

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9694 OF 2017**

Kiran Builders Pvt. Ltd. **...Petitioner**

V/s.

Kalpita Enclave Co-operative **...Respondents**
Housing Society Ltd. And Ors.

WITH

INTERIM APPLICATION NO. 14625 OF 2023

Panom Developers LLP **...Applicant**

In the matter between :

Kiran Builders Pvt. Ltd. **...Petitioner**

V/s.

Kalpita Enclave Co-operative **...Respondents**
Housing Society Ltd. And Ors.

WITH

INTERIM APPLICATION NO. 1080 OF 2026

Kalpita Enclave Co-operative **...Applicants**
Housing Society Ltd. And Ors.

In the matter between :

Kiran Builders Pvt. Ltd. **...Petitioner**

V/s.

Kalpita Enclave Co-operative **...Respondents**
Housing Society Ltd. And Ors.

Mr. Mahendra Ghelani with Ms. Nizzica Pinto and Ms. Sneha Vani, for the Petitioner.

Dr. Birendra Saraf, Senior Advocate with Mr. Rohan Savant, Mr. Nirmal Devmani, Mr. Aman Saraf and Mr. Abhijeet Mahadeokar i./b. Mr. Diwakar Gond, for Respondent Nos.1 to 3.

Ms. M.S. Bane AGP, for the State.

CORAM: SANDEEP V. MARNE, J.

Reserved On: 11 June 2026.

Pronounced On: 18 June 2026.

Judgment:

1) The Petitioner-Developer has challenged the Order dated 15 May 2017 passed by the District Deputy Registrar, Co-operative Societies-3, Mumbai and Competent Authority (**Competent Authority**) under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**MOFA**) granting unilateral deemed conveyance in respect of the land admeasuring 21,736 sq. mtrs together with buildings standing thereon in favour of Respondent Nos.1 to 3-Societies.

FACTS

2) Petitioner is a developer claiming rights in respect of the land situated at CTS No. 69/6 (PT) and CTS No.35 of Village-Vile Parle

admeasuring 26,000 sq.yards equivalent to 21,736 sq.mtrs. (**subject land**) Petitioner undertook construction of 10 buildings bearing Nos. A to H, J and K on the subject land. After surrendering of land required for 44 feet D.P. road forming part of the subject land, Petitioner secured extra FSI and has also constructed buildings L and M on the subject land. Petitioner also proposed construction of Buildings Nos. N and P on the basis of additional FSI out of surrendered land for DP road. However, on account of dispute relating to exact area of surrendered land for D.P. road, Petitioner has not yet been able to construct Building Nos. N and P on the subject land.

3) Kalpita Enclave CHSL (Respondent No.1) is formed by flat purchasers of 10 buildings namely A to H, J and K. Respondent No.1-Society was opposed to construction of Buildings Nos. L, M, N and P by the Petitioner-Developer and accordingly instituted S.C. Suit No. 3226 of 1985 before the City Civil Court, Bombay and claimed conveyance of entire land admeasuring 21,736 sq.mtrs. By judgment and decree dated 7 November 1997, the City Civil Court directed conveyance of only land appurtenant of buildings Nos. A to H, J and K in favour of Respondent No.1- Society. Respondent No.1-Society filed First Appeal No. 1091 of 2000 before this Court, which was admitted. In the meantime, construction of Building Nos. L and M also got completed. The Occupiers of flats of Building No. 'L' formed Kalpita Enclave Building No. L CHSL (Respondent No.2). Similarly, occupiers of flats in Building No. 'M' formed Kalpita Enclave Building No. M CHSL (Respondent No. 3). Respondent No.1-Society withdrew First Appeal No. 1091 of 2000 on

16 September 2016 expressing intention to apply for deemed conveyance.

4) After withdrawal of the First Appeal, Respondent Nos.1 to 3 jointly filed application under Section 11(3) of MOFA before the Competent Authority seeking deemed conveyance of entire land admeasuring 21,736 sq.mtrs. and building constructed thereon. Petitioner opposed the application for deemed conveyance by filing reply. By impugned order dated 15 May 2017, the Competent Authority has granted Certificate of unilateral deemed conveyance in respect of land admeasuring 21,736 sq.mtrs along with buildings in favour of Respondent Nos.1 to 3-Societies. Petitioner is aggrieved by certificate of unilateral deemed conveyance dated 15 May 2017 and has accordingly filed the present petition. By order dated 5 March 2024, this Court admitted the petition and passed interim order restraining Respondent Nos.1 to 3 from acting on the impugned order of the Competent Authority.

5) Since pleadings in the Petition are complete, with the consent of the learned counsel appearing for the parties, the petition is taken up for final disposal.

