



AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No.10220 OF 2025

Digitally signed by
ATUL GANESH
KULKARNI

Date: 2026.02.24
11:59:46 +0530

Quantum Park Cooperative Housing Society Limited, a society formed and registered under the provisions of the Maharashtra Cooperative Societies Act, 1960, having address at CTS No.D/1084(PT)/B/2/A, Union Park, Village Bandra, Khar (West), Mumbai 400 052.

... Petitioner

V/s.

- 1. AHCL-PEL**,
A limited liability partnership registered under the provisions of the Limited Liability Partnership Act, 2008,
Registered Office: 1, Rock Dale, St. Sebastian Road, Near Mehboob Studio, Bandra (West), Mumbai 400 050
- 2. Innovative construction Private Limited**, a private limited company incorporated under the Companies Act, 1956,
Registered office: 1st Floor, Samir Complex, St. Andrews Road, Bandra (West), Mumbai 400 050
- 3. Ace Housing & Constructions Ltd.**, (formerly Capricorn Construction Limited), A company incorporated

under the provisions of the
Companies Act, 1956
Registered Office: 1, Rock Dale,
St. Sebastian Road, Near Mehboob
Studio, Bandra (West),
Mumbai 400 050

4. **Patel Engineering Limited,**
A company incorporated under the
provisions of Companies Act, 1956
Registered office: Patel Estate,
Jogeshwari (West), Mumbai 400 102
5. **Rajat Patel,**
Age: Adult, Occupation: Business,
Residence at: 27, Raj Hem,
V.M. Road, JVPD Scheme,
Mumbai 400 056
6. **Khar Gulab Nagar Jaihind Coop.
Housing Society,** a society
registered under the provisions of
the Maharashtra Cooperative
Societies Act, 1960,
registered office: CTS No.1084 (pt),
Village Bandra, Bandra (West),
Mumbai 400 050
7. **Khar Gulab Nagar Trimurti Coop.
Housing Society,** a society
registered under the provisions of
the Maharashtra Cooperative
Societies Act, 1960,
registered office: CTS No.1084 (pt),
Village Bandra, Bandra (West),
Mumbai 400 050
8. **The Chief Executive Officer, Slum
Rehabilitation Authority,**

JUDGMENT:

1. The petitioner has invoked supervisory jurisdiction of this Court under Article 227 of the Constitution of India to assail the Judgment and Order dated 13 April 2022 passed by respondent No.10. By the said order, the application preferred by the petitioner society under Section 11(3) of the Maharashtra Ownership Flats Act, 1963 was rejected.
2. The facts giving rise to the present petition are as follows. Respondent No.9 was the owner and lessor of two contiguous plots situated at Bandra, Danda Khar West, Mumbai 400052. The first plot originally bore CTS No.D 1084 admeasuring approximately 2983.25 square meters. The second plot originally bore CTS No.D 1804 admeasuring approximately 3576.70 square meters.
3. By two separate lease deeds, both dated 7 February 1991, respondent No.9 demised the first property in favour of respondent No.6 and the second property in favour of respondent No.7. Thereafter, under two distinct Development Agreements dated 19 August 1997 and 17 September 1997 executed between respondent Nos.6 and 7 on one hand and respondent No.3 on the other, respondent No.3 was appointed as developer under the Slum Rehabilitation Authority Scheme. Respondent No.3 undertook to provide alternate accommodation to the occupants and members of respondent Nos.6 and 7 and was granted the right to utilize the balance FSI in accordance with the agreed terms. Necessary permissions and a Letter of Intent were granted by respondent No.8 upon applications submitted by respondent No.3.

4. Respondent No.3 thereafter entered into a partnership with respondent No.4 and constituted a partnership firm known as AHCL PEL, arrayed as respondent No.1. A Memorandum of Understanding dated 31 July 2001 was executed between respondent No. 1 and respondent No.2. Under the said arrangement, respondent No.2 was entrusted with the development of the property by utilizing 7918.54 square meters of FSI as per the Letter of Intent dated 19 February 1998, together with an additional ten percent balcony area and such other permissible areas, for construction of a building comprising stilt and twelve upper floors and any further additional area that might become available.

