

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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WRIT PETITION NO.6258 OF 2019

Rusabh Shah
an adult Indian Inhabitant, in his capacity
as the Chief Promotor of New Pushpanjali
Co-operative Housing Society (Proposed),
Having his address at :- Flat No. 701,
Pushpanjali Apartments, Old Prabhadevi Road,
Prabhadevi, Mumbai – 400 025. ... Petitioner

V/s.

1. Avarsekar & Sons Private Limited
a Company incorporated under the
provisions of the Companies Act, 1956,
Having its registered office at 1252,
Pushpanjali Apartments, 1st Floor,
Old Prabhadevi Road, Prabhadevi,
Mumbai – 400 025.
2. District Deputy Registrar
Co-operative Societies, Mumbai (1)
City,
G/S-ward, Malhotra House, 6th Floor,
Fort, Mumbai – 400 001. ... Respondents

Mr. Sharan Jagtiani with Mr. Nishant Sasidharan i/b. Ms. Trupti Shetty, Advocate for the Petitioner.

Mr. Sanjiv Punalekar i/b. Mr. Sachin Kanse, Advocates for the Respondent No.1.

Mr. S. D. Rayrikar - AGP for the Respondent No.2 - State.

CORAM : S. M. MODAK, J.

**RESERVED ON : 18TH NOVEMBER 2022
PRONOUNCED ON : 23RD DECEMBER 2022**

JUDGMENT :

1. There was a dispute in between proposed society headed by the Petitioner as Chief Promoter on one hand and the Developer / Promoter – Respondent No.1 on the point of formation of new entity. According to Petitioner, it should be co-operative housing society, whereas, according to Respondent No.1, already the declaration is submitted as per the provisions of the Maharashtra Apartment Ownership Act, 1970 (Maharashtra Act No.XV of 1971) [“*MAO Act 1970*”]. There is one more facet to this dispute. The ‘*Declaration*’ as contemplated under the provisions of Section 2 of *MAO Act 1970* was registered but not by Respondent No.1 but by one Mr.M.V.Prajith.

2. This dispute first arose before the ‘*Competent Authority*’ constituted under Section 5A of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (Act No. XLV of 1963) [“*MOFA, 1963*”]. This was when the proposal moved by the Petitioner for registration of co-operative housing society was under consideration and the Respondent No.1 took objection under the provision of Section 10(2) of the *MOFA Act, 1963*. Ultimately, the Competent Authority rejected the proposal vide order dated 30th June, 2018. It is challenged by way of this Writ Petition.

3. Heard learned Advocate Mr.Sharan Jagtiani, for the Petitioner, learned Advocate Mr.Sanjiv Punalekar for Respondent No.1 and learned AGP Mr. S.D.Rayrikar for the Respondent No.2 - State.

4. Rule. Rule made returnable forthwith. Learned counsel for the Respondent waives service. By consent of the parties matter is heard finally.

5. Petitioners relied upon contingency of formation of society on non-cooperation basis as per the provisions of first proviso to Section 10(1) of *MOFA, 1963*. Whereas, the Respondent No.1 relies upon the provisions of Section 10(2) of the said Act. So, the issue is :

“Whether the Competent Authority was justified in rejecting the proposal vide impugned order ?”

6. Both the learned Advocates elaborated various facets of the provisions of the *MOFA, 1963*, *MAO Act 1970* and the Maharashtra Co-operative Societies Act, 1960 (Maharashtra Act No.XXIV of 1961) [*MCS Act, 1960*] and Rules made thereunder.

7. There is conflict in between rights of prospective purchaser to form co-operative housing society on one hand and right of Respondent No.1 to submit the property to the provisions of *MAO Act 1970*. So, we have to decide :

- (a) Which right prevails,
- (b) What is the scope of inquiry by Competent Authority ;
- (c) Whether he can ascertain the validity of ‘*deed of Declaration*’.

8. According to the Petitioner, the alleged ‘*deed of Declaration*’ is not as per the provisions of the *MAO Act 1970* and intimation about registration of deed of declaration was not given to the proper

Authority. Whereas, learned Advocate for Respondent No.1 brought to my notice various amendments made in the provisions of *MAO Act 1970*. It will be relevant to go through the provisions of relevant Acts.