SUBMISSIONS

6) Mr. Ghelani, the learned counsel appearing for the Petitioner submits that the Competent Authority has grossly erred in granting deemed conveyance of the land in favour of Respondent Nos.1

to 3-Societies by ignoring the decree dated 7 November 1997 passed in S.C. Suit No. 3226 of 1985. That the decree has attained finality on account of withdrawal of the First Appeal on 16 September 2016. That decree dated 7 November 1997 conveyed only land appurtenant to Building Nos. A to H, J and K in favour of Respondent Nos.1-Society, whereas now the said Society is claiming rights in respect of the entire land admeasuring 21,736 sq.mtrs alongwith Respondent Nos.2 and 3. That the issue of title to the portion of land in the layout between the Petitioner and Respondent No. 1 is finally settled by the decree of the City Civil Court and that the Competent Authority does not have jurisdiction to pass order contrary to the City Civil Court's decree.

7) Mr. Ghelani further submits that the Competent Authority has completely ignored the position that land admeasuring 1859 sq. mtrs is handed over to Municipal Corporation of Greater Mumbai (**MCGM**) for DP road and land admeasuring 158.05 sq.mtrs is reserved for municipal market and land admeasuring 243.07 sq.mtrs is reserved for primary school. That therefore the said land cannot be conveyed in favour of the Respondent-Societies. That the Competent Authority has completely ignored this position and has erroneously granted conveyance of entire land admeasuring 21,736 sq.mtrs.

8) Mr. Ghelani further submits that the case involves layout development. That Petitioner has so far constructed only Building Nos. A to H, J and K and L and M. That the Petitioner has proposed construction of Building Nos. N and P in the layout. That plans for construction of Building Nos. N and P were sanctioned by MCGM and

flat purchasers of Building Nos. A to H and J and K and the members of Respondent-Societies were always aware of Petitioner's plan for construction of Building Nos. N and P in the layout. He submits that MCGM illegally reduced the area of land taken up for construction of D.P. Road from 2200 sq.mts to 1859 sq.mtrs putting the construction of Buildings Nos. N and P in jeopardy. That apart from Petitioner's right to claim FSI in respect of DP road land of 2200 sq. mtrs., there is also reservation of land admeasuring 158.05 sq. mtrs for municipal market and 243.07 sq.mtrs for primary school. That for reservation of that land, Petitioner is entitled to secure development rights. That therefore the land for DP road is erroneously reduced, the Petitioner is bound to secure development rights in respect of the land reserved for municipal market and primary school. That the process of handing over of land to municipal market and primary school is held up on account of neighboring landowners not cooperating with the MCGM. That only part of Petitioner's land is reserved for the said two purposes and the balance land reserved is owned by other neighboring land owners. That Petitioner has always showed willingness to surrender his part of the reserved land, but the Municipal Corporation has expressed unwillingness to accept possession of only part of the reserved lands. That Petitioner has always given option to Respondent-Societies to either compensate Petitioner in respect of the development potential in respect of Building Nos. N and P for taking conveyance of the entire land or to exclude the lands meant for Building Nos. N and P from the conveyance.

9) Mr. Ghelani further submits that the land is physically available for construction of Building Nos. N and P. That Petitioner has not given up right to construct Building Nos. N and P. He submits that the Petitioner cannot be forced to accept monetary compensation for acquisition of reserved land. That the Petitioner can also utilize development rights in respect of the reserved land for construction of Building Nos. N and P. Mr. Ghelani, would accordingly submit that the issue of conveyance would arise only after the entire layout development is complete. That after construction of Building Nos. N and P, the Petitioner is willing to grant conveyance of the appropriate portion of land in favour of Respondent-Societies and Societies formed by occupants of Building Nos. N and P. That if Respondent Nos.1 to 3 insist that conveyance must be granted even before completion of construction of Building Nos. N and P, the application be remanded for conveying only proportionate land as per built-up area utilized in construction of buildings of Respondent Nos.1 to 3 by carving out land meant for construction of Building Nos. N and P.

10) Dr. Saraf, the learned senior advocate appearing for Respondent Nos.1 to 3 opposes the petition. He submits that the decree dated 7 November 1997 cannot come in the way of Competent Authority exercising jurisdiction under Section 11 of MOFA. That the context in which Suit was required to be filed by Respondent No.1 must be appreciated. At that time, Respondent No.1. was opposed to construction of building Nos. L and M and wanted conveyance of entire land to itself. However, since Building Nos. L and M got constructed in the meantime, and since the Occupancy Certificate was granted during

pendency of Suit in November 1990, the entire scenario has changed which is the reason why Respondent No.1 withdrew First Appeal No. 1091 of 2000 and decided to seek joint conveyance in favour of Respondent Nos.1 to 3 in respect of the entire land. That therefore the decree passed in S.C. Suit No. 3226 of 1985 can have absolutely no effect on the order of deemed conveyance. That Appeal is continuation of the Suit, and that the Appeal was withdrawn with the specific intention of applying for deemed conveyance.

