

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11115 OF 2019

Raigad Co-operative Housing Society Limited through its Chairman / Secretary, having office at City Survey No.112A (1 to 5) Tika No.12, Plot No.5, Shivneri, Panchpakhadi, Dist. Thane.	] ... Petitioner
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Versus

1.	Suman Eknath Gaike, Residing at Chandori, Taluka Nifad, District Nashik, Through Her Constituted Attorney Shivaji Eknath Gaike, Residing at Chandori, Taluka Nifad, District Nashik (since the opponent No.1 is deceased, through her legal heirs).	]
1A	Sau Rekha Ashok Rayte, R/at, Flat No.3 & 4 Ekdant Apartment, Tulsi Colony, Amrutdham Panchwati, Nashik.	]
1B	Nanda Eknath Gaike, R/at, Flat No.5 & 6 Ekdant Apartment, Tulsi Colony, Amrutdham Panchwati, Nashik.	]
1C	Shivaji Eknath Gayke, R/at, Village	]

... Respondents

CIVIL REVISION APPLICATION NO.173 OF 2020

... Applicant

Versus

1.	Suman Eknath Gaike, Residing at Chandori, Taluka Nifad, District Nashik, Through Her Constituted Attorney Shivaji Eknath Gaike, Residing at Chandori, Taluka Nifad, District Nashik (since the opponent No.1 is deceased, through her legal heirs).	]
1A	Rekha Ashok Rayte, R/at, Flat Nos.3 & 4 Ekdant Apartment, Tulsi Colony, Amrutdham Panchwati, Nashik.	]
1B	Nanda Eknath Gaike, R/at, Flat Nos.5 & 6 Ekdant Apartment, Tulsi Colony, Amrutdham Panchwati, Nashik.	]
1C	Shivaji Eknath Gayke, R/at, Village and Post Chandori, Taluka - Nifad, Dist. Nashik.	]
2.	Competent Authority & District Deputy Registrar of Co-operative Housing Societies, summons be served upon S.M. Patil, District Deputy Registrar of Co-operative Housing Societies & Competent Authority, having address at Gaondevi Mandai Building, First Floor, Near Gaondevi Maidan,	]

	Gokhale Road, Thane (W), Thane – 400 602.	]]
3.	Sachin Bua.	]]
4.	Jatin Shah, both having address at Shrushti Infra, Deepanjali Society, Daji Ramchandra Road, Charai, Thane (West).	]]]] ... Respondents

**ALONG WITH
CIVIL REVISION APPLICATION NO.174 OF 2020**

Raigad Co-operative Housing Society] Limited through its Chairman / Secretary,] having office at City Survey No.112A (1] to 5) Tika No.12, Plot No.5, Shivneri,] Panchpakhadi, Dist. Thane.]	... Applicant
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Versus

1.	Suman Eknath Gaike, Residing at Chandori, Taluka Nifad, District Nashik, Through Her Constituted Attorney Shivaji Eknath Gaike, Residing at Chandori, Taluka Nifad, District Nashik (since the opponent No.1 is deceased, through her legal heirs).	]
1A	Rekha Ashok Rayte, R/at, Flat	]

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...

Mr. S.M. Gorwadkar, senior counsel with Mr. Sandeep Mishra for the petitioner/applicant.

Mr. Harshad Inamdar for respondent Nos.1A and 18.

...

CORAM : SMT. BHARATI DANGRE, J.

DATED : 29TH SEPTEMBER, 2021.