Provisions of the Act

9. There can be formation of three entities consisting of flat purchasers of the building. They are :-

(a) Co-operative Housing Society

(b) Company

(c) Condominium

10. In the present Petition, we are not concerned with the entity 'company'. The *MOFA, 1963*, lays down what are the responsibilities of promoter and flat purchasers. Promoter includes owner of the land as well as builder who constructs the building and sells the flat. Upto the stage of formation of entity, there is no difference in between legal relation of promoters vis-a-vis flat purchasers. Once the stage of formation of entity has arrived, legal relation in between them depends upon type of entity to be formulated.

11. If it is a co-operative housing society, then legal relationship will be governed by the provisions of Sections 10 and 11 of *MOFA, 1963*. Whereas, if the condominium is to be formed then the provisions of Section 2 and other provisions of *MAO Act 1970* apply.

12. Moot question is

(a) Which entity is to be formed;

- (b) What are the intention of the parties and who will decide which entity is to formed.

For deciding this question, the relevant provisions of the Acts, intention of the contracting parties and law interpreted by Courts guides us.

Formation of entity

Co-operative Housing Society

(a) As per Section 10 of MOFA, 1963, society can be constituted in two contingencies :-

(i) by the promoter : when quorum for filing an application is fulfilled [Section 10(1)]

(ii) by the flat purchasers : when promoter fails to file an application [first proviso to Section 10(1)]

In case before us, we are concerned with an application filed by majority of flat purchasers (21 out of 24). The Authorities for the above two contingencies are different. They are as follows :-

(i) Registrar can register the Society : when proposal is moved by the promoters

(ii) Competent Authority can be moved : if it is by flat purchasers

13. The first proviso to section 10(1) of MOFA was inserted by way of an amendment in the year 2008. In order to curb the evil of promoters not registering society, it was carried out. At the same time, Section 5A was also inserted. It empowers the State Government to

make appointment of officers as Competent Authority. It provides :-

- (a) an officer not below the rank of District Deputy Registrar ;*
- (b) for the purpose of exercising powers and performing duties under Section 5, 10 and 11 of this Act.*

So, as per the provisions of Section 10(1), it is the Registrar and as per first proviso, it is the officer of the rank of District Deputy Registrar who can perform the duties. There is one difference in these provisions. It is as follows :-

- (a) As per Section 10(1), Registrar can order for registration of the Society, whereas*
- (b) as per first proviso, even though the application has to be made to the Competent Authority, he himself is not ordering for registration of the society, but he directs*
 - (i) District Deputy Registrar*
 - (ii) Deputy Registrar*
 - (iii) The Assistant Registrar – to register the Society.*

Inquiry for registration

14. The MOFA, 1963, does not lay down the nature of inquiry to be conducted at the time of registration. The provisions of Section 8 to 12 of MCS Act, 1960 guides us in that behalf. Section 11 of MCS Act, 1960 empowers the Registrar to decide certain questions prescribed therein. No doubt, the question of deciding validity of 'deed of Declaration' is not prescribed in Section 11 of the said Act. Learned Advocate for Petitioner laid emphasis on specific wordings of Section

10(2) of *MOFA, 1963*. According to him, bar to register society will come into picture only when twin conditions mentioned therein are satisfied. They are :-

(a)and the promoter submits such property to the provisions of the *Maharashtra Apartment Ownership Act, 1970 (Mah.XV of 1971.)*, by executing and registering a Declaration **as provided by that Act**,....

And

(b)**then the promoter shall inform the Registrar**, as defined in the *Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961.)*, accordingly; and in such cases, it shall not be lawful to form any co-operative society or company.

15. According to him, the twin conditions are to be satisfied meticulously. And it is the duty of Competent Authority to satisfy himself of fulfillment of those conditions prior to rejecting the proposal for registration of the Society. According to him, both these conditions are not fulfilled by the Respondent No.1. He relied on the provisions of Section 10(2) of *MOFA, 1963*. For ready reference, it is reproduced below :-

“10. Promoter to take steps for formation of co-operative society or company.-

[(1)] As soon as a minimum number of persons required to form a co-operative society.....

[Provided that,.....

Provided further that,.....

