

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3530 OF 2026**

Neelkanth Mansions & Infrastructure
Private Limited

...Petitioner

Versus

The District Deputy Registrar, Co-
operative Societies, Thane & Ors.

...Respondents

Mr. Sharad Bansal with Mr. Mdehavin Bhatt, Mr. Ranjyot Singh Panesar
and Ms. Manashvi Shah i/b. MV Law Partners, for the Petitioner.

Ms. Mamta S. Srivastava, AGP for State.

Mr. Mosin Naik, for Respondent No.2.

CORAM: SANDEEP V. MARNE, J.

Judgment Resd on : 16 June 2026.

Judgment Pron.on : 25 June 2026.

JUDGMENT:

1) The issue that arises for consideration in the present petition is whether it is mandatory to convey only the plinth and appurtenant area to the organization of flat purchasers when TDR is utilised in construction of buildings in the layout or whether the

principle of land division proportionate to built-up area utilised in construction of buildings in the layout can also be followed in a given case where use of TDR is not restricted to a particular building and TDR is distributed across all buildings in the layout.

2) The issue arises in the light of challenge raised by the Petitioner-Developer to order dated 30 January 2026 passed by the District Deputy Registrar, Co-operative Societies, Thane and Competent Authority (**Competent Authority**) issuing certificate of unilateral deemed conveyance in respect of land admeasuring 929.84 sq.mtrs in favour of Second Respondent-Society.

3) Petitioner is a developer and promoter of larger integrated project named 'Neelkanth Greens' at Village-Majiwada, District-Thane comprising of multiple residential buildings, row houses, common amenities and infrastructure on land bearing Survey Nos.312/1A, 312/1B, 316 (Part), 318/1D/1, 318/1D/2, 319/1A, 319/1B/1 and 319/1B/2 totally admeasuring 56,654 sq.mtrs. The Project is sanctioned under a common layout approval issued by Thane Municipal Corporation on 28 September 2023.

4) Respondent No.2 is a Co-operative Housing Society comprising of purchasers of 12 row houses, construction of which has been completed and occupancy certificate dated 17 July 2007 is issued by the Municipal Corporation. There are other multi-storeyed buildings constructed in the layout.

5) On 10 September 2025, Respondent No.2-Society filed Application No. 603 of 2025 under Section 11(3) of MOFA before Respondent No.1-Competent Authority seeking deemed conveyance in respect of land admeasuring 929.84 sq.mtrs comprising of 788.63 sq.mtrs of exclusive plot area and 141.21 sq.mtrs of proportionate recreational ground. Petitioner filed Affidavit-in-Reply opposing the application. By order dated 30 January 2026, the Competent Authority has allowed Application No. 603 of 2025 filed by Respondent No.2-Society and has issued certificate of unilateral deemed conveyance of land admeasuring 929.84 sq.mtr in Survey No.312/1A Village-Majiwade, Tal. and District Thane alongwith buildings constructed thereon. Petitioner is aggrieved by orders of the Competent Authority dated 30 January 2026 and has filed the present petition.

6) Mr. Bansal, the learned counsel appearing for the Petitioner submits that the Competent Authority has grossly erred in directing conveyance of land admeasuring 929.84 sq.mtrs. He submits that the Petitioner has utilised TDR admeasuring 24,950.45 sq.mtrs for construction of the buildings in the layout. He relies on GR dated 22 June 2018 in support of his contention that when TDR is utilised, conveyance can be granted only of plinth and appurtenant area. He submits that when TDR is utilised in construction of buildings of the Society, it is impermissible to convey land proportionate to built-up area utilised in construction of the building. In support, he relies on judgments of this Court in **Rai Residency Pvt. Ltd. Versus. The Competent Authority District Deputy Registrar, Co-operative Societies, Thane¹, Rashesh Co-**

¹ Writ Petition NO.8030/2025 decided on 1 October 2025.

operative Housing Society Limited Versus. State of Maharashtra and ors. ² and **Valentine Properties Pvt. Ltd. Versus. State of Maharashtra and ors.** ³. He prays for setting aside the order of the Competent Authority.