JUDGMENT:-

1. In narrow compass, the facts leading to the writ petition and two civil revision applications, which are listed and argued before me can be succinctly set out as under:

2. The three proceedings involve property located at City Survey No.112-A (1 to 5), Plot No.5, in Mouza Panchpakadi Taluka and Sub Division Thane, admeasuring 648.85 sq. meters. The respondents in the proceedings, Smt. Suman Gaike asserts that she is the owner of the suit property, which is purchased by her along with her husband, who has predeceased. A building known as “Shivneri” was constructed on the said land, which comprised of 20 flats and the premises were let out to various tenants. It is her case that for some point of time, when her husband was alive and was away at native place, the tenants formed a Society titled as ‘Raigad Co-operative Housing Society Limited’ (refer to as **“the Society”**) on 07/09/1989. The

building was in dilapidated condition and most of the tenants moved away. This constrained Suman Gaike to institute distinct civil suits before the Civil Judge, Senior Division, Thane under the Bombay Rent Control Act, seeking eviction of tenants and payment of rent due and payable.

3. While this was the prevailing scenario, the Society preferred an application to respondent No.2 – the Competent Authority & District Deputy Registrar of Co-operative Societies (refer to as **“the Competent Authority”**) for grant of certificate of deemed conveyance under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963, wherein a claim was staked to the effect that Suman Gaike had entered into agreements for sale of flats with the individual purchasers as per Section 4 of the MOFA and all agreements were duly registered as per law. It was alleged that though the owner had agreed to convey the suit premises to the Society within the agreed period in the agreement or four months from the formation of the Society, as provided in Rule 9 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1964 (referred to as **“the Rules 1964”**), there is a failure to execute the conveyance for conveying the right, title and interest of the promoter/owner in the land, which they are entitled to. The Society, therefore claimed entitled to have a certificate issued by the Competent

Authority in the form of unilateral deemed conveyance under section 11 of the MOFA. It was alleged that though the notice was issued to the owner to grant conveyance, there is no compliance.

4. The said application, being Application No.150 of 2016 preferred by the Society came to be rejected by the Competent Authority on 27/07/2017 on the purported reasoning that against the members of the applicant-Society, proceedings under the Rent Control Act are pending and, there is no stay operating in the same and the reason assigned is the sale agreements produced by the Society are not under the MOFA and, there is no propriety in conferring the right of the promoter/ownership in favour of the Society. Liberty was however granted to file fresh application on compliance of the existing shortfalls.

5. On 01/09/2017, another application was preferred, which was numbered as Application No.728 of 2017, by the Society reiterating that the members of the Society had purchased respective flats from Suman Gaike under the provisions of the MOFA and the Society is in possession of the property. The Competent Authority on 22/07/2017 deemed it expedient to grant the deemed conveyance by recording that the Society has complied with the deficiencies pointed out in the earlier order. It also recorded that the Society is registered in the year 1989 and since long time, they have been deprived of their right.

6. Being aggrieved by the deemed conveyance, the petitioner filed a writ petition in this court, wherein she challenged the said order and on 16/07/2018, the petition was disposed of by the following order:

“The petitioner has filed the praecipe for seeking withdrawal of this writ petition.

*The writ petition is dismissed as withdrawn.
No order as to costs.”*

7. At a later point of time, the petitioner sought clarification of the order dated 16/07/2018 and sought liberty to file a civil suit for the purpose of adjudication of the title in respect of property in question. On 24/07/2018, the court passed the following order:

“2. It is clarified that the writ petition is allowed to be withdrawn with liberty to file a suit for adjudication of the title in respect of the property in question. The petitioner would be permitted to file a civil suit after issuing notice under section 164 of the Maharashtra Co-operative Societies Act, 1960. It is made clear that this Court has not expressed any views on the merit of the matter. All the contentions of both the parties on merit are kept open. The Civil Court shall decide the suit on its own merit without being influenced by the observations made in the impugned order passed by the Competent Authority.”

8. This order lead, Smt. Suman Gaike to lodge a special civil suit bearing No.502 of 2018 against the Society and the Competent Authority. While this event occurred, another development had taken place i.e. Shivneri building stood demolished and the development activities commenced.