(2) If any property consisting of building or buildings, is constructed or to be constructed and the promoter submits such property to the provisions of the Maharashtra Apartment Ownership Act, 1970 (Mah.XV of 1971.), by executing and registering a Declaration as provided by that Act, then the promoter shall inform the Registrar, as defined in the Maharashtra Co-operative Societies Act, 1960 (Mah. XXIV of 1961.), accordingly; and in such cases, it shall not be lawful to form any co-operative society or company.”

Provisions of Maharashtra Apartment Ownership Act

16. Just like formation of society there is no provision in MAO Act about formation of condominium/association of apartment owners. Section 2 of the said Act says about submitting the property to the provisions of this Act by owner or the owners by executing ‘*deed of Declaration*’ and registering it. Whereas as per the provisions of Section 10(2) of MOFAAct, it is the promoter who has to submit the property to the provisions of MAOAct. There are three important essentials. They are as follows :-

- a. who is owner/promoter who can submit the property,
- b. what is the meaning of the word ‘property’,
- c. declaration must be as per the provisions of the MAOAct.

Owner/promoter.

17. Who are the persons included within the category of owners of the property. Learned Advocate for the Petitioner invited my attention to the meanings of the word apartment, apartment owner and property as per MAO Act.

Property means the land, building and other things to be submitted to the provisions of this Act.

Whereas apartment includes block, chamber and other things. Apartment owner means person or persons owning the apartment and undivided interest.

According to learned Advocate for the Petitioner,

- (a) It is the owner of that land; and
- (b) Owner of the building that is to say the purchasers of the flat.

18. Submission is unilaterally, the owner of the land cannot submit the property to the provisions of this Act. Whereas, according to learned Advocate for Respondent No.1, it is the promoter only who can submit the property to the provisions of this Act. Learned Advocate for Respondent No.1 invited my attention to the amendments brought in the provisions of the MOFA. According to Section 10(2), earlier it was the promoter and apartment takers who can submit the property to the provisions of this Act. Whereas, as per the amendment, the word apartment takers is deleted and now, only promoter can submit the property to the provisions of this Act.

19. He submitted that when the property is to be submitted to the provisions of this Act, now the apartment owners have no role to play and it can be done only by the promoter of the property. This is disputed by learned Advocate for the Petitioner. Submitting the property to the provisions of this Act is one of the conditions which disentitles the flat purchasers from registering the housing society.

According to learned Advocate for the Petitioner, this Court can certainly inquire whether the Competent Authority has exercised the discretion property while refusing the proposal for registration and while exercising that discretion whether the Competent Authority has satisfied himself about the performance of this condition.

20. I agree to the submission of learned Advocate for Respondent No.1 to certain extent. It is true to say that after the amendment, it is only the promoter of the property who can submit the property to the provisions of this Act. Earlier, the apartment takers were also included, but now it is deleted.

21. So, now whether the flat purchasers/apartment owners are required to be joined while submitting the property to the provisions of this Act. Section 11 and section 12 of MAO Act mentions about contents of declaration and contents of apartment. Whereas Rule 3 of MAO Rules says that declaration shall be in Form "A". Rule 6 says about who can be parties to deeds of apartment (executant of declaration and apartment owner). But the Rules no where says about who can be the parties to the declaration. Even declaration as per Form "A" only mentions about the grantor. So, only the promoter can submit the property to the provisions of this Act. This is the plain meaning of the provisions of Section 2 of MAO Act 1970.

Meaning of the word 'property'

22. Now it needs to be seen what is meaning of the word "property" as per the provisions of MAO Act. As said above the property includes

land, building and other things. The word “building” has to be understood in its ordinary meaning. That is to say the building consisting of the apartments. Whereas as per MOFA “flat” means self contained premises and includes apartment. By taking over view of all these provisions it can only be said that it is the property consisting of land, building and other things which can be submitted to the provisions of this Act. However the question does not end there. Whether the declaration about the property is as per the provisions of the MAOAct.