7) Mr. Naik, the learned counsel appearing for Respondent No.2 opposes the petition and supports the order passed by the Competent Authority. He submits that the Competent Authority has rightly granted conveyance of proportionate land after noting failure on the part of the Petitioner to convey land despite issuance of Occupancy Certificate in the year 2007. That GR dated 22 June 2018 does not put any restriction on proportionate land division where TDR is used. That conveyance can be granted even before completion of the layout development. That Society is granted conveyance of only proportionate portion of land which does not affect other constructions in the layout. He prays for dismissal of the petition.

8) I have also heard Ms. Srivastava, the learned AGP for Respondent-State who supports the order passed by the Competent Authority.

9) Rival contentions of the parties now fall for my consideration.

10) Perusal of the grounds raised in the Petition would indicate that the conveyance in favour of Respondent No. 2-Society is mainly

² Writ Petition NO. 12257/2024 decided on 11 February 2025.

³ Writ Petition(L) NO. 35377/2025 decided on 23 December 2025.

opposed on the ground that it is impermissible to grant conveyance of part of land before completion of the entire layout development. However the law in this regard is well settled that the society in respect of a completed building need not wait for completion of the entire layout development and can seek conveyance of proportionate land. [SEE: **Lok Housing and Construction Limited vs. State of Maharashtra and Others**⁴, **ACME Enterprises & Anr. vs. Deputy Registrar, Co-operative Societies & Ors**⁵ and **Upvan Woodlands CHSL Vs. Upvan Developers**⁶] Also, the GR dated 22 June 2018 provides for such proportionate conveyance. Therefore the pleaded ground for opposing the conveyance made in favour of Respondent No. 2-Society deserves to be rejected outrightly.

11) Noting the settled position of law discussed above, Mr. Bansal has urged only a singular point before me during the course of his oral submissions. According to him it is impermissible to convey proportionate land in the layout on account of use of TDR in construction of buildings therein. It is Petitioner's contention that since TDR is used in construction of the buildings, only the plinth area and appurtenant land could have been conveyed.

12) Petitioner has relied upon certificate of Architect dated 10 September 2025 produced by Respondent No.2-Society before the Competent Authority to demonstrate that TDR admeasuring 24,950.45 sq.mtrs is utilized for constructing the buildings in the layout. The Architect's Certificate dated 10 September 2025 is as under:

⁴ Writ Petition No. 6418 of 2017 decided on 26 March 2025

⁵ Interim Application NO. 4859 of 2025 decided on 4 November 2025

⁶ Writ Petition No. 11551 of 2025 decided on 15 June 2026

This is to certify that Building No. R1 To R12 which is known as "NEELKANTH GREENS ROW HOUSE CO-OPERATIVE HOUSING SOCIETY LIMITED" is situated at Ghodbunder Road, Thane (West), on land bearing Survey No. 312/1A, 312/18, 316 (Pr.), 318/10/1, 318/10/2, 319/1A, 319/18/1 & 319/18/2 of Village Majiwade Taluka Thane, City Survey Office Thane, Thane District.

FSI Details of above referred Building as per Building Plans Approved by TMC U/Ref. No. V.P. 504/0069/14 TMC/TD-DP/TPS/0008/2023 Dated 28/09/2023 as mentioned below:-

Sr. No.	Statement	Area as per Approved Plan	Area as per Latest 7/12 record
1	Area of Plot as per Subdivision	56654.00 Sq. mts.	146034.00 Sq. mts.
2a	Deduction For Area under Road Set-back	1685.00 Sq. mts.	
2b	Deduction For Area under Proposed Twin Tunnel	674.22 Sq. mts.	
3	Balance Area of Plot	54294.78 Sq. mts.	
4	Amenity Space 15% (54969.00 X 15%)	8245.35 Sq. mts.	
5	Net Area of Plot	46049.43 Sq. mts.	
6	FSI Permissible	1.1	
7	Recreation Space 10%	4604.94 Sq. mts.	
8	Basic FSI BUA (46049.43 X 1.1)	50654.37 Sq. mts.	
9	FSI on Payment of Premium	13919.00 Sq. mts.	
10	Additions For FSI Purpose (TDR)	24950.45 Sq. mts.	
11	Total Entitlement of FSI in Proposal (Sr. No. 8 +9 + 10)	89523.82 Sq. mts.	
12	Ancillary FSI	7408.18 Sq. mts.	
13	Total Entitlement (Sr. No. 11 + 12)	96932.00 Sq. mts.	
14	Built-up Area of Other Buildings in the same Plot/Layout	94145.35 Sq. mts.	
15	Built-up Area of Building No. R1 to R12 [Neelkanth Greens Row House CHSL]	1640.40 Sq. mts.	
16	Total Built-up Area	95785.75 Sq. mts.	

