

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8203 OF 2022**

M/s. K.G. Associates & anr.

...Petitioners

V/s.

The District Deputy Registrar,
Co-operative Societies, Pune,
City-1 and Competent Authority
and Ors.

...Respondents

**ALONGWITH
CONTEMPT PETITION NO. 454 OF 2022**

M/s. K.G. Associates, Thr.
Partner, Mr. Pradeep Kamat &
Anr.

....Petitioners

V/s.

Kamalbaug Co-operative
Housing Society Ltd. Thr.
Chairman Mr. Sachin B. Kale and
Ors.

...Respondents

Appearances

Mr. Girish S. Godbole, Senior Advocate with Ms. Shruti Tulpule i/by.
Mr. Kaustubh Thipsay, for the Petitioners in WP-8203-2022.

Mr. Jaydeep S. Deo, for Respondent No.2 in WP-8203/2022 and for
Respondent No.1 in CP-454-2022.

Mr. C.D. Mali, AGP for Respondent Nos.1 to 3 in WP-8203/2022
and for Respondent Nos. 2 to 4 in CP-454-2022.

CORAM : SANDEEP V. MARNE, J.

Reserved on : 15 September 2023.

Pronounced on : 4 October 2023.

Judgment

THE CHALLENGE :

1. This Writ Petition is filed by Petitioners taking exception to the Order dated 17 March 2020 passed by the Deputy Registrar of Co-operative Societies and Competent Authority, Pune granting deemed conveyance of the land in favour of Respondent No. 2-Society. By that order, the Competent Authority has granted deemed conveyance of land admeasuring 77,754.75 sq. mtrs out of land bearing Gat No.1420 (Part), Village-Wagholi, Taluka-Haveli, District-Pune. During pendency of the present petition, the Respondent No.2-Society has registered the Certificate of deemed conveyance at Serial No.7185 of 2020, which is also challenged in the present petition. As per the Petitioners, in breach of interim Order passed by this Court on 17 December 2020, the Society entered into correspondence with the Revenue Authorities and got its name mutated to the records of rights of the land, which according to them, constitutes contempt of this Court and accordingly Contempt Petition No. 454/2022 has been filed.

FACTS :

2. For better understanding of the controversy in hand, a brief factual narration as a prologue to the judgment would be necessary. Petitioner No.1 was the owner of the land bearing Gat No. 1420-(Part), Village-Wagholi, Taluka-Haveli, District-Pune admeasuring 14 Hectares and 8 Ares. Petitioner No.1 decided to develop that lands by preparing a lay-out of plots and accordingly appointed Petitioner No.2 as an Organizer vide Agreements dated 24 January 2002 and 20 November 2003. Accordingly, Petitioners got the lay-out plan sanctioned in respect of the said land after obtaining permission for non-agricultural use of the land. According to Petitioners, the said land at Gat No.1420 (Part) admeasuring 14 Hectares and 8 Ares was divided for development by them as follows:

- (i) Land admeasuring 45,223.61 sq.mtrs was divided into 243 bungalow plots, out which Petitioners decided to undertake construction of 24 twin bungalows, whereas the rest of the plots were to be sold without any construction. Additional area of 4803.83 sq.mtrs was kept as proportionate open space for such 243 bungalow plots. Purchasers of such plots/bungalows were to become members of Respondent No.2-Society.
- (ii) Land admeasuring 30,318 sq.mtrs was also divided into bungalow plots and corresponding open space and another Society named Chyrsalis Co-operative Housing Society was registered in respect of those bungalows.
- (iii) Land admeasuring 4635.64 sq.mtrs was divided into 25 bungalow plots which was to be absolutely conveyed to the respective plot owners as freehold land. Those

- bungalows were not to form part of Respondent No.2-Society.
- (iv) Commercial Plot No.136 and Residential Plot No.230 totally admeasuring 2,549.06 sq.mtrs was to be retained by Petitioner No.2.
 - (v) Amenity space totally admeasuring 20,434.26 sq.mtrs.
 - (vi) Internal roads admeasuring 23,816.14 sq,mtrs connecting the southern part of the lay-out.
 - (vii) Total area under road widening 4,887.31 sq.mtrs.

3. Accordingly, Petitioners undertook development of the land forming part of serial No. (i) above and divided the land admeasuring 45,223.61 sq. mtrs into 243 bungalow plots. Petitioners executed agreement for sale in respect of 219 open plots with purchasers. The plot purchasers became members of Respondent No.2-Society. Under the agreements, the purchasers had choice of constructing the bungalows either on their own or through Petitioner No.2. Under the agreements, Petitioners also undertook to convey the land to Respondent No.2-Society. In respect of 24 plots, separate agreements were executed for sale of 24 constructed bungalows. The purchasers of such bungalows were also to become members of Respondent No.2-Society and Petitioners undertook to convey the land in respect of those 24 constructed bungalows also in favour of the Society.