Submitting the property to the provisions of this Act

23. According to learned Advocate for the Petitioner, this condition is not fulfilled for following reasons :-

- (a) The ‘deed of Declaration’ cannot be said to be as per the provisions of various sections of this Act ;*
- (b) This ‘deed of Declaration’ is not registered by the promoter with whom, they have entered into agreement for sale ;*
- (c) The present Respondent No.1 is changing his stand. Before the Competent authority, he has opposed the proposal on the ground that property is submitted to the provisions of this Act. Whereas, on the other hand, he has filed a suit in this Court thereby asking for specific performance of their agreement with the owners and they have also prayed for cancellation of deed of conveyance entered into in between their vendors and Mr.M.V.Prajith ;*

24. Whereas, according to Respondent No.1, the ‘deed of

Declaration’ satisfies the provisions of Maharashtra Apartment Ownership Act and the Competent Authority has no right to inquire whether a ‘deed of Declaration’ is within the provisions of the Act or not. It is further contented that as per the provisions of Section 196 of the Indian Contract Act, 1872 (9 of 1872), the Respondent No.1 can certainly ratify the act of Mr.M.V. Prajith of executing a ‘*deed of Declaration*’ and accordingly submitting the property to the provisions of the Act.

25. There is also submission made on behalf of Respondent No.1 on the basis of amendment carried out in the year 2020. certain rights are given to apartment owners and certain mechanism is created for redressal of grievances. It is not applicable retrospectively

26. It will be relevant to see the observations in the judgment relied upon by the petitioner.

27. In *Cipla Limited (supra)*, the Division Bench of this Court has dealt with all issues threadbare. It is held that the promoter cannot submit the property to the provisions of the *MAO Act 1970* unilaterally. Even there is a discussion about role of the Competent Authority as per second proviso of section 10(1) the MOFA Act. He has not to deal with mechanically in order to find out whether the ‘*deed of Declaration*’ was executed by the promoter or not and whether the information is complied with or not. There are further observations that the Competent Authority cannot relegate the parties to the Civil Court.

28. Whereas in the case of ***Sarita Nagari Phase – 2 Cooperative Housing Society Ltd., (supra)***, there is emphasis on the ‘*deed of Declaration*’ as per provisions of this Act. So to say the Competent Authority has to satisfy himself that the declaration was furnished as per the provisions of the Act. Even the issue is answered about conducting an inquiry by this Court even though the suit is pending. It finds place in para 38.

29. In case of ***Padmavati Construction Company (supra)***, there was emphasis on what was the intention of the flat purchasers when they have agreed to purchase the flat. Such an intention can be inferred from the agreements entered into. Those agreements must specifically spell out about the intention.

30. Whereas, in case of ***Chetan Constructions (supra)***, there was rival claim in between 60% of the flat owners on the one hand, and the vendor on the other hand. The vendor was intending to submit the property to the provisions of the **Apartment Ownership Flat Act**. Ultimately it was held that it is choice of majority of the flat purchasers. Even Court dealt with the objection availability about alternate remedy and on facts it was turned down.

31. When it can be said that the owner is justified in exercising his option to submit the property to the provisions of this Act. There are certain factors to be considered.

(a) First one is the intention of the parties as reflected from the flat purchase agreement.

- (b) Second one, Mr.M.V.Prajith who has entered into '*deed of Declaration*' whether he can be said to be the owner.

32. Learned Advocate for the Petitioner invited my attention to certain clauses of the flat purchase agreement. He also invited my attention to certain correspondence made by Respondent No.1 with the flat purchasers and the correspondence made by the flat purchasers with Respondent No.1. They are as follows :-

- (a) Letter by Respondent No.1 to flat purchasers requesting to submit documents for formation of society. (13/10/2001)
- (b) Correspondence from the side of flat purchasers with Respondent No.1 (From 2008-2015)

In addition to that, there is copy of occupation certificate dated 28/10/1997 issued by the Corporation and one of the conditions was to obtain a certificate of registration of Society within a period of three months.

33. On reading these clauses, one can very well say that the flat purchaser and the promoter i.e. Respondent No.1 has agreed to form a co-operative housing society comprising of the members who are the flat purchasers. Not only that the Respondent No.1 has started the process of registering the co-operative housing society. The correspondence referred above shows the intention of the parties. Under these circumstances, whether Mr.M.V.Prajith was justified in executing a '*deed of Declaration*' and whether it can be said that it is as per the provisions of this Act.