11) Dr. Saraf further submits that so far as land surrendered for DP Road and reserved for municipal markets and primary schools are concerned, Respondent Nos.1 to 3 are willing to give up claims in respect of those 3 pieces of land. Dr. Saraf goes a step further and submits that the additional land admeasuring of 123.12 sq.mtrs is taken over by MCGM in 2001 for widening of Sahar road and land admeasuring 2328.41 sq.mtrs encroached by slum dwellers which is outside the compound wall of the Society. He therefore submits that the entire land admeasuring 4711.65 sq. mts relating to DP road, municipal market, primary school, road widening and slum encroachment need not be conveyed to the Respondent-Societies. That Respondent-Societies are entitled to conveyance of entire land admeasuring 21,736 sq.mtrs. That they are willing to restrict their entitlement to land admeasuring 16,584.55 sq. mtrs so as to put an end to the entire litigation.

12) Dr. Saraf further submits that the Petitioner has lost right to construct balance Building Nos. N and P. Inviting my attention to the

pleadings in para-9 of the Petition, Dr. Saraf submits that Building Nos. N and P were to be constructed only on account of development rights flowing out of land surrendered for DP road of 2200 sq. mts. That however actually land area admeasuring 1859 sq. mtrs is ultimately surrendered for DP road. He relies on letter dated 23 April 1991 of MCGM to demonstrate that construction of Building Nos. N and P is not possible on account of non-availability of balance FSI in lieu of DP road. Dr. Saraf submits that the Petitioner cannot be permitted to withhold conveyance for satisfying its greed of carrying out additional constructions as and when new FSI becomes available. He relies on judgments of this Court in Lakeview Developers Versus. Eternia Co-operative Housing Society Ltd.¹ and Rajkumar Gulati and Ors. Versus. S.D. Corporation Pvt. Ltd. and Ors.². He submits that the Petitioner can secure monetary compensation/TDR as and when land reserved for municipal market and primary school is acquired by the Municipal Corporation. That TDR arising out of reserved land cannot be treated as a development potential in respect of the land meant to be conveyed to the Respondent-Societies. That entire development potential in respect of the land is consumed by the Petitioner and that therefore it cannot delay conveyance of the land for eternity. That process of surrender of land reserved for municipal market and primary school is still not complete. That the buildings of Respondent No.1-Societies were constructed during 1970s and even buildings of Respondent Nos.2 and 3-Societies have received Occupancy Certificate in November 1990. That period of over 46 years have passed from construction of the last building and it is high time that conveyance of the land is granted in

1 2015 SCC Online Bom 3824

2 2025 SCC Online Bom 4370

favour of the Societies. Dr. Saraf accordingly prays for issuance of a direction to the Competent Authority to issue certificate of unilateral deemed conveyance of land admeasuring 16584.55 sq.mtrs.

CONSIDERATION OF SUBMISSIONS

13) Petitioner undertook development of several buildings on land admeasuring 21,736 sq.mtrs. While undertaking phase wise development, initially Building Nos. A, B, C, D, F and G were constructed on portions of the subject land. Thereafter, four buildings bearing Nos. E, H, J and K were constructed on the subject land. It appears that a portion of the said property was required for construction of 44 feet D.P. road. Petitioner believed that the area of land required to be surrendered for DP road out of the subject land was 2200 sq.mtrs. Accordingly, in the year 1983, Petitioner put up revised plans for development of the total land admeasuring 21,736 sq.mtrs by seeking development rights in respect of the land admeasuring 2200 sq.mtrs for DP road. Accordingly, Petitioner proposed to construct 4 additional building Nos. L, M, N and P in the subject land. The plans were apparently sanctioned on 25 October 1983 which envisaged construction of Building Nos. N and P as well. Petitioner first undertook development of Building Nos. L and M and completed the same. It appears that subsequently, the Municipal Corporation took a stand that the actual area surrendered for DP road was only 1859 sq.mtrs. This resulted in reduction of available built-up area making construction of Building Nos. N and P impossible. Accordingly, Petitioner could not construct Building Nos. N and P on the said property. The Building Nos. L and M received Occupancy Certificate in November 1990 and

thereafter apparently, no additional construction is put up by the Petitioner-Developer due to consumption of the entire available FSI potential based on computation of DP road land of only 1859 sq. mtrs.

14) Thus, as of now what stands on the land are Building Nos. A to H and J to K and L and M. As observed above, occupants of buildings A to H and J to K have formed Respondent No.1-Society whereas occupants of Buildings Nos. L and M have formed Respondent Nos.2 and 3-Societies respectively. All the three Societies jointly applied to the Competent Authority for deemed conveyance of the entire land admeasuring 21,736 sq.mtrs and by the impugned order dated 15 May 2017, the entire land admeasuring 21,736 sq.mtrs has been conveyed to Respondent Nos.1 to 3-Societies.

