

jsn

Digitally
signed by
JITENDRA
SHANKAR
NIJASURE
Date:
2025.04.09
18:37:03
+0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.10051 OF 2025

Avenue Supermarts Ltd.

...Petitioner

Versus

District Deputy Registrar and Ors.

...Respondents

Mr. Aditya Shiralkar with Mr. Rahul Theckedath for the Petitioner.

Mr. Prashant Kamble, AGP for Respondent No.1.

Ms. Vishaki Bhatia for Respondent No.2.

Mr. Subhash Bane with Ms. Krutika Dongarkar for Respondent Nos.3
and 4.

CORAM : R.I. CHAGLA J.

DATE : 8TH APRIL, 2025.

ORDER :

1. By this Writ Petition, the Petitioner is impugning the order and certificate dated 21st May, 2024 passed / issued by the Respondent No.1.

2. In the impugned Order and certificate, the District Deputy Registrar, Co-Operative Societies, Mumbai City (4) has

conveyed proportionate Rights in R.G. area.

3. It is well settled by this Court in *Marathon Era Co-operative Housing Society Ltd. V/s. Competent Authority and District Deputy Registrar Cooperative Societies*¹ in paragraph 57 that, 'None could claim a divisible right in those common areas and amenities which would be for common enjoyment for all'. Further, in *Mazda Construction Company and Ors. V/s. Sultanabad Darshan CHS Ltd. and Ors.*² at paragraphs 22 and 23, this Court has held that, "... areas referred to as 'garden' and 'access' are forming part of the entitlement of the occupants and residents of the building on one plot or sub-plot. If it is styled and termed as common amenities, but the claims are contested", then, all the more the Competent Authority should not have included that portion in the area forming part of the deemed conveyance". Further, in paragraph 23 of the said decision, this Court has held that, "the term 'in proportion with' referred to in the order and certificate is vague".

4. Thus, prima facie I find that the impugned order and certificate which has granted deemed conveyance in respect of

1 2024 SCC OnLine Bom 1115.

2 2012 SCC OnLine Bom 1266.

proportionate rights in RG area is erroneous and accordingly, the impugned order and certificate is stayed.

5. Respondent No.2 – Society shall file Affidavit in Reply to the Writ Petition within a period of one week from the date of this Order.

6. The Petitioner shall file Affidavit in Rejoinder thereto within a period of one week thereafter.

7. Place the Writ Petition for further consideration on 29th April, 2025, high on board.

[R.I. CHAGLA J.]