34. Section 2 does not say when the promoter is justified in submitting the property to the provisions of this Act. However, it is also true that prior to executing a '*deed of Declaration*', there are flat purchase agreements entered into in between the flat purchasers and the promoter. It is true to say that those flat purchase agreements nowhere mentions that the promoter has agreed to submit the property to the provisions of this Act. So, even though the promoter can submit the property to the provisions of this Act, this has to be on the basis of the relationship as reflected from the flat purchase agreement.

35. Learned Advocate for the Petitioner also invited my attention to the provisions of Section 11 of MOFA which deals with what are the contents of '*deed of Declaration*' and also invited my attention to the provisions of 12 of the said Act which deals with what are the contents of deed of apartment. According to him, if the '*deed of Declaration*' executed in present matter is considered, it does not contain the particulars as contemplated under Section 11 of the said Act and in that view of the matter, the said '*deed of Declaration*' does not fulfill the requirement of the provisions of this Act. According to Respondent No.1 these are disputed questions of fact and it cannot be gone into by this Court in a Writ Petition.

Inconsistent stand and civil suit.

36. Even he criticized the conduct of Respondent No.1. According to him, even though Respondent No.1 has filed a suit on the original side of this Court whereby asking for specific performance against the

original owners and have also prayed for the cancellation of deed of conveyance dated 4th May, 2016. Whereas, on the other hand, by taking u-turn, the same Respondent No.1 has objected to the registration of Housing Society when the application is made on behalf of the Society.

37. According to him, even the Petitioner has filed a Suit on the Original Side of this Court and it is prayed that '*deed of Declaration*' thereby submitting the property to the provisions of *MAO Act 1970* as illegal. There is an objection taken on behalf of Respondent No.1 about maintainability of this Writ Petition. It is for the reason that this Court is seized of two Suits in which, there is prayer for declaration in respect of '*deed of Declaration*'. According to him, if it is so, then this Court in Writ jurisdiction cannot issue directions. According to him, even the fact of filing suit was considered by Competent Authority while rejecting the proposal for forming Co-operative Society.

38. I do not think that filing of the suit thereby asking for declaration in respect of '*deed of Declaration*' will come in the way of entertaining this Petition. It is for the reason that in this Petition we are not supposed to decide whether the '*deed of Declaration*' was valid or not. It is a subject matter of a suit. We are not going to conclude that the declaration can be said to be illegal declaration. The scope of inquiry before the Competent Authority while dealing with the proposal for registration of society is limited. He has to satisfy whether a case for registration of society on non co-operation basis is made out or not, and if there are certain objections the Competent Authority has to deal with those objections.

39. It is true that the Civil Court is entitled to entertain any suit in which there is a civil dispute. The jurisdiction is ousted expressly or impliedly then only there is a bar of jurisdiction. However, it is pertinent to note that a separate machinery is provided for registration of society and the obligation is cast on the promoter to take necessary steps. So the predominant purpose is to see whether the society can be registered or not and for scrutinizing that proposal the competent authority in a summary way can deal with the objections. If there are certain observations by the Competent Authority, about that objection it does not mean that there is encroachment on the powers of a Civil Court. In spite of the observations on the point of the objection, still the Civil Court can take a decision on the basis of evidence and the law. With these observations, this Court has entertained this Petition.

40. When '*deed of Declaration*' is under challenge by Petitioner by way of suit and when deed of conveyance under which Shri.M.V.Prajith has purchased the property is under challenge by way of suit by Respondent No.1, we can not accept '*deed of Declaration*' and consider it as executed as per the provisions of the Act. Grantor Mr.M.V.Prajith is not the promoter from who the Petitioner and others have purchased the flats. In view of this, I have not gone into the issue whether declaration fulfills to the requirement of '*deed of Declaration*'. For the above discussion it cannot be said that the declaration can be said to be as per the provisions of this Act.

Not giving information to Registrar

41. The Competent Authority may not register the society, if information about formation of condominium is given to the Registrar.