5. Subsequently, four Inter se Promoters Agreements dated 5 November 2001, 9 September 2002, 20 November 2003 and 7 December 2007 were executed between respondent Nos.1 and 2. These agreements recorded the detailed terms governing the development of the larger property and conferred development rights, including the right to construct residential buildings. In discharge of its obligations under the earlier Development Agreements dated 19 August 1997 and 17 September 1997, respondent No.1 completed construction of three buildings comprising ground plus seven floors for rehabilitation of the members and occupants of respondent Nos.6 and 7.

6. It was subsequently noticed that the actual areas of the first and second properties were larger than originally recorded. Respondent Nos.1 to 5, acting as promoters, procured rectification of the areas in the revenue records as well as in the records of the

Slum Rehabilitation Authority in order to avail the benefit of the additional area for development. The first property, the second property and portions thereof, collectively referred to as the third property, came to be treated together as the larger property.

7. Upon actual measurement of the larger property, it was found that there existed an additional area of 626.2 square meters over and above the earlier recorded area of 6565.2 square meters as per the survey conducted by the City Survey Officer, Bandra and reflected in M.R. Plan No. C office 2K CTS Vashi 949 of 2003 dated 13 February 2004. A No Objection Certificate was also issued permitting inclusion of the additional 656.2 square meters in the Slum Rehabilitation Scheme.

8. By order dated 20 May 2004 bearing No. SRA CSP DIV Z 04, respondent No.8 granted permission for amalgamation and subdivision of the larger property. Approval was also granted for corresponding changes in the City Survey Records and Property Register Cards and for issuance of separate property cards.

9. Pursuant to such subdivision, the Slum Rehabilitation Component comprised CTS No.D 1084 B 1 ad-measuring approximately 2978.50 square meters and CTS No.D 1084 B 2 admeasuring approximately 4242.90 square meters. CTS No.D 1084 B 2 was further subdivided into CTS No.D 1084 B 2 A admeasuring approximately 3635.4 square meters, CTS No.D 1084 B 2 B admeasuring approximately 228.5 square meters, CTS No.D 1084 B 2 C admeasuring approximately 353.5 square meters and CTS No.D 1084 B 2 D admeasuring approximately 25 square

meters.

10. Respondent Nos. 1 to 5 thus became entitled to the leasehold interest in the land together with the right to construct residential buildings in accordance with the sanctioned built up area. In terms of the sanctioned layout, requisite approvals and the Inter se Promoters Agreements, respondent Nos.1 to 5 constructed at their own cost two residential buildings known as Quantum Park, each comprising basement plus stilt plus thirteen upper floors with two wings designated as Wing A and Wing B.

11. Respondent Nos.1 to 5 thereafter entered into registered agreements for sale with various purchasers in respect of flats in the said buildings in accordance with Section 4 of the Maharashtra Ownership Flats Act and the Rules framed thereunder. The consideration amounts were received, and the agreements were duly registered under the Registration Act, 1908.

12. Upon handing over possession of the flats, respondent Nos. 1 and 2 caused formation and registration of a co-operative housing society in the name of Quantum Park Co operative Housing Society Limited under the provisions of the Maharashtra Co operative Societies Act. The society was registered on 24 August 2010 with the office of the Deputy Registrar, Co operative Societies, H W Ward, as required under Section 10 of the Maharashtra Ownership Flats Act. The office bearers of the petitioner society assumed charge of the management of the land and buildings, which are presently in its possession.

13. As the respondents failed to execute the conveyance of the land despite receipt of a legal notice, the petitioner was constrained to file Application No.127 of 2021 under Section 11 of the Maharashtra Ownership Flats Act before the Competent Authority, namely respondent No.10, seeking unilateral deemed conveyance in its favour.

14. Upon issuance of notice, respondent Nos.1, 6 and 7 appeared and filed their replies. The Competent Authority, after hearing the parties and perusing the material on record, by order dated 22 April 2022 rejected Application No.127 of 2021.

