entitled to undivided share in the common RG proportionate to its participation.

63. Thus, the exact common RG share of the petitioner is determined as: RG=703.62 sq.m. (undivided proportionate share)

64. Therefore, the final determination in favour of the petitioner society is as follows:

a. Exact Plinth Area: 1151.56 square metres;

b. Exact Appurtenant Area: 1050.00 square metres;

c. Total Exclusive Conveyance Area: 2201.56 square metres;

d. Common RG Share: 703.62 square metres as undivided proportionate right.

65. If total entitlement including common RG share is expressed, though RG remains common and undivided, it would be: 2201.56+703.62=2905.18 sq.m.

66. Accordingly, the Competent Authority shall issue deemed conveyance certificate recording that the petitioner society receives exclusive conveyance of 2201.56 square metres consisting of plinth and appurtenant area, together with undivided proportionate common right in Recreational Ground admeasuring 703.62 square metres.

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

(i) The writ petition is partly allowed;

(ii) The judgment and order dated 8 July 2025 passed by respondent No.2 in Application No.379 of 2023 is quashed and set aside;

(iii) It is declared that the petitioner society is entitled to deemed conveyance in accordance with Section 11 of the Maharashtra Ownership Flats Act, 1963 read with Government Resolution dated 22 June 2018;

(iv) It is further declared that for the purpose of deemed conveyance, the entitlement of the petitioner society shall stand determined as under:

a. Exact Plinth Area: 1151.56 square metres;

b. Exact Appurtenant Area: 1050.00 square metres;

c. Total Exclusive Conveyable Area comprising plinth and appurtenant area: 2201.56 square metres;

d. Undivided proportionate right in common Recreational Ground area: 703.62 square metres;

(v) It is clarified that the Recreational Ground area mentioned in clause (iv)(d) shall not confer exclusive possession over any demarcated portion thereof, but shall constitute proportionate undivided beneficial right in the common amenity area, subject to rights of other entitled occupants in the sanctioned layout;

(vi) Respondent No.2 shall issue fresh certificate of deemed conveyance and execute all consequential orders and directions in favour of the petitioner society by incorporating

the above areas, within a period of eight weeks from the date of receipt of authenticated copy of this order;

(vii) While issuing the fresh certificate, respondent No.2 shall ensure that necessary description of survey numbers, hissa numbers, layout particulars and municipal plan references are incorporated;

(viii) Respondent Nos.3 to 7 shall extend full cooperation for execution and registration of the conveyance documents and shall furnish all title documents, sanctioned plans and revenue particulars required by respondent No.2 within two weeks;

(ix) In the event of failure of respondent Nos.3 to 7 to cooperate, respondent No.2 shall proceed in accordance with law and complete the deemed conveyance process without awaiting their consent;

(xi) Rule is made absolute in the above terms;

(xii) There shall be no order as to costs.

(AMIT BORKAR, J.)