Determination of Percentage Share as under:

1	Share in Built Up Area of Other Buildings [94145.35/95785.75 X 100]	98.29%
2	Share in Built Up Area of Building No. R1 to R12 [Neelkanth Greens Row House CHSL] [1640.40/95785.75 X 100]	1.71%
	TOTAL	100%

Determination of Proportionate Rights in Net Plot Area as under:

1	Share in Built Up Area of Other Buildings [46049.43 X 98.29%]	45260.80 Sq. mts.
2	Share in Built Up Area of Building No. R1 to R12 [Neelkanth Greens Row House CHSL] [46049.43 X 1.71%]	788.63 Sq. mts.
	TOTAL	46049.43 Sq. mts.

Determination of Proportionate Rights in Amenity Space Area as under:

1	Share in Built Up Area of Other Buildings [8245.35 X 98.29%]	8104.14 Sq. mts.
2	Share in Built Up Area of Building No. R1 to R12 [Neelkanth Greens Row House CHSL] [8245.35 X 1.71%]	141.21 Sq. mts.
	TOTAL	8245.35 Sq. mts.

Conclusion:-

Area to be considered for Conveyance in favor of "**NEELKANTH GREENS ROW HOUSE CO-OPERATIVE HOUSING SOCIETY LIMITED**" is 788.63 Sq.mts. plus Proportionate Rights in R. G. Area admeasuring 141.21 Sq.mts. aggregating to 929.84 Sq.mts. from land bearing Survey No. 312/1A out of all common Survey Nos. 312/1A, 312/18, 316 (Pt.), 318/10/1, 318/1D/2, 319/1A, 319/18/1 & 319/18/2 of Village Majiwade Taluka Thane, City Survey Office Thane, Thane District.

Note: The said Area is given without any prejudice and with assumption that the above referred approved plans are valid and no order from any court of law is passed challenging the approval of the plans.

(emphasis added)

13) Since TDR of 24950.45 sq. mtrs is utilized for construction of buildings in the layout, the Petitioner contends that only plinth and appurtenant land could have been conveyed and that it is impermissible to grant conveyance of proportionate land in the layout to the society as per para 2(C)(vi)(2) of the GR dated 22 June 2018. It would therefore be necessary to reproduce the relevant part of the GR which is as under:

(क) जिल्हा उपनिबंधक, सहकारी संस्था / सहनिबंधक, सहकारी संस्था (सिडको) तथा सक्षम प्राधिकारी यांनी मानीव अभिहस्तांतरण प्रमाणपत्र देण्याबाबत करावयाची कार्यपध्दत:-

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vi) मानीव अभिहस्तांतरणाचे आदेश व प्रमाणपत्र पारीत करताना जिल्हा उपनिबंधक, सहकारी संस्था/ सहनिबंधक, सहकारी संस्था (सिडको) तथा सक्षम प्राधिकारी यांनी खालील बाबी विचारात घेऊन आदेश पारीत करावेत:

(१) एका भूखंडावर अनेक इमारती असतील व प्रत्येक इमारतीची स्वतंत्र सहकारी गृहनिर्माण संस्था असेल आणि त्यापैकी काही इमारतीचे बांधकाम अपूर्ण असल्यास, पूर्ण झालेल्या इमारतीचे मानीव अभिहस्तांतरण करताना अशा संस्थेच्या इमारतीच्या बांधकामाच्या प्रमाणात जागेचे क्षेत्रफळ (Proportionate area) किंवा Ground Coverage किंवा Plinth area, तसेच मोकळी जागा, सामुदायिक सेवा सुविधा, रस्ते यांचेवर बांधकामाच्या प्रमाणात अविभक्त हिस्सा Undivided share) वहिवाटीचा हक्क द्यावा.

(२) ज्या ठिकाणी टि.डी. आर. चा (TDR) वापर केला असेल अशा लेआऊट मधील इमारतीच्या बाबतीत मानीव अभिहस्तांतरण करताना Plinth व Appurtenant area प्रमाणे अभिहस्तांतरण करावे.