15. The Competent Authority rejected the application on the ground that the area sought to be conveyed, namely 4242.90 square meters, exceeded the area allegedly admissible to the society, stated to be 3635.10 square meters. The impugned order further records that the petitioner may file a fresh application after disposal of Suit No. 419 of 2018 instituted by the society and Suit No.1037 of 2018 instituted by certain members. The subject matter of the said suits concerns the alleged illegality of the 13th and 14th floors of the building. The pendency of those suits, which relate to the legality of certain floors, does not operate as a legal bar to consideration of an application for deemed conveyance. The issues involved in the said suits are distinct and have no direct bearing on the petitioner's statutory entitlement under Section 11 of the Act.

16. Mr. Bhole, learned counsel for the petitioner contends that respondent No.10 failed to take into consideration the fact that an

additional area of 656.2 square meters was subsequently included in the larger property. This inclusion, according to him, is borne out by the communication dated 13 February 2004 issued by the District Officer, Mumbai Suburban District bearing No. C Office 2K CTS Vashi 949 of 2003, addressed to the Chief Executive Officer of the Slum Rehabilitation Authority, whereby a No Objection Certificate was granted for incorporation of the said additional area. It is further submitted that respondent No. 10 did not appreciate that the buildings of the petitioner society form part of the Free Sale Component bearing CTS No. D 1084 B 2 admeasuring 4242.90 square meters. The said Free Sale Component was thereafter subdivided into four parts, namely CTS No. D 1084 B 2 A admeasuring approximately 3635.4 square meters, CTS No. D 1084 B 2 B admeasuring approximately 228.5 square meters, CTS No. D 1084 B 2 C admeasuring approximately 353.5 square meters and CTS No. D 1084 B 2 D admeasuring approximately 25 square meters. Learned counsel submits that respondent No. 10 erred in law in overlooking the settled legal position that an order directing execution of deemed conveyance does not finally determine or adjudicate the right, title and interest of the parties. Any person aggrieved by such conveyance retains the liberty to institute appropriate proceedings before the competent Civil Court.

17. It is further contended that the limited scope of enquiry before respondent No. 10 was confined to determining the area liable to be conveyed to the petitioner society. Instead, respondent No. 10 exceeded the bounds of jurisdiction by taking into

consideration disputes of a civil nature pending between the parties, which were extraneous to the proceedings under Section 11 of the Act. Learned counsel also submits that respondent No. 10 failed to consider the Agreement for Sale dated 5 September 2017 annexed as Exhibit C to the application. The said agreement, executed between respondent No. 1 and a flat purchaser, records in recital S that Wing A and Wing B of the petitioner society have been constructed on the property described as IRDLY in the First Schedule thereto. The description of IRDLY in the First Schedule corresponds to the property admeasuring 4242.9 square meters, being the very land on which the petitioner society's buildings stand. It is further submitted that even assuming a dispute regarding the larger extent of land, respondent No. 10 ought to have granted deemed conveyance at least in respect of the lesser area of 3635.90 square meters instead of rejecting the application in its entirety.

18. On the aforesaid premises, it is urged that this Court may direct respondent No. 10, the District Deputy Registrar, Co operative Societies, Mumbai, to issue a certificate under Section 11 of the Maharashtra Ownership Flats Act in respect of unilateral deemed conveyance of land bearing CTS No. D 1084 B 2 A admeasuring 3635.4 square meters situated at Bandra Danda, Khar West, Mumbai 400052, together with the two multistoried buildings known as Quantum Park Wing A and Wing B comprising basement, stilts and fourteen upper floors.

19. Mr. Deokar learned counsel for respondent No. 2 submits that the erstwhile respondent No. 2, now Innovative Construction

Private Limited, initially constructed two wings of the building known as Quantum Park, namely Wing A and Wing B, each consisting of twelve floors, in accordance with plans approved by the Slum Rehabilitation Authority. An Occupation Certificate in respect thereof was issued by the Slum Rehabilitation Authority on 10 April 2003. It is further submitted that plans were subsequently approved for construction of the thirteenth floor in both Wing A and Wing B. Construction of the said thirteenth floors was carried out by the erstwhile respondent No. 2, and an Occupation Certificate dated 18 July 2006 was issued. As per the Occupation Certificate plans of the said date, the FSI approved for the thirteenth floor in Wing A was 279.23 square meters and in Wing B was 197.03 square meters. Learned counsel submits that the fourteenth floor in Wing B has not been constructed to date. The FSI of 147.33 square meters, which according to respondent No. 2 pertains to the proposed fourteenth floor of Wing B, has been unlawfully diverted by respondent Nos. 1, 3 and 4 to flats constructed on the thirteenth and fourteenth floors of Wing A pursuant to a Commencement Certificate dated 12 January 2016. The alleged deviations are set out as follows:

- (i) The flats on the thirteenth floor of Wing A presently comprise FSI of 337.87 square meters. Of this, only 279.23 square meters is stated to belong to respondent Nos. 1, 3 and 4 as per the sanctioned plans dated 31 July 2010 and the Occupation Certificate plans dated 17 January 2012. The balance FSI of 58.64 square meters is alleged to have been unauthorisedly transferred from the FSI of 147.33 square

meters claimed by respondent No. 2 for Wing B.

(ii) The flats on the fourteenth floor of Wing A presently comprise FSI of 296.49 square meters. Out of this, only 209.94 square meters is stated to be sanctioned in favour of respondent Nos. 1, 3 and 4 as per the approved plans dated 31 July 2010 and the Occupation Certificate plans dated 17 January 2012. The excess FSI of 86.55 square meters is alleged to have been diverted from the FSI claimed by respondent No. 2.

(iii) It is thus contended that the total FSI of 147.33 square meters claimed by respondent No. 2 for construction of the fourteenth floor in Wing B has been appropriated by respondent Nos. 1, 3 and 4 by utilising 58.64 square meters for additional construction on the thirteenth floor of Wing A and 86.55 square meters for additional construction on the fourteenth floor of Wing A.

(iv) Even the Occupation Certificate plans dated 25 April 2016, according to respondent No. 2, reflect that no construction has been carried out on the fourteenth floor of Wing B.

20. In view of the aforesaid, respondent No.2 has instituted Commercial Suit No.178 of 2021 before this Court seeking, inter alia, a declaration that the construction of the additional 58.64 square meters on the thirteenth floor of Wing A and 86.55 square meters on the fourteenth floor of Wing A is illegal, invalid, and contrary to the sanctioned plan dated 31 July 2010 as well as the

Occupation Certificate plan dated 17 January 2012, together with consequential reliefs against respondent Nos.1, 3, and 4. It is therefore submitted that in view of the pendency of the said suit filed by respondent No.2 and the observations made by this Court while admitting flat purchasers of the thirteenth and fourteenth floors of Wing A, any conveyance executed in favour of the petitioner society ought to be made expressly subject to the final outcome of the suit filed by respondent No. 2 as well as the suit instituted by the petitioner society.

REASONS AND ANALYSIS:

21. I deal with the rival contentions, review the material on record, and explain why the order of respondent No.10 dated 22 April 2022 cannot stand.

22. Respondent No.10's stated reason for rejection was twofold. First, the Authority recorded that the society sought conveyance of 4,242.90 square meters, a figure the Authority considered larger than the society's entitlement. Second, the Authority directed that the society may file a fresh application after the pending civil suits are decided. Both reasons are legally flawed.

23. On the first ground given by the Authority, the reasoning does not stand scrutiny. The Competent Authority had before it clear and specific documentary material. When such material is available on record, the Authority is expected to read it carefully, reconcile it, and then arrive at a reasoned conclusion about the exact area that is liable to be conveyed. The record includes the order passed by the Slum Rehabilitation Authority permitting

amalgamation and thereafter subdivision of the larger property. That order changes the manner in which the property stands recorded in official records. It is followed by corresponding changes in the city survey records and the property register cards. The MR plan reflects the actual measurement on the ground and records the additional area found during survey. These are official acts carried out by competent authorities in exercise of statutory powers. They form the foundation of title identification.

24. Once subdivision is approved and recorded, the original larger CTS number ceases to remain a single indivisible parcel. It breaks into distinct and separately identifiable parts. In the present case, the Free Sale Component bearing CTS No.D/1084/B/2 was further subdivided, and one such sub part is CTS No.D/1084/B/2/A admeasuring about 3,635.4 square meters. The measurement is not an approximation drawn by the society. It flows from survey records and subdivision particulars maintained in official registers. The Authority also had before it the Agreement for Sale and registered sale deeds. Those documents are executed by the developer itself. They describe the property in the First Schedule as IRDLY. That description corresponds to the land on which the buildings known as Wings A and B are constructed. The registered documents tie the constructed buildings to a specific survey identity. They are instruments registered under the Registration Act. When the developer has represented to flat purchasers that their building stands on a defined property, and possession has been delivered accordingly, the Authority cannot ignore that representation while deciding a statutory application under

Section 11.