OBJECTION OF CONVEYANCE BEING CONTRARY TO CIVIL COURT'S DECREE

15) The first objection raised on behalf of the Petitioner to the impugned order of deemed conveyance dated 15 May 2017 is that the same is in the teeth of decree dated 7 November 1997 passed by the City Civil Court in S.C. Suit No. 3226 of 1985. By decree dated 7 November 1997, the City Civil Court directed Petitioner to convey in favour of Respondent No.1-Society sub-lease in respect of Building Nos. A to H, J and K together with land appurtenant thereto with common right of way and common enjoyment of recreational ground. The operative part of decree dated 7 November 1997 reads thus:

The Plaintiffs suit is partly decreed as per following terms:-

a) The 1st defendant is ordered and directed to execute an indenture/conveyance of sub lease in respect of buildings A to H, J and K together with the land appurtenant thereto, with common right

of way and common enjoyment of recreation ground of payment of proportionate costs of maintenance.

b) The 1st defendant is also ordered and directed to submit to the plaintiffs within six weeks from the date hereof draft of such indenture/conveyance deed, to be executed together with a copy of the plan to be attached thereof showing locations of the said buildings A to H, J and K together with the land appurtenant thereof to be sub-leased and the common right of way and recreation ground, within 4 weeks from the receipt of the said draft and the plan, and plaintiffs shall approve the same and get engrossed and stamped and submit to the 1st defendant for its execution. The parties to the suit will have liberty to apply in case of disagreement between them.

c) Upon engrossing and stamping the said sub-lease the plaintiff shall tender the same to the 1st defendant alongwith the arrears of proportionate lease rent payable by them as also the arrears of outstanding payable by them to 1st defendant and the 1st defendant shall execute the same within 2 weeks thereof. The plaintiffs shall lodge the same for registration with Sub-Registrar of assurances and pay the registration charges and the 1st defendant admit execution within six weeks thereof.

Rest of the prayers are dismissed. The suit against 2nd defendant is dismissed. The parties to bear the own costs.

Dated: 7th Nov. 1997

16) The decree dated 7 November 1997 was challenged by Respondent No.1-Society before this Court by filing First Appeal No. 1091 of 2000. However, the Appeal was withdrawn by Respondent No.1-Society on 16 September 2016 expressing that the Society intended to apply for deemed conveyance. Accordingly, the First Appeal was permitted to be withdrawn vide order dated 16 September 2016, which reads thus:

P.C.:

1. Not on board. Mentioned. Taken on board.
2. Learned counsel for the appellant/applicants submits that the appellant-society does not want to proceed with the present appeal.

The letter to that effect issued by the Secretary of the appellant-society is produced on record and marked as Annexure-A. The secretary of the society is also present before the Court and submits that the society wants to withdraw the appeal as the society intends to apply for the deemed conveyance.

3. In view thereof, the appeal stands disposed of as withdrawn. No order as to costs.

4. In view of the disposal of the appeal, the civil application no more survives and stands disposed of.

5. The permission is granted to apply for the original documents produced in the case.

17) It is contended on behalf of the Petitioner that withdrawal of the First Appeal by Respondent No.1-Society has given finality to the decree dated 7 November 1997. It is contended that when Civil Court has directed conveyance of only land appurtenant to Building Nos. A to H, J and K to Respondent No.1-Society, it was impermissible for that Society to file application for deemed conveyance before the Competent Authority. What is sought to be contended on behalf of the Petitioner may appear to be attractive in the first blush and ordinarily this Court would not countenance Competent Authority exercising jurisdiction under Section 11 of MOFA after adjudication of entitlement for conveyance by the Civil Court. However, what needs to be appreciated in the present case is the background in which the Suit was filed and the decree has been passed by the Civil Court. At the time when S.C. Suit No. 3226 of 1985 was filed, Petitioner-Developer had completed construction of only Building Nos. A to H, J and K and Respondent No.1-Society was formed by the flat purchasers thereof. Petitioner proposed to construct four more Building Nos., L, M, N and P by utilizing FSI flowing out of land surrendered for DP road.

Respondent No.1-Society was opposed to the said plans of the Developer and accordingly filed S.C. Suit No. 3226 of 1985 before the City Civil Court. The Suit was filed essentially to prevent the Petitioner from putting up construction of four additional buildings. No doubt, the Suit was also for claiming conveyance of the entire land in favour of Respondent No. 1 Society. Thus the first Respondent Society believed that the development potential in the layout was complete after construction of Building Nos. A to H, J and K and that therefore the entire land admeasuring 21736 sq. mtrs must be conveyed to it.