In the civil suit, Suman Gaike, who became the plaintiff, sought a relief of declaration that the conveyance dated 22/12/2017 issued by respondent No.2 is illegal and further a declaration is sought that the sale deeds executed in favour of the individual flat purchasers are illegal. A restrain order was also sought, thereby restraining the defendants, their representatives and agents from carrying out any construction activity on the subject plot or creating any third party interest. The restrain order was also sought against selling and disposing of the property in any manner. Injunction came to be granted in her favour on 21/11/2018, by which the defendants or anyone claiming through them was temporarily restrained from making any development on the suit property. The defendants were temporarily restrained from creating any third party interest in the property.

To continue the chronology of events, it is pertinent to note that being aggrieved by the said order in favour of the plaintiff, an appeal was instituted by the defendant-Society, which was numbered as Misc. Civil Application No.13 of 2019 and the appellate court dismissed the appeal on 19/09/2019 and affirmed

the order of injunction in favour of the plaintiff.

9. Writ Petition No.11115 of 2019 is instituted by the Society through its Chairman/Secretary, being aggrieved by the judgment dated 19/09/2019 passed by the Additional District Judge-2, Thane in Misc. Civil Appeal No.13 of 2019, wherein it was held that the plaintiff is entitled for grant of injunction by recording that a prima facie case for injunction is made out coupled with balance of convenience and irreparable loss in her favour.

10. Other two ancillary proceedings are the two civil revision applications. CRA No.173 of 2020 poses a challenge to the order dated 29/11/2018 passed by the 9th Joint Civil Judge, Senior Division, Thane on Ex-13, which is passed on an application filed by defendant No.1 for rejection of plaint under Order 7 Rule 11 of the Code of Civil Procedure (“**C.P.C.**”), where his application is rejected; the rejection of the plaint being sought on the ground of the bar created by Section 164 of the Maharashtra Co-operative Societies Act, 1960 (“**the MCS Act**”) and the ground, which was put in service, is to the effect that a suit filed without a notice being served as contemplated under Section 164 of the MCS Act and until expiration of two months next after the notice in writing is delivered to the Registrar and it is barred by law.

11. CRA No.174 of 2020 assails the order dated 21/09/2018 passed by the Civil Judge, Senior Division, Thane, allowing the application filed by the respondents, seeking leave to institute the suit before expiry of the period specified in Section 164 of the MCS Act.

12. Since the two civil revision applications and the writ petition were tagged together, they are heard together and are being disposed of by a common judgment. Since the parties are at consensus that the writ petition and the civil revision applications shall be heard finally, they are taken up for final hearing at the stage of admission.

13. I have heard Mr. Sanjeev Gorwadkar, learned senior counsel with Mr. Sandeep Mishra for the petitioner/applicant and learned counsel Mr. Harshad Inamdar for the respondents.

14. Rule. Rule made returnable forthwith. By consent of the parties, heard finally.

15. The parties are referred to as the plaintiff and defendant as per their positions in the civil suit. The plaintiff instituted Regular Civil Suit No.502 of 2018 before the Civil Judge, Senior Division, Thane for cancellation of sale deed and for a declaration and injunction. In the said suit, the petitioner/Raigad Co-operative Housing Society was impleaded as respondent

No.1. The District Deputy Registrar was ranked as respondent No.2 whereas respondent Nos.3 and 4 are private respondents.

16. On the suit being instituted, the society moved an application for rejection of plaint under Order 7 Rule 11 of the CPC on the premise that there is no compliance of Section 164 of the Maharashtra Co-operative Societies Act (refer to as “**MCS Act**”) and, in absence of the said compliance, the plaint deserves a rejection.

17. The Civil Judge, Senior Division, Thane, considered the application by recording the earlier proceedings before the High Court and by taking note of the fact that permission was granted to file suit after issuing notice under Section 164 of the Act. Notice was issued and a copy of that notice along with the acknowledgment is filed by the plaintiff. The court recorded as under:

“8. As per Section 164 notice to Registrar is mandatory. Suit shall not be instituted until expiration of two months next after the notice in writing delivered to the Registrar. Plaintiff had filed Writ Petition No.2822/2018 before Hon’ble High Court dtd. 24/07/2018. Present plaintiff was allowed to withdraw his writ petition with liberty to file a suit. He was permitted to file suit after issuing notice under Section 164 of the Act. Accordingly that notice was issued. Copy of that notice alongwith

acknowledgment is also filed by plaintiff. That notice is delivered on 08/08/2018. Present suit is filed on 21/09/2018. Plaintiff has filed application to waive notice period. That application is already allowed by Civil Judge, Senior Division, Thane. Notice period is dispensed with and further it was directed to register the suit. It shows that Section 164 of the Act is duly complied by plaintiff. Under such circumstances there is no substance in present application. Application deserves to be rejected.”