This provision is made so as to avoid conflict in between two entities that is housing society and condominium. However, there is serious dispute ; whether information was given to Registrar. According to the Petitioner ‘Registrar’ is designated and hence, information to Officer other than Registrar is not valid. Learned Advocate for Petitioner relied upon the observations in case of ***Cipla Limited V/s. The Competent Authority and the District Dy. Registrar Cooperative Society (1), Mumbai and Ors. [Writ Petition (L) No.3706 of 2019 : 19th December, 2019 : Bombay High Court]***. Relevant discussion finds place in Para Nos. 131, 132, 133 and 150 of the said judgment. It is held that information given to Officer below the rank of Registrar cannot be proper. In that Petition, certificate of registration of society is granted and the order is challenged. The observations of this Court in case of ***Krishnarao Bakaramji Hadge V/s. The State of Maharashtra [1966 SCC OnLine Bom 49]*** are considered (Paragraph No.132).

42. In ***Krishnarao Bakaramji Hadge (cited supra)***, the question was which is the forum for preferring an appeal against the decision of Registrar. The provisions of Section 152 of *MCS Act, 1960* were considered. Forum of appeal depends upon ; whether the order is passed with the approval of Registrar or without his approval. Section 3 of the said Act empowers the State Government also to appoint one or more persons to assist Registrar and confer upon him certain powers. Such person has to work under the control of Registrar.

43. According to Petitioner, as held in ***Cipla Limited (cited supra)***, information given to Officer other than Registrar is not proper. Whereas, according to Respondent No.1, Assistant Registrar or Deputy

Registrar are delegated with the powers of Registrar and hence, intimation to them under Section 10 (2) of *MOFA, 1963* is perfectly valid. According to him, there is no period prescribed for giving of intimation after '*deed of Declaration*' is registered and it can be given at any time prior to registration of society. Certain factors / aspects need to be considered. They are as follows :-

(a)	Date of conveyance in between owners and Mr.Prajith	04.05.2006
(b)	Deed of registration of Deed of Declaration by Mr.Prajith as per <i>MAO Act 1970</i>	19.10.2016
(c)	Letter by Shri.Biswas to the Petitioner	24.02.2017

44. Earlier to above incidents, there are certain events relied upon by the Petitioner. They are as follows :-

Sr.No.	Date	Particulars
(a)	Agreement for sale Plot No. dated 1/10/1991	Between Linganna Pujari (owner) in favour of Avarsekar & Sons Pvt. Ltd.
(b)	Commencement Certificate dated 8/08/1994	3 Buildings 2 for tenants one (15 floors) for free sale
(c)	October 1996	Sale of at least 10 flats in third building by Respondent No.1 (suggesting of formation of cooperative housing society by flat purchasers.
(d)	Occupancy certificate 28/10/1997	One of the condition submission of certificate of registration of society
(e)	13/10/2001	Letter by Respondent No.1 to flat

		purchasers requesting to submit documents for formation of society.
(f)	From 2008-2015	Correspondence from the side of flat purchasers with Respondent No.1
(g)	24/01/2017	Petitioner filed an application for reservation of the name of the society and grant a permission to open bank account.
(h)	15/03/2017	It was rejected by Deputy Registrar
(i)	21/12/2017	Divisional Joint Registrar remanded the matter
(j)	26/03/2018	Application made by Chief Promoter under section 10(1) of <i>MOFA, 1963</i> for registration of society on non corporation basis.
(k)	30/06/2018	Competent Authority rejected the application.

45. It will be relevant to consider the Authorities who are involved in above events :-

Deputy Registrar, Co-operative Societies, G/Sward, Mumbai	Who rejected proposal of name reservation by Petitioner on 15.03.2017 (Page No.317/II)
Divisional Joint Registrar, Co-operative Societies, Mumbai Division	Who remanded the matter on 21.12.2017
Fresh proposal for registration to Assistant Registrar	Who transferred it to Deputy Registrar and Competent Authority on 27.03.2018
Shri.M.V.Prajith and Shri.Ganesh Biswas produced copy of 'deed'	(i) 24.11.2016 (ii) 28.11.2016

<i>of Declaration'</i> before Assistant Registrar	(Referred in letter dated 15.03.2017 – Page No. 317/II)
Competent Authority rejected proposal	30.06.2018 (impugned order)

46. On set of above facts ; whether Assistant Registrar can be the proper Authority to whom intimation under Section 10(2) of *MOFA, 1963* can be given is the moot question. We are not dealing with an Appeal under *MCS Act, 1960* against the order of Officers under *MCS Act, 1960*. Section 3 of *MCS Act, 1960* empowers any person to assist Registrar and the works under the control of Registrar. Still, we are bound by the observations made by Division Bench in case of ***Cipla Limited (cited supra)***. Hence, I hold that intimation given to Assistant Registrar (not by Respondent No.1 but by two persons mentioned above) cannot be treated to be proper as per the provisions of Section 10(2) of *MOFA, 1963*.