18) However, during pendency of the suit, Petitioner was successful in constructing Building Nos. L and M and the Occupancy Certificate in respect thereof was issued in November 1990. Thus, by the time decree dated 7 November 1997 was passed, two more Building Nos. L and M were already constructed by the Petitioner on the land of which conveyance was sought by Respondent No.1-Society. It appears that the City Civil Court took into consideration the fact that two more buildings had come up on the land and accordingly directed conveyance of only land appurtenant to Building Nos. A to H, J and K in favour of Respondent No.1-Society. Respondent No.1 got aggrieved by conveyance of only limited land in its favour and accordingly filed First Appeal No. 1091 of 2000 in this Court. By the year 2016, the position that existed was that two more buildings had come up on the land in respect of which Respondent Nos.2 and 3 Societies were formed. At this stage the first Respondent Society changed its original stance and agreed that even the societies formed in respect of Building Nos. L and M are also entitled to conveyance of portion of land and that the entire

land cannot be conveyed only in favour of Respondent No. 1-Society. Therefore, all the three Societies came together and decided to seek joint conveyance of the entire land in their favour rather than fighting amongst each other. In my view, this was a correct decision taken by the three Societies rather than seeking to divide the lands amongst each other. Respondent Nos.2 and 3-Societies were not parties to S.C. Suit No. 3226 of 1985 and to First Appeal No. 1091 of 2000. Therefore, First Appeal could not have been effectively decided in absence of Respondent Nos.2 and 3-Societies. It would have been difficult for the Appellate Court to decide land entitlement of Respondent No.1 without hearing Respondent Nos.2 and 3-Societies. Appreciating this difficulty, Respondent No.1-Society decided to join hands with Respondent Nos.2 and 3 and claimed conveyance of the entire land.

19) After having decided to seek joint conveyance of the entire subject land in favour of the three societies, two options were open to Respondent No.1 Society. The first option was to secure conveyance through the Court. Accordingly, Respondent No. 1 could have applied for amendment of the Plaint at appellate stage or could have withdrawn the Appeal with liberty to file a fresh suit seeking conveyance of entire land in favour of the three societies. However, provisions of Section 11 of MOFA were amended and a faster and swifter remedy of deemed conveyance was provided during pendency of the First Appeal. Thus second option became available for the Respondent Societies and accordingly they decided to file application for deemed conveyance. This is a reason why First Appeal No. 1091 of 2000 was withdrawn expressing intention to file application for deemed conveyance.

20) Considering the above position, it is difficult to hold that decree dated 7 November 1997 came in the way of Competent Authority deciding an altogether different prayer made by Respondent Nos.1 to 3 Societies for deemed conveyance. Instead of impleading Respondent Nos.2 and 3 to First Appeal No.1091 of 2000, Respondent No.1-Society thought it appropriate to file a joint application for deemed conveyance along with Respondent Nos.2 and 3. It is well settled that an Appeal is a continuation of the Suit. What can be done during pendency of Suit can also be done during pendency of the Appeal. It is always open for a party to withdraw a conveyance suit and file application for deemed conveyance. Legislature has consciously provided for a quicker and swifter remedy to the Societies to secure conveyance of land. Therefore, merely because a suit is instituted, the same does not prevent a Society from applying for deemed conveyance by withdrawing the suit. In the present case, the Suit was filed when there was no provision in MOFA for deemed conveyance. Since S.C. Suit No. 3226 of 1985 could have been withdrawn by Respondent No.1-Society with liberty to file joint application for deemed conveyance with Respondent Nos.2 and 3-Societies, the same course of action could be adopted even during pendency of the First Appeal.

21) In my view, therefore the objection sought to be raised by the Petitioner about impermissibility for Competent Authority to decide application for deemed conveyance after withdrawal of the Appeal is completely misplaced. The objection of *res-judicata* can also not be raised since the Appeal was withdrawn expressing intention to

file application for deemed conveyance. The objection in this regard sought to be raised on behalf of the Petitioner is accordingly repelled.

ERROR COMMITTED BY THE COMPETENT AUTHORITY IN CONVEYING LAND ADMEASURING 21,736 SQ.MTS.

22) It is sought to be contended on behalf of the Petitioner that the entire land admeasuring 21,736 sq.mts cannot be conveyed in favour of Respondent Nos.1 to 3 on account of surrender of land for DP road and reservation of lands for municipal market and primary school. Dr. Saraf fairly admits that the land admeasuring 1859 sq.mts is surrendered for DP road and lands admeasuring 158.05 sq.mtrs and 243.07 sq.mtrs are reserved for municipal market and primary school respectively. With a view to put an end to the litigation, he fairly concedes that the said three portions of land need not be conveyed to Respondent -Societies though in law the Societies may be justified in seeking conveyance of benefits flowing through the said lands. To this extent, there appears to be an error in the order passed by the Competent Authority in directing conveyance of entire land admeasuring 21,736 sq.mtrs.