(३) एकाच रेखांकनात (Layout) एकापेक्षा जास्त संस्था असतील व त्यापैकी फक्त एकाच संस्थेने असा अर्ज केला असेल तर, तसेच अर्जदार संस्थेच्या जमिनीची मोजणी करण्यास इतर संस्था सहकार्य करीत नसतील तर, जिल्हा उपनिबंधक, सहकारी संस्था तथा सक्षम प्राधिकारी यांनी अर्जदार संस्थेस संबंधित संस्थेच्या बांधकामाचे नकाशे मंजूर करणा-या सक्षम प्राधिकरणाकडील नामतालिकेवरील वास्तुविशारदाचे मंजूर नकाशाप्रमाणे मोजणी करून संस्थेच्या क्षेत्राबाबत अहवाल सादर करण्यास सूचित करतील.

English translation of the above part of the GR is as under:

A procedure to be adopted in respect of issuing Deemed Conveyance Certificate by the District Dy. Registrar, Co-operative Societies/Jt. Registrar, Co-operative Societies (CIDCO) and Competent Authority:

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While passing Deemed Conveyance Order and Certificate, District Dy. Registrar, Co-operative Societies/Jr. Registrar, Co-operatives (CIDCO) and Competent Authority should consider following matter and then pass the order:

(1) If there are many buildings on one plot and have a separate co-operative society of each building and if construction of some of them is incomplete then while making deemed conveyance of completed building, undivided share of occupancy right in the proportion of construction on the proportionate area of the construction of the building of such society or ground coverage or plinth area, similarly open space, common services and facilities, roads should be given.

(2) While making deemed conveyance in respect of the build-ings in the layout where T.D.R. is utilized, their conveyance should be made according to plinth and appurtenant area.

(3) If there is more than one society in one layout and out of them only one society has made such application, similarly other societies are not cooperating for conducting measurement of the land of the applicant society then the District Deputy Registrar, Co-operative Societies, and Competent Authority shall suggest the applicant society to conduct the measurement according to the approved plan from the Architect on the panel of the Competent Authority who approved the constructions plans of the concerned society and submit the report regarding area of the society."

(emphasis added)

14) Petitioner strenuously relies on para-2(C)(vi)(2) of the GR dated 22 June 2018 which contemplates that while granting deemed conveyance in respect of the buildings in the layout where TDR is utilised, only plinth and appurtenant area land can be conveyed. It is Petitioner's contention that there is marked difference in para-2(C)(vi)(2) which applies to situation of non-utilisation of TDR in layout as compared to para-2(C)(vi)(2) which applies to a layout development in which TDR is used for construction of buildings. It is contended that in the former case [para 2(C) (vi)(1)] proportionate division of land in the layout is permissible whereas in the latter case [para 2(C)(vi)(2)]

proportionate conveyance of land is impermissible and only plinth and appurtenant land can be conveyed.

15) The difference in the procedure prescribed in clauses (1) and (2) of para-2(C)(vi) of the GR is apparent. Both the clauses undoubtedly apply to conveyance of land in respect of multiple buildings in a layout. However, the procedure in para-2(C) (vi)(1) is meant to be applied when no TDR is used for construction of buildings in the layout. When TDR is used for construction of buildings in the layout, para-2(C)(vi)(2) becomes applicable. The issue for consideration is whether in every case, where some TDR is used for construction of buildings, the principle of proportionate conveyance of land under para-2(C)(vi)(1) becomes inapplicable? When TDR is used whether conveyance must be restricted to only plinth and appurtenant area in every case leaving large chunk of land in the layout unconveyed to any society?

