

Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SHABNOOR
AYUB
PATHAN

WRIT PETITION NO.15878 OF 2022

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Akshadeep Cooperative Housing

Society Lt d., A Cooperative Society duly
registered under the Maharashtra Cooperative
Societies Act, 19960 bearing Registration
No.BOM/WN/HSG/TC/8518/2000-2001/
Yr. 2000 with its registered office at Building
No, 8-A/B, Damodar Park, LBS Marg,
Ghatkopar (West), Mumbai – 400 086,
and duly represented by Paritosh Kumar,
Authorised Representative/Secretary,
Age: 43 years, Occupation: Service,
having address at Building No., 8-A/B,
Damodar Park, LBS Marg,
Ghatkopar (West), Mumbai – 400 086.

... Petitioner

V/s.

1. **State of Maharashtra,**
Through the Government Pleader,
P. W. D. Building, High Court, Mumbai
Through the City Survey Office,
Ghatkopar Division, Topiwala College,
Sarojni Naidu Marg
Mulund (West), Mumbai – 400 080
2. **The District Deputy Registrar – II,**
Cooperative Societies, Suburban,
Kokan Bhavan, Belapur, Navi Mumbai
3. **The Poddar Mills Ltd.,**
B – 10, Nav Shilpwani Society,
Lalubhai Park Road,
Vile Parle (West), Mumbai – 400 056.
4. **Parul Enterprises,**
312, Maker Bhavan No.3, New Marine
Lines, Mumbai – 400 020.

5. Solery Land Development Pvt. Ltd.

608, Maker Chambers – V, Nariman Point,
Mumbai – 400 020.

6. Rockline Properties & Developers Pvt. Ltd.

& Ors., A private limited company
incorporated under the Indian
Companies Act, 1956, having its office
at G-1, Block No.8, Beach Apartment,
Near Novatal Holiday Inn, Dr. A. D. Nair
Road, Juhu, Vile Parle, Mumbai – 400 049. ... Respondents

Mr. Mandav Soman with Mr. Rajkumar K. Shukla with
Ms. Saraswati Rapurohit, for the Petitioner.

Mr. S. L. Babar, AGP, for the respondent Nos.1 and 2-
State

Mr. Ranjit Thorat, Sr. Advocate a/w Mr. Prashant A.
Nakati, for Respondent No.6.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 9, 2026

RESERVED ON : MARCH 24, 2026

JUDGMENT:

1. By the present Petition instituted under Article 227 of the Constitution of India, the Petitioner calls in question the legality and correctness of the Impugned Order dated 15 June 2020 passed by Respondent No. 2. By the said order, Respondent No. 2 has rejected the Application for Deemed Conveyance preferred by the Petitioner. According to the Petitioner, the rejection proceeds on grounds which are wholly erroneous and unsustainable in law. It is contended that the authority has failed to correctly appreciate the material placed on record and has adopted a view which is

contrary to the statutory scheme governing deemed conveyance under the relevant enactment.

2. The factual background giving rise to the present Petition may now be briefly stated. The Petitioner is Akashdeep Co-operative Housing Society Ltd., a co-operative housing society formed by the purchasers of flats in the building known as “Akashdeep Society.” The society has been constituted in accordance with the provisions of Section 10 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. The Petitioner Society is also duly registered under the provisions of the Maharashtra Co-operative Societies Act, 1960, bearing Registration No. BOM/WN/HSG/TC/8518/2000-2001 dated 2 May 2000. The registered office of the Petitioner Society is situated at A-8A / 8B, Damodar Park, L.B.S. Marg, Ghatkopar (West), Mumbai – 400086. Respondent No. 1 is the State of Maharashtra. Respondent Nos. 2 to 6 are parties who were concerned with the proceedings arising out of the Petitioner’s Application for Deemed Conveyance bearing Application No. DC/105516/2019.