23) In fact, Dr. Saraf walks a step further and submits that in addition to exclusion of 3 portions of land surrendered for DP road and reserved for municipal market and primary school, there is certain more portion of land which is incapable of being conveyed in favour of Respondent-Societies. He has submitted that the land admeasuring 123.12 sq.mtrs has been taken over by MCGM for widening of Sahar road. Similarly, portion of land falling outside Societies' compound admeasuring 2328.41 sq.mtrs is encumbered by slum and is not in

physical possession of the society. It is submitted that societies are not interested in seeking conveyance of land admeasuring 2328.41 sq.mtrs encumbered by slum. This is how Respondent Nos.1 to 3 societies are willing to given up claims in respect of the total land admeasuring 4711.65 sq.mtrs and conveyance is insisted only in respect of land admeasuring 16584.55 sq.mtrs. The statement showing the above calculations, which is presented by Respondent Nos.1 to 3 is as under:

	Description	SQ. MTS.
	AREA OF PLOT AS PER 7/12 EXTRACT AS PER APPROVED LAYOUT PLAN	21,296.20
	LESS	
A	AREA OF PLOT HANDED OVER BY KIRAN BUILDERS TO BMC FOR DP ROAD	1859.00
B	MARKET RESERVATION OF DP	158.05
C	PRIMARY SCHOOL RESERVATION	243.07
	AREA OF PLOT LESS (A+B+C)	19,522.22
D	AREA TAKEN OVER BY BMC IN 2001 FOR WIDENING OF SAHAR ROAD (5 FEET)	123.12
E	AREA ENCUMBERED BY SLUMS AND NOT IN PHYSICAL POSSESSION (outside compound wall)	2,328.41
	TOTAL DEDUCTION (A+B+C+D+E)	4,711.65
	AREA OF PLOT LESS (A+B+C+D+E)	16,584.65
	AREA OF PLOT THAT SOCIETIES ARE SEEKING REVISED CONVEYANCE OF	16,584.55

24) Thus, there appears to be an error in the order of the Competent Authority in directing conveyance of entire land admeasuring 21,736 sq.mtrs and that error can be corrected by this

Court. The manner in which such correction can be effected is being discussed in the latter part of the judgment.

PETITIONER'S RIGHT TO CONSTRUCT BUILDING NOS. N AND P AND TO DELAY CONVEYANCE TILL COMPLETION OF ENTIRE LAYOUT

25) It is contended by the Petitioner that it is entitled to construct Building Nos. N and P as per plans sanctioned in the year 1983 and that therefore conveyance of even land admeasuring 16584.55 sq. mtrs., which is claimed to be in physical possession of the Societies, cannot be granted. It is contended that Building Nos. N and P would come up on land admeasuring 16584.55 sq.mtrs and this is how conveyance of even land of 16584.55 sq. mtrs. is also opposed by the Petitioner.

26) As observed above, after completion of construction of Building Nos. A to H, J and K, Petitioner proposed construction of four more Building Nos. L, M, N and P on the land. Construction of the said four buildings was apparently premised on Petitioner's belief that the area of land surrendered for DP road was 2200 sq.mtrs. However, it latter transpired that the actual land surrendered for DP road was only 1859 sq.mts. Accordingly, the development rights flowing out of surrendered land for DP road got reduced and Petitioner was prevented from constructing Building Nos. N and P. He could construct only Building Nos. L and M out of development rights secured through surrender of land for DP road. This position is admitted by the Petitioner in para-9 of the Petition wherein it is averred as under:

9. Occupation certificate of Buildings L and M were issued by MCGM in November 1990 but construction of building nos. N and P had to be deferred because on actual demarcation and survey of the DP road land on site, the area was ascertained to be 1859 sq.mts., instead of 2200 sq.mts., thereby restricting the construction of buildings of N and P due to deficit of FSI. The buildings N and P have been approved in the layout plan and can be constructed in lieu of development rights but due to matters pending before the Hon'ble court, the Petitioner has so far refrained from carrying out any remaining further construction activities on the proposed land.

27) Thus, construction of Building Nos. N and P could not be carried out by the Petitioner only on account of dispute relating to area of land surrendered for DP road. For the last 46 long years (after receipt of OC for Building Nos. L and M) Petitioner has not been able to resolve the said area dispute. On the other hand, Municipal Corporation has emphatically informed the Petitioner way back on 23 April 1991 that there was no balance FSI in lieu of DP road and that construction of Building Nos. N and P was not possible. The letter dated 23 April 1991 reads thus:

23 APR 1991

M/s. Kiran Builders Pvt. Ltd.;
17, Kamer Building,
2nd floor, 38 Cawasji Patel Street,
Bombay 400023.