18. In CRA No.173 of 2020, the challenge is raised to the said order. It would be apposite to reproduce Section 164 of the MCS Act, which reads as follows:

“164. Notice necessary in suits:

No suit shall be instituted against a society, or any of its officers, in respect of any act touching the business of the society, until the expiration of two months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.”

19. The plaintiff issued a notice to the respondent No.2 i.e. the competent authority on 07/08/2018 and she approached the Civil Judge, Senior Division, Thane seeking dispensation of notice of 60 days and, in the application preferred vide Ex-7, the plaintiff

asserted that she had forwarded the notice to the society and to the competent authority on 07/08/2018 and 08/08/2018 and as per law and is conscious of the legal position that no suit shall be instituted before expiry of 60 days. However, when she visited the place, she saw that the third parties and defendant No.1 had erected a display board about the property being offered for sale and she apprehended that the defendants will create third party interest, which compelled her to obtain urgent interim orders restraining defendant No.1. In the wake of the compelling circumstances, it became necessary to approach the court and the mandate of 60 days for instituting the civil suit was prayed to be dispensed with.

On the said application, the Civil Judge, Senior Division, Thane, passed the following order:

“1) Perused the application, record and documents and report of Asstt. Supdt. (Judicial). Heard the learned advocate appearing on behalf of Plaintiff.

2) In view of directions of the Hon’ble High Court in W.P.no.2822/18, Plaintiff had issued notice to defendant on 07/08/2018 u/sec. 164 of the Maharashtra Co. Operative Societies Act, 1960. Period of 45 days is over t the issuance of said notice. However, emerging circumstances are there which shows urgency in the matter. I, therefore, pass the following order:

O R D E R

1) Notice under section 164 of the Maharashtra Co. Operative Societies Act, 1960 stands dispensed with against Defendants No.2.

2) Asstt. Superintendent (Judicial) to register the suit as per rule.”

20. On the order being passed on 21/09/2018, the suit was instituted. The two civil revision applications challenge the above two orders and the submission advanced on behalf of the applicant through learned senior counsel Gorwadkar is to the effect that the notice under Section 164 of the MCS Act is mandatory and he compared the said notice with the one under Section 80 of the CPC and advances submissions to the effect that in the absence of compliance of the statutorily prescribed period of 60 days, the suit is barred by law and this would act as a ground for rejection of plaint under Order 7 Rule 11 of the CPC. It is argued on behalf of the applicant that there is no provision for waiving of the said notice period and the learned Judge has clearly faulted, when he curtailed the period of 60 days and granted the permission to institute the suit before expiry of the statutory period.

21. Learned senior counsel Mr. Gorwadkar would rely on the decision of the Single Judge of this court in the case of **Jijamata Sahakari Sakhar Karkhana Ltd. v. Sukhadeo Rambhau**

Fulzade & Anr., reported in **2010(5) Mh.L.J. 431**, which has held that suit instituted against the society without the pre-suit statutory notice and when no waiver was established before the civil suit is filed, it is liable to be dismissed. Relying upon the Full Bench decision of this court in **Vasant Ambadas Pandit v. Bombay Municipal Corporation & Ors.** reported in **AIR 1981 Bom. 394**, as regards Section 80 of the CPC, it is sought to be canvassed that there can be no waiver of notice and the suit, being filed without adhering to the mandatory statutory period, is barred by law and the plaint ought to have been rejected.