3. The record further indicates that on 31 October 1979 the original owners of the property, namely Poddar Mills, granted and assigned development rights in favour of M/s. Parul Enterprise for the purpose of construction of eight buildings, namely Building Nos. 1, 2, 3, 5, 6, 8, 10 and 13 on the larger parcel of land. At the same time, the owners executed a Power of Attorney in favour of Shri C. D. Shah and another person authorising them to act in relation to the development of the property. Thereafter, on 15

January 1980, by two separate agreements, Poddar Mills further conferred development rights upon M/s. Parul Enterprise for the construction of additional buildings bearing Nos. 4, 7, 9, 11 and 12. These buildings were proposed to be constructed on another portion of the balance land as well as on a portion of the property which was then occupied by hutment dwellers. The Municipal Corporation of Greater Mumbai had earlier granted municipal sanction vide Sanction No. CE/169/BSIII/LONS dated 28 July 1979. The said sanction contemplated construction of thirteen buildings on the larger property. The building in which the members of the Petitioner Society have purchased flats was sanctioned under IOD No. CE/2536/BPES/AN & CC dated 26 May 1979. Subsequently, on 20 December 1994, the owners agreed to transfer and convey a portion of the larger property which was occupied by hutment dwellers to Solaris Land Development Pvt. Ltd. Thereafter, an Indenture of Conveyance dated 10 May 2009 came to be executed between Solaris Land Development Pvt. Ltd. and Respondent No. 6. Prior to the said conveyance, M/s. Parul Enterprise, who were the developers, had assigned development rights in favour of Respondent No. 6 by executing an Assignment of Development Rights dated 13 March 2007 in respect of the slum area described therein.

4. Since the promoters and the original owners failed to execute the conveyance of the land and building in favour of the Petitioner Society within the period contemplated under law, the Petitioner Society was constrained to invoke the statutory remedy provided under Section 11 of the Maharashtra Ownership Flats

(Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. Accordingly, on 26 November 2018 the Petitioner Society filed an Application seeking grant of Deemed Conveyance in respect of the land upon which the building of the Petitioner Society stands constructed. The said application came to be registered as Application No. DC/105516/2019. Upon consideration of the material placed before it, Respondent No. 2 by an Order dated 11 March 2019 allowed the Application for Deemed Conveyance filed by the Petitioner Society. Consequent upon the said order, the process of Deemed Conveyance was completed on 27 September 2019. Respondent No. 6, being aggrieved by the said order granting Deemed Conveyance, instituted Writ Petition No. 12838 of 2019 before this Court. By an Order dated 18 December 2019, this Court allowed the said writ petition and remanded the matter to Respondent No. 2 for a fresh hearing and decision in accordance with law. Pursuant to the order of remand, Respondent No. 2 reheard the parties. However, after such rehearing, Respondent No. 2 passed the Impugned Order dated 15 June 2020 rejecting the Application for Deemed Conveyance filed by the Petitioner Society. The Petitioner contends that the authority has failed to properly consider the material available on record and has adopted an approach contrary to the governing legal principles. Being aggrieved by the said Impugned Order dated 15 June 2020, the Petitioner has therefore approached this Court by filing the present Petition under Article 227 of the Constitution of India.

5. Mr. Soman, learned Advocate appearing on behalf of the Petitioner, submits that the Petitioner Society, namely Akashdeep Co-operative Housing Society Ltd., has been constituted by the purchasers of flats in the building known as “Akashdeep Society.” The said Society has been formed in accordance with the provisions of Section 10 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. It is further submitted that the Society stands duly registered under the Maharashtra Co-operative Societies Act, 1960 bearing Registration No. BOM/WN/HSG/TC/8518/2000-2001 dated 2 May 2000. The Society is registered under the name and style of Akashdeep Co-operative Housing Society Ltd., hereinafter referred to as “the said Society.” The registered office as well as the building of the said Society are situated at A-8A / 8B, Damodar Park, L.B.S. Marg, Ghatkopar (West), Mumbai – 400086.

6. It is further submitted that the Applicant Society is in possession of the plot of land bearing C.T.S. No. 150 (Part) and C.T.S. No. 151B (Part) of Village Ghatkopar, as well as C.T.S. Nos. 2268 (Part), 2269 (Part) and 2270 (Part) of Village Kiroli, Taluka Kurla, District Mumbai Suburban, all situated at L.B.S. Marg, Ghatkopar (West), Mumbai. According to the Petitioner, the respective areas of the said lands are 334.43 sq. mtrs., 4417.36 sq. mtrs., 75.70 sq. mtrs., 31.79 sq. mtrs. and 1572.02 sq. mtrs., aggregating to a total area of 6431.30 sq. mtrs., as reflected in the approved plans issued by the Municipal Corporation of Greater Mumbai. The said property together with the building standing

thereon is hereinafter referred to as “the Suit Premises.” It is further submitted that the building of the Applicant Society consists of two wings, namely Wing A and Wing B, comprising in all 82 units, including 49 flats in Wing A, 32 flats in Wing B and one community hall belonging to the Society.