16) The objective behind prescribing the procedure for conveyance of only plinth and appurtenant land area in respect of the layout where TDR is utilised must be appreciated. In the layout development, all buildings may not be constructed simultaneously and by use of same FSI. Since layout development takes substantial time on account of phase-wise construction of buildings, it is possible that first building is constructed in the layout by utilising the base FSI whereas the developer may purchase TDR from the market and load the same in construction of subsequent buildings. On account of loading of TDR for construction of one of the buildings in the layout, the same results in FSI imbalance and ordinarily the principle of division of land proportionate

to built-up area utilised for each building results in a situation where the building with TDR walks away with larger share in the land. To illustrate, if the plot admeasuring 10,000 sq.mtrs is taken up for layout development and the normal FSI available is 1.00, the total available built-up area (BUA) would be 10,000 sq.mtrs. The developer constructs building no.1 by utilising BUA of 5,000 sq.mtrs. The second building can be constructed with balance available built-up area of 5,000 sq.mtrs. However, the Developer purchases TDR of 2,000 sq.mtrs and loads the same for construction of the second building and the second building is actually constructed by utilising built-up area of 7,000 sq.mtrs. In this illustration, if principle of land division proportionate to utilised built-up area for each building is followed, building no.1 would get lesser share in the land whereas building no. 2 would get larger share only on account of utilisation of TDR. To prevent this incongruous situation, para-2(C)(vi)(2) provides a transitional/temporary solution for conveyance of only plinth and appurtenant area. Para 2(C)(vi)(2) of the GR seeks to ensure that there is no imbalance in the land distribution where some of the buildings in the layout are constructed with use of TDR. This could also have been achieved by ensuring that for land division purposes, only base FSI utilised in each building is considered by ignoring the TDR, premium FSI, incentive FSI, etc. used in some of the buildings. However this is not the issue to be decided in the present case. Suffice it to observe that the objective behind prescribing procedure under para-2(C)(vi)(2) is to provide a solution, possibly a temporary one, to avoid unequal division of land while making an order of deemed conveyance.

17) If all societies in the layout jointly seek conveyance or seek conveyance in favour of the federation, entire land can be conveyed and use of TDR in construction of some of the buildings does not pose any difficulty. However, where layout development takes unduly long time and society formed in respect of the completed building opts for conveyance before completion of development in the entire layout, use of TDR for constructing other buildings pose a problem for proportionate land division. Therefore, the GR makes a sort of transitional solution where only plinth and appurtenant areas can be conveyed in favour of society of each building and the final conveyance of balance land in the layout can take place in favour of the federation or in favour of all societies jointly. Thus para 2(C)(vi)(2) of the GR merely seeks to provide a solution where proportionate land division is an impossibility on account of use of TDR in some of the buildings in the layout. The legislative intent behind incorporation of para-2(C)(vi)(2) of the GR is not to provide any benefit to the developer or to deprive the societies of their due land entitlement. Otherwise, in every layout the developer would deliberately use some TDR to prevent conveyance of proportionate land and go on milking additional FSI arising out of new Building Regulations in the unconveyed land by putting up additional construction in the layout. Para-2(C)(vi)(2) of the GR merely makes a transitional arrangement to surmount the difficulty faced in proportionate land division due to use of TDR. This is the true purport of the procedure prescribed in para-2(C)(vi)(2) of the GR dated 22 June 2018.

18) Therefore, in my view, para-2(C)(vi)(2) of the G.R. dated 22 June 2018 cannot be read to mean as an absolute prohibition for application of principle of land division proportionate to the utilised built-up area in every case. Para-2(C)(vi)(1) of the G.R. may apply even to the illustration discussed above. However, in a given case, the developer may get the entire layout sanctioned by allocating specified built-up areas to different buildings in the layout. In that case, even if TDR is purchased and loaded, the same gets distributed across various buildings in the layout. To illustrate, for undertaking layout development in land admeasuring 10,000 sq. mtrs, the developer with FSI 1.00 resulting in BUA of 10,000 sq. mtrs, the developer may purchase and utilize TDR of 2000 sq. ft and apply for permission for construction of buildings with total BUA of 12000 sq. mts. In this illustration, the TDR is not restricted to any particular building, but is utilized for construction of all the buildings in the layout. In such case, I do not see any difficulty why the principle of land division proportionate to built-up area utilised in each building cannot be followed. In fact this exactly is the situation which has occurred in the present case. Petitioner has not loaded TDR on any particular building selectively. It has utilised TDR of 24,950.45 sq.mtrs across all buildings in the layout. The Certificate of Architect would indicate that the total land taken up for development is 56,654.00 sq.mtrs, after deduction of various areas, the net area of the plot is 46,049.43 sq.mtrs. The FSI available is 1.10 and this is how total BUA available in 50,654.37 sq.mtrs. Additional premium FSI is procured by making payment of 13,919.00 sq.mtrs. It appears that TDR of 24,950.45 is utilised by the Petitioner-Developer. It appears that ancillary FSI of 7408.18 sq.mtrs is also utilised. This is how for net plot