25. At the very least, the Authority was required to examine whether the buildings of the society stand on CTS No.D/1084/B/2/A. If the answer from the record is in the affirmative, then the society's entitlement to that sub parcel follows, subject of course to other legal objections. Instead, the Authority appears to have rejected the entire application on the footing that the society sought conveyance of 4,242.90 square meters being the larger CTS No. D/1084/B/2. That approach shows non application of mind. When subdivision particulars are on record, the Authority must separate the parcels and determine which parcel corresponds to the society's construction. It cannot treat the entire parent number as a single block and reject the claim without analyzing its components.

26. It is true that the Authority may scrutinise the area claimed. It may correct clerical errors. It may even reduce the area if the record supports a smaller entitlement. But what it cannot do is avoid the exercise altogether. If the society claimed a larger area than what the record justified, the Authority was duty bound to identify the correct lesser area and grant conveyance accordingly. The statute does not contemplate an all or nothing approach. It requires the Authority to determine the area "to be conveyed". That necessarily involves quantification on the basis of existing survey and subdivision records. By declining to isolate CTS No. D/1084/B/2/A and by failing to test the claim against the MR plan, the SRA order and the registered sale documents, the Authority abdicated its statutory responsibility. The material on

record was sufficient to at least prima facie establish that the buildings stand on the subdivided parcel measuring about 3,635.4 square meters. Once that position emerged from official records and contractual documents, the Authority ought to have proceeded to grant conveyance in respect of that identified sub parcel. In effect, the Authority treated the existence of subdivision as irrelevant and rejected the application on a broad assertion regarding total area. That reasoning cannot be sustained. The exercise required was a careful identification of the correct CTS sub number and its corresponding area. Had that exercise been undertaken, the Authority would have found that the documentary record supported conveyance of the admitted sub parcel. The failure to do so vitiates the impugned order.

27. The second reason assigned by the Authority is equally unsustainable. The mere pendency of civil suits cannot operate as a blanket prohibition against exercise of statutory power under Section 11 of MOFA. If that principle were accepted, any promoter or contesting party could stall a deemed conveyance simply by filing a suit and keeping it pending. The statute does not contemplate such approach. It is necessary to see what the pending suits actually concern. Suit No. 419 of 2018 and Suit No. 1037 of 2018, as well as Commercial Suit No. 178 of 2021, revolve around allegations of irregular construction and improper utilisation of FSI. The grievance of respondent No.2, in particular, is that certain portions of FSI were diverted from one wing to another and that additional construction on the 13th and 14th floors of Wing A was carried out contrary to sanctioned plans. These issues relate to

building permissions, sanctioned layouts, occupation certificates and compliance with planning regulations.

28. Such questions require detailed examination of sanctioned plans, commencement certificates, occupation certificates and municipal records. They fall squarely within the domain of civil adjudication. However, they do not, by themselves, alter the identity of the land parcel on which the buildings stand. They do not dispute that the buildings exist. They do not dispute that flats were sold. They do not dispute that possession was handed over and that the society was formed. The controversy is about how much FSI was lawfully utilized and whether additional floors were constructed in accordance with law. There is a clear distinction between a dispute about the identity or ownership of the land and a dispute about the manner in which construction was carried out on that land. The documents on record, including the SRA order, the survey plan and the subdivision particulars, consistently show that the buildings stand on CTS No.D/1084/B/2/A. The registered agreements for sale also describe the property accordingly. The pending suits do not seek a declaration that the land belongs to someone else or that the society has no connection with the said sub parcel. They focus on alleged excess construction and unauthorized FSI adjustments between wings.