About the impugned order

47. The Competent Authority in Para No.5 at the end had given a categorical finding that the Chief Promoter is appointed and requirement of the second proviso to section 10(1) have been complied with. The Competent Authority has declined to register the society for the reason that the dispute is pending before this Court (Para No.6). However, the said observation is not correct in view of the law laid down by the Division Bench of this Court in case ***Sarita Nagari Phase-II Cooperative Housing Society (cited supra)***.

48. As said earlier this Court is not going to declare the '*deed of*

Declaration’ as illegal. Only summary inquiry is contemplated. The Competent Authority further observed that the issue is not with regard to declaration of the property but the issue is not regarding validity of proposal for registration of the society. However, the Competent Authority has not considered the observations made by the Division Bench of this Court in case ***Cipla Limited (supra)***. The Competent Authority is under an obligation to see whether ‘*deed of Declaration*’ is made as per the provisions of this Act or not.

49. Merely registration of the ‘*deed of Declaration*’ whether is sufficient ? It is not sufficient. That has to be as per the provisions this Act and it is duty for the Competent Authority to verify whether it is as per the provisions of the Maharashtra Apartment Ownership Act. The Competent Authority must be conscious of the fact that when there is objection on the basis of registration of ‘*deed of Declaration*’, it prohibits him from registering a society.

50. So, he needs to satisfy himself that ‘*deed of Declaration*’ is registered as per the provisions of this Act. If he refuses the proposal for registration of the society merely on producing the ‘*deed of Declaration*’ and without ascertaining whether it is as per the provisions of the Act or not, in that case he will be abdicating his responsibilities.

51. It is important to note that in this case the ‘*deed of Declaration*’ is not registered by Respondent No.1 but it is registered by one M.V.Prajith. The said Mr.M.V.Prajith claims to be purchaser from the original owners. Admittedly, he is not a person who has agreed to sell

the flats from the third building to the members of proposed cooperative housing society. So there was no relationship in between him and the petitioner's members as flat purchaser and promoter.

52. It is important to note that Respondent No.1, who can be said to be a promoter has even challenged the claim made by the said M.V.Prajith. All these facts were not considered by the Competent Authority. It is very surprising that this Court has interpreted the law and also about responsibility of the Competent Authority in various judgments. In spite of that it is sad to note that the Competent Authorities are not following the law laid down by this Court and mechanically they are refusing to register the society. Hence, the order cannot be sustained in the eyes of law.

53. Already the Competent Authority has observed that there is compliance of the proviso to Section 10(1) of the said Act. Hence, the Petitioner has made out a case for registration of the housing society. The observations made about '*deed of Declaration*' by this Court were made only for the purpose of deciding an issue whether it can be said to be as per provisions of this Act and it is only with a view to ascertain whether the proposal for registration of the housing society can be considered or not. These observations will not come in way of the Court dealing with the Civil suit. That suit can be decided on its own merits.

54. In view thereof the Petition deserves to be allowed. Hence, the Petition is allowed in terms of prayer clause (a). The Competent Authority is directed to issue a certificate of registration to the

Petitioner within one month from the date of receipt of this order. The parties to bear their own costs. Rule is discharged.

(S. M. MODAK, J.)

After pronouncement of judgment :-

55. Learned Advocate for Respondent No.1 prays for staying the operation of this order. Similar orders passed in case of ***Cipla Limited V/s. The Competent Authority and the District Deputy Registrar, Co-operative Society*** by this Court and by the Hon'ble Supreme Court are cited.

56. It is submitted that once the order is received by the Competent Authority, he can issue the certificate at any time and the outer period is thirty days. The prayer is opposed on behalf of the Petitioner.

57. Stay is granted to the operation of this order for two weeks' from today.

(S. M. MODAK, J.)