7. Learned Advocate for the Petitioner further submits that in view of the aforesaid facts and circumstances, the Applicant Society is entitled to seek issuance of a certificate by the Competent Authority declaring that the Society is entitled to obtain unilateral Deemed Conveyance in respect of the Suit Premises under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. It is therefore submitted that the Competent Authority ought to issue a Certificate of Entitlement for Unilateral Conveyance in favour of the Applicant Society in respect of the land together with the building standing thereon situated at A-8A / 8B, Damodar Park, L.B.S. Marg, Ghatkopar (West), Mumbai – 400086.

8. The total area of the property claimed by the Applicant Society, C.T.S.-wise, is stated as under:

Survey No.	C.T.S. No.	Area Conveyed
--	150 (Pl.) (C.S.O. Ghatkopar)	334.43 sq. mtrs.
--	151 B (Pl.) (C.S.O. Ghatkopar)	4417.35 sq. mtrs.
--	2268 (Pl.) (C. S. O. Ghatkopar, Kirol)	75.70 sq. mtrs.
--	2269 (Pl.) (C. S. O. Ghatkopar, Kirol)	31.79 sq. mtrs.

27 of Ghatk opar	2270 (Pl.) (C. S. O. Ghatkopar, Kirol)	1572.02 sq. mtrs.
	Total Area	6431.30 sq. mtrs.

9. The Competent Authority, upon consideration of the facts and documents produced during the course of the proceedings, recorded that the Applicant is a Co-operative Housing Society known as Akashdeep Co-operative Housing Society Ltd., duly registered under the Maharashtra Co-operative Societies Act, 1960 and the Rules framed thereunder, bearing Registration No. BOM/WN/HSG/TC/8518/2000-2001. The Competent Authority further noted that the registered address of the Applicant Society is at A-8A / 8B, Damodar Park, L.B.S. Marg, Ghatkopar (West), Mumbai – 400086.

10. It was further observed that the Applicant Society had filed an Application for Deemed Conveyance in Form VII on 26 November 2018 and thereafter submitted a modified Form VII on 13 February 2019 before the Competent Authority. As per the said Application in Form VII, the Society claimed ownership of the building together with the land admeasuring 6431.30 sq. meters, as specifically described in the approved plans of the Municipal Corporation of Greater Mumbai. The said description of the property was also reflected in the remarks under Reference No. CE/2536/BSIII/A/N dated 17 May 1975, together with the buildings standing thereon situated at Ghatkopar (West), Mumbai – 400086. The area claimed by the Applicant Society and the description of the property in the said Application were stated to

be duly supported and corroborated by the approved plans issued by the Municipal Corporation of Greater Mumbai which were produced along with the Application for Deemed Conveyance.

11. Mr. Thorat, learned Senior Advocate appearing on behalf of Respondent No. 6, submits that the building of the Applicant or Petitioner Society is actually situated on the properties bearing C.T.S. No. 2270 of Village Kirol, Taluka Kurla, C.T.S. No. 2268 of Village Kirol, C.T.S. No. 2269 of Village Kirol and C.T.S. No. 150 (Part) of Village Ghatkopar, and not on C.T.S. Nos. 151B and 151C as alleged by the Petitioner. It is further submitted that the area in question had already been declared as a slum area by the competent authority prior to the issuance of any sanctioned plan by the planning authority. According to Respondent No. 6, the attempt made by the Petitioner Society to connect the said properties with C.T.S. Nos. 151B and 151C is wholly incorrect and contrary to the official records. The correct particulars of the properties, according to Respondent No. 6, are stated as under:

Sr. No.	CTS No.	Village	Area (Sq. Mtrs.)
1	2270	Kirol	4056.70
2	2268	Kirol	97.10
3	2269	Kirol	64.50
4	150 (Part)	Ghatkopar	2213.005
	Total Area		6431.30 Sq. Mtrs

12. It is further submitted on behalf of Respondent No. 6 that the aforesaid total area of 6431.30 sq. mtrs. is clearly reflected in the official maps and revenue records. However, according to

Respondent No. 6, without undertaking a proper survey and demarcation of the aforesaid C.T.S. numbers, the Petitioner Society is attempting to unlawfully encroach upon and claim property which is legally owned and developed by Respondent No. 6. It is contended that the official records, including the Slum Declaration Gazette Notification, the Development Plan remarks and the Property Register Card pertaining to the said property, clearly establish the correct factual position. On the basis of the aforesaid material, Respondent No. 6 submits that the present Petition is misconceived, devoid of merits and liable to be dismissed with costs.