22. It is necessary to juxtapose the provisions of Section 164 of the MCS Act against Section 80 of the CPC.

23. Section 80(1) of the CPC stipulates that no suit can be instituted against the Government or a public officer until expiration of two months of giving notice whereas, sub-section (2) of Section 80 of the CPC adumbrate that the suit against the Government or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the court, without serving any notice as required by sub-section (1). In any case, the court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit. It is sought to be canvassed

before me by learned counsel that Section 80 of the CPC at least contemplates a relaxation of the mandate contained in subsection (1), but Section 164 of the MCS Act, does not even admit of such a deviation and necessarily a statutory notice cannot be waived.

24. Both the provisions of law serve policy of law and, public purpose and manifest an intention to alert the Government about the proposed suit to be instituted by issuance of a notice with an expectation that a responsible officer in the department shall take notice of the same and with a view to avoid litigation, may negotiate a just settlement or will at least inform the plaintiff, who brings the suit as to under what ground, his claim is being resisted.

25. True it is, that Section 80 of the CPC and Section 164 of the MCS Act contemplate a pre institution notice, which aims to achieve a common object. Though serving of notice under Section 80 of the CPC is mandatory, it is also capable of being waived, is the settled position of law. Whether there is a waiver or not, would depend upon the facts and circumstances of each case. By this time, the law is very well settled, that want of notice under Section 80 of the CPC, which operates a bar to institute suits against the Government or public officer, must be taken at the earliest possible opportunity and must be specifically pleaded. In any case, the purpose of issuing of notice is limited

in its operation; it acts as a forwarning to the Government that the suit is likely to be instituted against it and efforts can be made to settle the claim of the plaintiff if the Government is ready to rectify its act, which has prejudiced one of its citizen. The scope and ambit of such a notice is, ofcourse, not intended to defeat the just claim of the plaintiff, but it is a procedural provision, which cannot defeat the substantive justice. Procedure, definitely, is only handmaid of justice and will not succumb to substantive justice.

The Full Bench of this court while interpreting provisions of Section 80 of the CPC and while dealing with the notice as a condition precedent to exercise of its jurisdiction, held that it is a mere procedural requirement and cannot go to the root of the jurisdiction in a true sense of the term particularly, when it is capable of being waived by the defendants and on such a waiver, the court gets jurisdiction to entertain and try the suit. The plea of waiver being capable of being tried by the civil court and the question whether there is any waiver or not would depend on the facts of the case. The Full Bench held as under:

“7. The following passage from the judgment of the Supreme Court in Dhirendra Nath’s case can be said to be conclusive of the controversy (at. p. 1304):

“The Judicial Committee in AIR 1947 PC 197 at p. 199 pointed out that there was no inconsistency between the propositions that the

provisions of Section 80 of the Code of Civil Procedure were mandatory and must be enforced by the court and that they might be waived by the authority for whose benefit they were provided. In that case the Judicial Committee held that Section 80 of the Code of Civil Procedure was explicit and mandatory; but still it held that it could be waived by the authority for whose benefit that was provided.”

26. In case of **Bihari Chowdhary & Anr. v. State of Bihar & Ors.** reported in **AIR 1984 SC 1043**, while construing Section 80 of the CPC, the Hon’ble Apex Court has discerned its true purport in the following words:

“The effect of the Section is clearly to impose a bar against the institution of a suit against the Government or a public officer in respect of any act purported to be done by him in his official capacity until the expiration of two months after notice in writing has been delivered to or left at the office of the Secretary to Government or Collector of the concerned district and in the case of a public officer delivered to him or left at his office, stating the particulars enumerated in the last part of sub-section (1) of the Section. When we examine the scheme of the Section it becomes obvious that the Section has been enacted as a measure of public policy with the object of ensuring that before a suit is instituted against the Government or a public officer, the Government or the officer concerned is afforded an opportunity to scrutinise the claim