29. An order of deemed conveyance under Section 11 does not validate unauthorized construction. It does not certify that every floor has been lawfully built. It merely transfers the promoter's right, title and interest in the land and building to the society, subject to existing rights and liabilities. If a civil court ultimately

holds that certain floors are illegal or that certain FSI has been misused, appropriate directions can still be issued. The grant of conveyance does not obstruct that process. By treating the pendency of suits as a complete bar, the Authority effectively expanded its jurisdiction beyond the statute. Section 11 requires the Authority to decide whether the society is entitled to conveyance of the land and building. It does not authorise the Authority to sit in judgment over complex construction disputes already pending before civil courts, nor does it permit indefinite postponement on that ground alone. The reasoning in the impugned order suggests that until all disputes between the parties are finally resolved, no conveyance can be granted. Such an approach defeats the very object of MOFA. The Act was enacted to ensure that flat purchasers are not left at the mercy of promoters and that conveyance of the property is not indefinitely delayed. If pendency of any suit is treated as a sufficient reason to deny conveyance, the statutory protection becomes illusory. In the present case, the disputes pending before the civil court do not strike at the root of the society's entitlement to the identified sub parcel. They relate to alleged deviations in construction and allocation of FSI. Those issues can be examined and decided independently. The Authority was therefore in error in assuming that it lacked power to proceed under Section 11 merely because such suits are pending. The law does not impose such a restraint. The Authority misdirected itself in treating pendency of civil litigation as a categorical bar to issuance of a certificate of deemed conveyance.

30. I consider the specific submissions of respondent No.2 about FSI. Respondent No.2 says FSI of 147.33 square meters belonging to it for the proposed 14th floor of Wing B was diverted to construct additional area in Wing A. Respondent No.2 relies on occupation certificate plans and alleges usurpation of FSI. Those are serious factual contentions. They justify adjudication in a civil forum. They do not, however, automatically extinguish the society's right to apply for deemed conveyance for the land parcel on which buildings stand. The remedy for alleged FSI usurpation lies in the civil suit which respondent No.2 has filed. That civil suit will determine whether additional construction was lawful and whether any corrective orders or adjustments are necessary. It will not, however, convert the statutory duty of the Competent Authority into a fact-finding mission on all civil disputes touching constructional deviations. The Authority must confine itself to the statutory criteria for Section 11. It must grant a certificate where the society establishes its entitlement to the parcel on record and possession, subject to civil rights being preserved.

31. The Agreement for Sale dated 5 September 2017 and recital S merit attention. That document records that Wings A and B were constructed on the property described as IRDLY in the First Schedule. The First Schedule's description corresponds to D/1084/B/2/A. The Agreement is a contemporaneous commercial document executed between the developer and a purchaser. It supports the society's claim that the wings occupy the subparcel D/1084/B/2/A. It also shows that purchasers understood the property they bought and took possession accordingly. The

Authority should have placed appropriate weight on that agreement along with survey records and SRA orders.

32. The Competent Authority must act in accordance with the statute and the record. The facts here show that the society has established, prima facie, its entitlement to CTS No. D/1084/B/2/A admeasuring 3,635.4 square meters. The pending civil suits do not negate that entitlement on the present record. The Authority's refusal to grant any relief, instead asking for a fresh application after litigation, was unreasonable and legally unsustainable.

33. Hence, following order is passed:

(i) The writ petition is allowed.

(ii) The Judgment and Order dated 22 April 2022 passed by respondent No. 10 in Application No. 127 of 2021 under Section 11 of the Maharashtra Ownership Flats Act, 1963 is quashed and set aside.

(iii) It is declared that the petitioner society is entitled to unilateral deemed conveyance in respect of land bearing CTS No. D/1084/B/2/A admeasuring approximately 3,635.4 square meters situated at Bandra Danda, Khar West, Mumbai 400 052, together with the buildings known as "Quantum Park" Wing A and Wing B standing thereon.

(iv) Respondent No.10, being the Competent Authority under Section 11 of the Maharashtra Ownership Flats Act, 1963, shall issue the certificate of unilateral deemed conveyance in favour of the petitioner society in respect of

the aforesaid property within a period of four weeks from the date of receipt of a copy of this order.

(v) All rights and contentions of the parties in pending suits, including Suit No. 419 of 2018, Suit No. 1037 of 2018 and Commercial Suit No. 178 of 2021, are kept open.

34. Rule is made absolute in the above terms. No order as to costs.

(AMIT BORKAR, J.)