Sub.: Certificate that there is no N-P building existing since there is no balance F.S.I. on property known as kalpita Enclave.

Sir,

Ref.: Your letter dt. 2-4-91.

With reference to the above, I have to state that there is no balance F.S.I. in lieu of D. P. Road under 10 (2) on property bearing C. T. S. No. 27,31,33,35,360,361 and 362 The construction of Building

No. N-P is not possible. The contents of your letter dated 2-4-1991 are confirmed.

Yours Faithfully
Assistant Engineer Building
Property
(W.D.) K/E Ward.

28) Faced with the difficulty that development potential in respect of the land surrendered for DP road is complete and that no FSI is available for construction of Building Nos. N and P, Petitioner has sought to suggest that it is likely to receive development rights at least *qua* the land acquired for municipal market and primary school. As observed above, land admeasuring 158.05 sq.mtrs is earmarked in the DP for municipal market reservation and land admeasuring 243.07 sq.mtrs. is earmarked for primary school reservation. Petitioner believes that upon acquisition of those two portions of land, it is likely to receive development rights which it purposes to utilize for construction of Building Nos. N and P.

29) I must observe that this novel idea of utilizing development rights flowing out of reserved land for construction of Building Nos. N and P now engineered by the Petitioner is preposterous to the core. There are multiple reasons for holding so:

Firstly, there may or may not be acquisition of lands reserved in DP for municipal market and primary school. It is not incumbent for the Planning Authority to acquire the land reserved in the DP. If the land is not acquired within the stipulated time, it is open for the land owner to

issue notice under Section 127 of the Maharashtra Regional and Town Planning Act, 1966 and get the land out of reservation. In that situation ownership of the land would be retained with the Petitioner.

Secondly, in the event the Municipal Corporation acquiring the land reserved for municipal market and primary school, the Petitioner would secure compensation in respect of the acquired land. Though the Petitioner may opt for Transferable Development Rights (**TDR**) in respect of the acquired land, such TDR is issued mainly on account of financial difficulties of the planning authority in paying monetary compensation. Thus, Petitioner's entitlement in respect of acquired land is towards compensation paid either in monetary terms or through TDR.

Thirdly, in case the TDR is granted by issuance of Development Rights Certificate (**DRC**), the FSI/TDR reflected therein can be utilised in some other project by the Petitioner itself or can be monetized. TDR is freely tradable in the market. The DRC can be hoarded, or TDR can be sold in parts or utilised by the holder himself or sold completely as per his desire. Thus, it is not necessary that the TDR must be utilized for putting up additional construction on the subject land.

Fourthly, Petitioner would still be the owner in respect of the slum land, which can be redeveloped where the TDR granted for acquired land can be utilized.

Fifthly, and most importantly, the compensation receivable either in monetary terms or in the form of TDR cannot be treated as a development potential for land to be conveyed in favour of Respondent-Societies. Once land is acquired, it would get separated from the layout and would have no relationship with the development carried out in the layout. Therefore, even if Petitioner chooses to opt for TDR in respect of the acquired land, the same cannot be treated as a development potential for construction of Building Nos. N and P which was envisaged out of usable FSI flowing out of land surrendered for DP land.

Sixthly, both the lands reserved for municipal market and primary school have not yet been acquired by the Municipal Corporation. Petitioner itself has contended that larger lands are earmarked in the reservations and only some part of Petitioner's land has been reserved. Petitioner has admitted that the Municipal Corporation has not shown willingness to accept possession of only part of reserved land on account of non-co-operation by the neighboring land owners. These may be valid difficulties for the Petitioner. However, till Municipal Corporation acquires the land and pays compensation/TDR to the Petitioner, conveyance of the land meant for the Societies cannot be delayed.

30) In view of the above reasons, it is difficult to hold that there is development potential left in land admeasuring 16584.55 sq.mtrs. of which conveyance is sought by the Petitioner.