area of 46,049.43 sq.mtrs, the total built-up area available is 96,932.00 sq.mtrs. This total available built-up area of 96,932.00 sq.mtrs is utilised for construction of all the buildings in the layout whose aggregate total BUA is 95,785.75 sq. mtrs. Thus, though the case involves utilization of TDR, such TDR is not selectively loaded in a particular building resulting in FSI imbalance for computation of land entitlement of each building. In that view of the matter, I do not see any difficulty in following the principle of land division proportionate to utilised built-up area envisaged in para-2(C)(vi)(1) of the G.R. dated 22 June 2018. In the present case therefore, it is not necessary to restrict the conveyance only to plinth area and appurtenant land and Respondent No.2-Society can be granted conveyance of land proportionate to the built-up area utilised in its building.

19) The Society's Architect has considered that the built-up area utilised for row houses of Respondent No.2-Society is 1640.40 sq.mtrs whereas, the total built-up area used for construction of other buildings in the layout is 94,145.35 sq.mtrs. This is how the Architect has determined share of Respondent No.2-Society in the built-up area as 1.71% as compared to share of other buildings of 98.29% in the layout. Accordingly, the net land available for division of 46,049.43 sq.mtrs is divided by considering the share of Respondent No.2 of 1.71%. This is how share of Respondent No.2 in the land is arrived at 788.63 sq.mtrs. Since land admeasuring 8245.35 sq.mtrs has gone in amenity spaces, Respondent No.2 is granted 1.71% share therein and accordingly share of 141.21 sq.mtrs land in the amenity space is granted in favour of Respondent No.2. This is how the Architect has determined the total

share of Respondent No.2 in the land as 788.63 sq.mtrs. + 141.121 sq.mtrs = 929.94 sq.mtrs.

20) It must be appreciated that the Petitioner-developer is attempting to take disadvantage of provisions of para-2(C)(vi)(2) of the GR. It does not want to convey proportionate land to the Respondent No. 2-Society and wants to retain ownership of some of the land conveyable to the society. This attempt is obviously aimed at the objective of additional BUA which may arise in future from the land retained by the Petitioner. Thus, the practical transitional solution provided in para-2(C)(vi)(2) of the GR for the benefit of the organization of flat purchasers is sought to be taken disadvantage of by the Petitioner-developer, which cannot be countenanced. It is not the objective behind incorporation of para-2(C)(vi)(2) in the GR to deny conveyance of due land to the organization of flat purchasers or to ensure retention of ownership of land (*other than plinth and appurtenant land*) with the developer, where TDR is used for construction of other buildings in the layout.

21) It must also be noted that it is impracticable to grant conveyance of only plinth or appurtenant area to Respondent No.2-Society in the unique facts of the present case. Respondent No.2-Society comprises of 12 row houses. It does not comprise of a singular building for considering conveyance of only plinth and appurtenant areas. Therefore, it is otherwise impossible to convey only plinth or appurtenant areas in respect of each row house in favour of the Society.

22) Reliance by Mr. Bansal on various judgments cited by him is inapposite in the facts of the present case. In ***Rai Residency Pvt. Ltd.*** (supra) an order of remand is made by this Court after observing that the Competent Authority did not follow the directives to conduct the measurements according to the approved plan from the Architect on the panel of the Competent Authority. It appears that some of the buildings therein were constructed by utilising the TDR. However, the judgment cannot be read in support of an abstract proposition that in no case where TDR is utilised, the principle of division of land proportionate to utilised built-up area cannot be followed. In ***Rashesh Co-operative Housing Society Limited*** (supra), the Competent Authority had conveyed only plinth area and not the appurtenant area and on that count, an order of remand has been made by this Court. The judgment again cannot be read in support of a principle that land in excess of plinth and appurtenant area can never be granted in a case involving utilisation of TDR. In ***Valentine Properties Pvt. Ltd.*** (supra) this Court directed appointment of Architect on panel of the Competent Authority for ascertaining the plinth area and appurtenant area in terms of Clause-(b) (2) of the G.R. dated 22 June 2018 in the peculiar facts of that case. In none of the judgments cited on behalf of the Petitioner, situation of utilization of TDR for construction of all buildings in the layout was involved.