13. Learned Senior Advocate appearing on behalf of Respondent No. 6 further submits that upon completion of the sale component of the project, and after due inspection and verification by the competent authority regarding compliance with the applicable conditions, Occupation Certificates in respect of the sale buildings comprising Wings A to C have been duly issued. It is submitted that the construction of the sale component has been completed in accordance with the sanctioned plans and the permissions granted by the competent authorities, and Respondent No. 6 has complied with all statutory requirements in respect of the said sale buildings.

14. It is further submitted that the rehabilitation buildings constructed under the Slum Rehabilitation Scheme have already been handed over to the eligible slum dwellers and beneficiaries in accordance with the applicable statutory provisions and the approved scheme. The beneficiaries are presently in lawful

possession and occupation of their respective rehabilitation tenements. According to Respondent No. 6, the rehabilitation component of the project has been substantially implemented in compliance with the Letter of Intent, the sanctioned plans and the conditions imposed by the Slum Rehabilitation Authority and other competent authorities. Respondent No. 6 further submits that it is presently in the process of completing certain ancillary and procedural formalities, if any, in relation to the sale component, including documentation and other statutory compliances as may be required.

REASONS AND ANALYSIS:

15. The approved plans issued by the Municipal Corporation assume considerable importance in the present dispute. They are official documents prepared and sanctioned by the planning authority. They show the layout of the entire property, the position of the buildings, and the extent of the land attached to each structure. In the present matter, the Petitioner Society relies heavily on these approved plans to show that its building stands on a particular portion of the larger property and that the area claimed by the Society is reflected in those municipal records.

16. On the other hand, Respondent No. 6 places reliance on a different set of official records. Respondent No. 6 has produced revenue maps, entries from the Property Register Card and the Slum Declaration Notification issued by the competent authority. These documents are also official records maintained by statutory authorities. They indicate the revenue particulars of the land and

also show the status of the land prior to the redevelopment activities. In addition to these documents, Respondent No. 6 has also produced assignment agreements and conveyance deeds which are relied upon to establish the transfer of development rights and the title claimed by Respondent No. 6 over certain portions of the property.

17. Thus, it becomes clear that both sides rely on documentary material issued by competent authorities. The Society relies mainly on municipal planning records and the Form VII. Respondent No. 6 relies primarily on revenue records, slum declaration documents and agreements relating to development rights. When such competing records are placed before the Court, the duty of the the Competent Authority is to carefully examine each document, understand its legal effect and determine which record carries greater value for deciding the right claimed under Section 11 of the Flats Act.

18. Section 11 of the Maharashtra Ownership Flats Act provides a statutory remedy to a cooperative housing society where the promoter or the original owner fails to execute conveyance of the land and building in favour of the society within the period prescribed by law. The intention behind this provision is to protect flat purchasers who have formed a cooperative society but are deprived of conveyance due to inaction or refusal on the part of the promoter. In such circumstances, the law empowers the Competent Authority to grant what is known as deemed conveyance so that the society can obtain legal title to the property.

19. For deciding this issues, the Competent Authority must examine approved municipal plans, survey maps, development agreements and conveyance deeds are all relevant documents depending on the nature of the dispute. The Authority must assess these documents carefully and must arrive at its conclusion by giving clear reasons.

20. Although the order refers to revenue records and documents relied upon by Respondent No. 6, it does not clearly explain why those documents should prevail over the municipal planning records relied upon by the Society. The order does not demonstrate a proper comparison between the two sets of documents. For this reason, the decision appears to have been reached without a detailed evaluation of the material on record. In my considered view, such an approach does not satisfy the requirement of a reasoned decision which the law expects from a statutory authority exercising quasi judicial powers.

21. Another important aspect of the dispute relates to the CTS numbers of the property. Both parties broadly agree about the total area involved in the dispute. However, they disagree on how that total area is distributed among the different CTS numbers. The Society claims that certain CTS numbers form part of the property attached to its building. Respondent No. 6 disputes this claim and asserts that the building stands on different CTS numbers.