31) Even otherwise, it is well settled position of law that a Developer cannot put up additional constructions for eternity on the basis of FSI made available in future. The issue is well settled by Division Bench judgment of this Court in *Lakeview Developers* (supra) in which it has held in paras-55 to 56 as under:

55. In our view, therefore, from the aforesaid judgment, it is clear that the developer cannot claim that he can continuously exploit the building potential for eternity without conveying the land in favour of the Society. The obligation to convey the land in favour of the Society within a prescribed time and the obligation to make true and full disclosure under Clauses 3 and 4 of Form V remains unfettered. If the full development potential of the land is exhausted and the obligation for conveyance of land in favour of the Society has arisen as per the Act and Rules and if the developer fails to do so then any further benefit which would accrue to the developer on account of any additional TDR or FSI made available, cannot be used by him for the purpose of construction of additional buildings. For example, recently, the Government of Maharashtra has announced that the FSI which would be available in the City of Greater Mumbai would be increased by 0.6. The benefit of this announcement cannot be availed by a developer who has not conveyed the property in favour of the Society though he was under legal obligation to do so, having fully developed the building potential of the land under building as per true and full disclosure under Section 3 and 4 of the said Act and Clauses 3 and 4 of Form V of the said Rules. He, therefore, cannot having failed in his obligation to convey the property within the time prescribed thereafter claim that full building potential has not been utilized and claim right to construct further buildings.

56. In our view, from the facts and circumstances of the present case, it can be seen that though the developer/promoter had fully utilized the full FSI/potential of the land and was under an obligation to convey the property after construction of the 10 th building on Sector IV-A, he is now trying to construct four other buildings by claiming additional TDR and trying to load it on the four additional buildings. In our view, prima facie, it can be seen that full development potential/FSI has already been utilized by the developer and his claim that additional buildings were constructed by utilizing the additional TDR prima facie does not appear to be correct if the layout plan produced by the Plaintiffs/Societies is taken into consideration.

32) The principles are reiterated by this Court in its judgment in ***Rajkumar Gulati*** (supra). Therefore, mere possibility of additional FSI being made available in respect of the reserved land cannot be a ground for not conveying the land in favour of Respondent-Societies.

CONCLUSIONS

33) In view of the above discussions, I do not find any infirmity in the Competent Authority exercising jurisdiction under Section 11 of MOFA for grant of deemed conveyance of the land in favour of Respondent Nos. 1 to 3-Societies. As observed above, mere passing of decree in the suit filed by Respondent No. 1 or withdrawal of Appeal by it does not come in the way of the Competent Authority in entertaining and deciding the joint application made by Respondent Nos. 1 to 3 societies for deemed conveyance. The Occupancy Certificates in respect of buildings of Respondent No.1-Society were issued in 1970s whereas those in respect of buildings of Respondent Nos.2 and 3-Societies is issued in the year 1990. Petitioner has already delayed performance of its statutory obligation to convey its right, title and interest in the land and buildings in favour of the Societies under Section 11 of MOFA. The Competent Authority has rightly stepped into the shoes of the Petitioner and has performed the act which the Petitioner was supposed to perform. Therefore, no error can be traced in exercise of jurisdiction by the Competent Authority.

34) However, the Competent Authority has committed a slight error in conveying entire land admeasuring 21,736 sq.mtrs ignoring the fact that certain portion of land is surrendered for D.P. road and some

portion of land is reserved for municipal market and primary school in the development plan. Additionally, Respondent Nos.1 to 3 have voluntarily sought deduction of land taken over by MCGM for widening of Sahar Road, as well as land encroached by slum dwellers. The Societies have accordingly restricted conveyance in respect of the land admeasuring only 16584.55 sq.mtrs. Upon conveyance of land admeasuring 16584.55 sq.mtrs, Petitioner would be able to enjoy rights in respect of the land admeasuring 158.05 sq.mtrs reserved for municipal market, land admeasuring 243.07 sq.mtrs reserved for primary school, as well as land admeasuring 123.12 sq.mtrs taken over by MCGM for road widening and land admeasuring 2328.41 encroached upon by slum dwellers. Petitioner can claim benefits in respect of the reserved land and land taken over for road widening. Petitioner can also carry out redevelopment in respect of the land encroached by slum dwellers. Respondent-Societies have shown the magnanimity in not claiming title in respect of land admeasuring 4711.65 sq.mtrs. In my view, therefore a direction needs to be issued to the Competent Authority for conveyance of land admeasuring 16584.55 sq.mtrs. in favour of Respondent Nos.1 to 3-Societies.

ORDER

35) The Petition accordingly succeeds partly, and I proceed to pass the following order:

- (i) Order dated 15 May 2017 passed by the Competent Authority as well as certificate of unilateral deemed conveyance issued in pursuance thereof are set aside.

(ii) Application No. 119 of 2016 is remanded to the Competent Authority for the limited purpose of issuing certificate of unilateral deemed conveyance in respect of land admeasuring 16584.55 sq.mtrs in favour of Respondent Nos.1 to 3 -Societies within a period of 3 months.

(iii) Parties shall appear before the Competent Authority on 24 June 2026 along with copy of this order downloaded from the website of the Court.

36) With the above directions, the petition is partly allowed. Rule is made partly absolute. There shall be no order as to costs. Pending interim applications, if any, are disposed of.

NEETA
SHAILESH
SAWANT

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SAWANT
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[SANDEEP V. MARNE, J.]