23) The scope of the term 'appurtenant area' in the context of provisions of MOFA and the procedure prescribed in the GR dated 22 June 2018 has been examined by this Court in ***Rashesh Cooperative***

Housing Society Limited Vs. State of Maharashtra And ors.⁷ where it is held that a promoter cannot convey only the footprint beneath columns and staircase and retain all open areas when those open areas being mandatory under building rules. It is held that the term ‘appurtenant area’ cannot be restricted to mean only the land covered by the footprint of the building and has held that the appurtenant land would also include the land required for beneficial enjoyment of the building. However, in that case, this Court did not have an occasion to deal with the issue of permissibility to convey a proportionate area where TDR is utilised in construction of one of the buildings in the layout. In the facts of that case, this Court determined the exact plinth area, appurtenant area and proportionate RG entitlement and directed issuance of certificate of deemed conveyance accordingly. However, this Court did grant proportionate share in the common Recreational Ground area in favour of the society in addition to the plinth and appurtenant area. Therefore, it cannot be contended that nothing more than plinth and appurtenant area can ever be conveyed as sought to be contended by the Petitioner.

24) Conspectus of the above discussion is that ordinarily the approach of the Competent Authority must be to make an endeavour to divide and convey land proportionate to the utilised BUA in each building in the layout. The procedure prescribed in para-2(C)(vi)(2) cannot be mechanically applied to deny proportionate land conveyance merely because some TDR is used in the layout. In cases where the Competent Authority notices that use of TDR does not pose any

⁷ Writ Petition No.10961 of 2025 decided on 28 April 2026

difficulty in proportionate land conveyance, it must grant conveyance of proportionate land. It is only in rare cases where use of TDR or incentive FSI in some of the buildings results in imbalance making proportionate land division impossible that the Competent Authority can grant conveyance of plinth and appurtenant area till the entire land in the layout gets conveyed to the federation or to all Societies jointly. However, under no circumstances, non-conveyance of proportionate land should work to the advantage of the developer. Thus the first endeavour of the Competent Authority must be towards proportionate land division. Where TDR is distributed across many buildings the principle of conveyance of land proportionate to the BUA utilised in each building must necessarily be followed. In a case where TDR is used only for construction of some of the buildings in the layout, an endeavour can be made by the Competent Authority to examine whether BUA corresponding to only base FSI for all buildings can be taken into consideration for proportionate land division. For example, in illustration discussed in para 14 above, it can be examined if only base BUA of 5000 sq.mtrs. can be considered for proportionate land division by ignoring the TDR or incentive FSI. If such solution is possible, the Competent Authority must adopt it rather than mechanically conveying only the plinth and appurtenant area to each building in the layout. To sum up, the procedure of conveying land less than proportionate land should be followed only in rare cases where it becomes impossible to divide and convey land proportionate to the BUA utilised in each building or where application of such principle gives undue advantage to one of the societies in the layout at the cost of other societies.

25) The Order of the Competent Authority has resulted in a situation where Respondent No. 2-Society has received title in respect of only that portion of land which is its lawful entitlement. I am convinced that the Competent Authority has correctly divided the land by taking into consideration the BUA utilised in construction of rowhouses of Respondent No. 2-Society. I am thus satisfied with the ultimate outcome of the proceedings. Jurisdiction of this Court under Article 227 of the Constitution of India is supervisory and it need not be exercised to correct every error of law or fact, especially when the Court is satisfied with the ultimate outcome of the litigation. Reference in this regard can be made to the judgment of the Apex Court in **Garment Craft vs. Prakash Chand Goel**,⁸ in which it is held in paragraph 15 as under:

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order 1 is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. **Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported.** The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. **The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to.** It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

⁸ 2022 (4) SCC 181

26) In view of the above discussion, I do not find any valid reason to interfere in the impugned order passed by the Competent Authority. The Order of the Competent Authority appears, to my mind, to be unexceptionable. Writ Petition is devoid of merits. It is accordingly dismissed with no order as to costs.

NEETA
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Date: 2026.06.25
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[SANDEEP V. MARNE, J.]