22. Such a dispute is essentially factual in nature. It concerns the identification and demarcation of the land on the ground. Questions of this nature require careful examination of revenue

maps, municipal records and other official documents. In some cases, it may also become necessary to conduct a proper field survey so that the exact boundaries of the property can be identified. Only after such verification can a clear conclusion be reached regarding the CTS numbers which actually form part of the land attached to the Society's building.

23. Therefore, the Competent Authority ought not to have rejected the application solely on the ground that there was a dispute regarding CTS numbers. Instead, the Authority should have taken steps to reconcile the municipal records and the revenue records. If required, a survey could have been directed so that the boundaries of the property could be determined with certainty.

24. Respondent No. 6 has also relied upon the fact that the property in question had been declared a slum area and that rehabilitation work under the Slum Rehabilitation Scheme has already been carried out. If rehabilitation tenements have been constructed and handed over to eligible beneficiaries, those persons are now in occupation of the premises allotted to them.

25. However, the existence of rehabilitation buildings does not automatically extinguish the right of the Society to seek deemed conveyance for the building in which its members reside. The two aspects must be examined separately. The Competent Authority must carefully identify the area which corresponds to the building of the Society as per the approved municipal plans. The Society's claim can extend only to that area and to the building standing

upon it. Any portion of land or building which forms part of the rehabilitation component under the Slum Rehabilitation Scheme must remain unaffected by the process of deemed conveyance.

26. Respondent No. 6 has also relied upon occupation certificates issued for certain sale buildings forming part of the redevelopment project. An occupation certificate indicates that the construction of the building has been completed in accordance with the sanctioned plans and that the building is fit for occupation. Therefore, such certificates lend support to the claim of Respondent No. 6 regarding the completion of the sale component of the project.

27. At the same time, the existence of occupation certificates for sale buildings does not by itself defeat the statutory right of a cooperative housing society to obtain conveyance of the land and building belonging to it. The MOFA Act specifically recognises the right of a society to obtain conveyance where the promoter has failed to execute it voluntarily. Therefore, the presence of sale buildings and the issuance of occupation certificates do not automatically prevent the grant of deemed conveyance. What is required is a clear identification of the land and building which belong to the Society as distinct from the portions forming part of the sale component of the project.

28. For this reason, it becomes necessary that the Competent Authority carefully separate the different components of the project. If required, this separation may be achieved through proper demarcation of the property on the ground.

29. For all these reasons, it becomes evident that the matter requires careful reconsideration with proper examination of the documents and, if necessary, verification of the property boundaries so that the rights of all parties can be determined on the basis of reliable evidence.

30. For the reasons given I allow this petition in part. I set aside the impugned order dated 15 June 2020. I direct that Respondent No. 2 must reconsider the Petitioner's application in a reasoned manner. The reconsideration will follow these steps.

a) Respondent No. 2 shall obtain and examine the original municipal approved plans and the Form VII filed by the Society. These documents must be compared with the revenue maps and the PR card entries relied upon by Respondent No. 6.

b) If any discrepancy exists between municipal plans and revenue records regarding CTS numbers and boundary lines, Respondent No. 2 shall direct a limited survey and demarcation. The survey will be done by a competent authority agreed by the parties or nominated by Respondent No. 2. The scope of the survey must be limited to fixing the boundaries between the Society building, the rehabilitation tenements and the sale component.

c) Respondent No. 6 shall produce true copies of the assignment and conveyance documents and the relevant PR card and Slum Declaration Gazette Notification. These documents will be placed before the Competent Authority

during the fresh hearing.

d) The Competent Authority will thereafter pass a fresh reasoned order stating, on the basis of the reconciled records and the survey if any, whether the Society is entitled to a Certificate of Entitlement for unilateral deemed conveyance under Section 11 in respect of the area and units shown in the approved plans as belonging to the Society.

e) If entitlement is found, the Competent Authority shall issue the Certificate of Entitlement and give directions to complete the conveyance formalities and registration.

f) The fresh hearing and decision shall be completed within twelve weeks from the date of receipt of this order.

g) Parties shall appear before competent authority on 30th March 2026 at 11 am.

h) No order as to costs.

(AMIT BORKAR, J.)