in respect of which the suit is proposed to be filed and if it be found to be a just claim, to take immediate action and thereby avoid unnecessary litigation and save public time and money by settling the claim without driving the person, who has issued the notice, to institute the suit involving considerable expenditure and delay. The Government, unlike private parties, is expected to consider the matter covered by the notice in a most objective manner, after obtaining such legal advice as they may think fit, and take a decision in public interest within the period of two months allowed by the Section as to whether the claim is just and reasonable and the contemplated suit should, therefore, be avoided by speedy negotiations and settlement or whether the claim should be resisted by fighting out the suit if and when it is instituted. There is clearly a public purpose underlying the mandatory provision contained in the Section insisting on the issuance of a notice setting out the particulars of the proposed suit and giving two months time to Government or a public officer before a suit can be instituted against them. The object of the Section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation.”

27. The Hon’ble Supreme Court in the case of **State of Andhra Pradesh & Ors. v. M/s. Pioneer Builders**, reported in **(2006) 12 SCC 119**, while considering the historical background of Section 80 and when by the Code of Civil Procedure (Amendment Act, 1976), the existing Section 80 was re-

numbered as Section 80(1) and sub-sections (2) and (3) were inserted w.e.f. 01/02/1977, has observed as under:

“17. Thus, from a conjoint reading of sub-sections (1) and (2) of Section 80, the legislative intent is clear, namely, service of notice under sub-section (1) is imperative except where urgent and immediate relief is to be granted by the Court, in which case a suit against the Government or a public officer may be instituted, but with the leave of the Court. Leave of the Court is a condition precedent. Such leave must precede the institution of a suit without serving notice. Even though Section 80(2) does not specify how the leave is to be sought for or given yet the order granting leave must indicate the ground(s) pleaded and application of mind thereon. A restriction on the exercise of power by the Court has been imposed, namely, the Court cannot grant relief, whether interim or otherwise, except after giving the Government or a public officer a reasonable opportunity of showing cause in respect of relief prayed for in the suit.

18. Having regard to the legislative intent noticed above, it needs little emphasis that the power conferred in the Court under sub-section (2) is to avoid genuine hardship and is, therefore, coupled with a duty to grant leave to institute a suit without complying with the requirements of sub-section (1) thereof, bearing in mind only the urgency of the relief prayed for and not the merits of the case. More so when want of notice under sub-section (1) is also made good by providing that even in urgent matters relief under this provision shall

not be granted without giving a reasonable opportunity to the Government or a public officer to show cause in respect of the relief prayed for. The provision also mandates that if the Court is of the opinion that no urgent or immediate relief deserves to be granted it should return the plaint for presentation after complying with the requirements contemplated in sub-section (1)."

In **Sangram Singh v. Election Tribunal, Kotah**, reported in **1955 AIR 425**, the Apex Court has made the following notable comment:

"Now a code of procedure must be regarded as such. It is procedure, something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties; not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it."

28. "Procedure is but the machinery of the law after all the channel and means whereby law is administered and justice reached. It strongly departs from its office when in place of facilitating, it is permitted to obstruct and even extinguish legal rights, and is thus made to govern when it ought to subserve."

.. Lord Penzance in 1879 (4) AC 504.

In any given case, like all rules of procedure, this section demands a construction which would promote the cause and it can in a way stretched so far, to overpower and elude substantive justice and substantive rights. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae*, where the tragic sequel otherwise would be wholly inequitable. - Justice is the end and the beginning too – Procedure shall always remain only the means and an aid to attain justice, the goal of any legal system. Procedure in no way can contribute to elude justice and if does, it must be read down to uphold justice.

29. In the wake of the aforesaid legal position, if the facts of the present case are perused, what emerges is that the plaintiff withdrew a writ petition with liberty to file a suit after due compliance of the provisions of Section 164 of the MCS Act, which the plaintiff complied with and, accordingly, issued a notice to the Society as well as to the competent authority, expressing great urgency, the dispensation of notice period of 60 days was sought and leave was also sought from the competent court to file a suit before expiry of the statutory period. The court considered the exigency expressed in the application and granted leave to file suit before expiry of the period of 60 days. Though the order passed on 21/09/2018, which is the subject

matter of the revision applications, is not expressly worded, the gist of the order can be gathered from the brief reasoning when the period of notice stands dispensed against defendant No.2 in the light of emerging circumstances reflecting urgency in the matter. Defendant No.2 is a competent authority and it had never objected to institution of suit before the expiry of statutory period and has contested the suit on merits. The Application for rejection of plaint is brought not by the competent authority/Government, but who is shouting horse is the Society.

Notice under Section 164 of the MCS Act is a notice to be issued to the competent authority and stands at par with Section 80 of the CPC being a notice issued to the Government or a public officer. The mandate of Section 164 will not lie against the Society and since the competent authority has not raised any objection about institution of suit before expiry of the statutory period nor did it challenge the curtailment of mandatory period by order dated 21/09/2018, it can be safely assumed that it has waived the said objection. If the Government has waived the objection, there is no reason why the Society should claim a rejection of plaint on the ground that it is barred by law under Order 7 Rule 11 of the CPC. The submission of learned senior counsel, therefore, does not hold good qua both the impugned orders challenged in the civil revision applications.

30. As far as the writ petition is concerned, the petition has challenged the order passed in appeal rejecting Ex-5 filed at the

instance of petitioner-society. The said order uphold the grant of injunction by the Civil Judge, Senior Division, Thane on 21/12/2018. When carefully perused, the order reflects the factual conspectus and records that the plaintiff, who sought an order of injunction is the owner of the suit plot wherein she constructed a building consisting of 20 flats and let out the said flats to various tenants. The Society was registered of the tenants when the building was in a dilapidated condition. Recording that though respondent No.2, competent authority, rejected the claim of the Society for certificate of deemed conveyance, within a short span of time, without any change in the circumstances, the same application was allowed by the very same authority on 22/12/2017 and the deed of conveyance came to be executed on 22/12/2018.

31. The courts below have considered the three essential parameters for grant of injunction being *prima facie* case, balance of convenience and irreparable loss.

Recording that the respondent/plaintiff was the owners of the suit property, who had constructed the building and let out the flats, the court recorded that a *prima facie* case existed in her favour. It is further reasoned that the suit property has been demolished and a development agreement is entered into with M/s. Shruti Buildcom Builders and Developers, but if the injunction is not granted and in the meantime, a structure is erected on the suit property, third party interest would be created

and this would create complication and multiplicity of proceedings. Balancing the equity, to protect the interest of both the parties, without their right being finally adjudicated, the court records that a *prima facie* case is made out for grant of injunction, which is a discretionary relief. Balance of convenience is also recorded in her favour with irreparable loss being caused to her in case of refusal to grant of temporary injunction. Since she is the owner of the suit property and merely because the society relied upon the document of development agreement, the court held that it would not create any right in favour of them. Though an attempt was made to argue that the development activities have now started, giving primacy to the right in favour of the defendant as owner of the property, it held that her right cannot be compared with the right of a developer and injunction came to be granted.

I see no legal infirmity in the order passed by the appellate court, which has taken into account the three prerequisites for grant of temporary injunction being existence of *prima facie* case, balance of convenience and irreparable loss. When the orders are perused in the light of the deed of deemed conveyance granted in favour of the society by the very same authority which had rejected it barely two months prior to the grant of conveyance and this is the subject matter of the suit, which will require a threadbare trial as to whether the society is entitled for deemed conveyance and whether the order passed by respondent No.2 conferring such status on the society, detrimental to the

interest of the plaintiff, can stand the test of law and whether the plaintiff is entitled for setting aside of the said order and, consequently, cancellation of the deemed conveyance.

This being a matter of trial, the impugned order upholding the temporary injunction in favour of the plaintiff does not warrant any interference and is liable to be dismissed for the reasons recorded above.

The writ petition as well as the civil revision applications are dismissed.

[SMT. BHARATI DANGRE, J.]