4. On 5 January 2006, Respondent No.2 was registered as a Tenant Ownership Co-operative Housing Society. After sale of 243 plots / bungalows, Petitioners offered to convey land admeasuring

50,027.69 sq. mtrs in favour of the Society and shared a draft deed of conveyance with the Society. The Society apparently did not agree with the area of land that was offered under conveyance. It appears that the Society sent its own draft of conveyance deed for land admeasuring 84,939.44 sq.mtrs out of the land bearing Gat No.1420(Part), which was rejected by Petitioners. Society addressed a notice through its Advocate to Petitioners on 7 September 2017 accusing them of intentionally delaying grant of conveyance and declaring its intention to opt for deemed conveyance. The Society accordingly filed application dated 29 January 2019 before the Competent Authority under Section 11 of the Maharashtra Ownership of Flats (Regulation of Promotion, Construction, Sale, Management and Transfer) Act, 1963 (**MOFA**) seeking deemed conveyance of the land admeasuring 84,939.44 sq.mtrs. Petitioners resisted the application by filing its reply raising an objection of maintainability and jurisdiction of the Competent Authority contending that the Agreements executed with the members of the Society did not come within the purview of Section 4 of the MOFA. Alternatively, Petitioners questioned the area of 84,939.44 sq.mtrs in respect of which deemed conveyance was sought and contended that Society could be granted conveyance of maximum area of 50,027.69 sq. mtrs.

5. After hearing both the sides, Competent Authority passed order dated 17 March 2020 allowing the application filed by

Respondent No.2-Society and granted deemed conveyance of area admeasuring 77,754.75 sq.mtrs in favour of Respondent No.2-Society. The Competent Authority excluded area of Plot Nos. 204 to 210, 212 to 229 as well as Plot Nos.230 and 136 admeasuring 7184.69 sq.mtrs and granted area admeasuring 77,754.75 sq.mtrs to the Society. While doing so, the Competent Authority directed that owners of the said plots shall have undivided right in open spaces and internal roads. The Competent Authority further directed that the Society shall maintain amenity spaces and open spaces or should appoint an agency for their maintenance. It also directed that open spaces and roads shall be kept open for use of members of public. It further directed that the road shall be permitted to be used by adjoining land owners as well. Petitioners have filed the present Petition challenging Order dated 17 March 2020.

DEVELOPMENTS DURING PENDENCY OF PETITION

6. Before proceeding further to record submissions of learned counsels appearing for rival parties, it will be necessary to take stock of developments that have taken place after filing of the Petition. Petitioners contend that notice of hearing of the present petition was given to the Society on 23 July 2020, after receipt of which, the Society purchased stamp duty in the evening of 23 July 2020 and before the petition could be heard on 24 July 2020, it registered Certificate of deemed conveyance on 24 July 2020 at serial

no.7185 of 2020. Petitioners submit that before such registration, they were not issued any notice as mandated under Section 11(5) of the MOFA. They also contend that in copy of the Order dated 17 March 2020 appended to registered Certificate of deemed conveyance, there is manipulation. On 17 December 2020, this Court noted the discrepancy in the order dated 17 March 2020 filed with Petition and the one appended with registered Certificate and directed the State Government to file an Affidavit. This Court directed Respondent No.2-Society not to act on the deed of conveyance till the next date of hearing. Petitioners contend that by flouting that interim order of this Court, Respondent No.2-Society addressed letter dated 20 December 2020 to Talathi/Circle Officer for mutation of its name to the records of rights of the land. The Upper Tehsildar, Haveli passed order dated 21 September 2021 directing that mutation entry No. 14553 to be recorded for mutating Society's name in the 7/12 extract of Gat No.1420 (Part). The Respondent No.2-Society filed one more application dated 22 September 2021 to get its name mutated as the owner of land covered by roads and open spaces and the Upper Tehsildar passed order dated 14 October 2021 directing the Talathi/Circle Officer, Wagholi to mutate Society's name in the individual revenue records of 243 plots, open spaces and internal roads in Gat No.1420 (Part). Accordingly, the Talathi/Circle Officer effected Mutation Entry No. 17050 on 16 November 2021 recording the name of the Society as the owner in individual plots, open spaces and internal roads. According to Petitioner, such acts of the Society as

well as of the revenue officials are contemptuous and accordingly, they have filed Contempt Petition No. 454 of 2022. By order dated 9 August 2023, this Court directed the Writ Petition to be heard alongwith the Contempt Petition. Accordingly, both Writ Petition and Contempt Petition are being heard together and decided by this common judgment.

SUBMISSIONS

7. Mr. Godbole, the learned senior advocate, assisted by Ms. Shruti Tulpule, would appear on behalf of Petitioners and assail the order of the Competent Authority on the ground of Competent Authority's jurisdiction and maintainability of the application under Section 11 of the MOFA. He would submit that Petitioners agreed to sell open plots of land to the members of Society by giving them a choice to carry out construction thereon either by themselves or through Petitioner No.2. That the Agreements did not envisage carrying out any construction by Petitioners. Taking me through the definition of the term 'Flat' under Section 2(a-1) of the MOFA, he would submit that an open plot of land will not be governed by the definition of the term 'Flat' and therefore the provisions of MOFA would not be applicable to the agreements executed between the Petitioners and members of Respondent No.2-Society. He would further submit that Petitioners are not governed by the definition of the term 'Promoter' under Section 2(c) of MOFA as Petitioners have neither constructed nor have caused to be constructed anything on

the concerned plots. That a person or an entity undertaking sale of mere open plots would not come within the purview of definition of the term 'Promoter' under MOFA. Mr. Godbole therefore submits that what is sold to the members of the Society are neither 'Flats', nor Petitioners fit into the definition of the term 'Promoter' and therefore the provisions of MOFA are wholly inapplicable to the transactions in question. That therefore the application filed by Respondent No.2-Society for deemed conveyance under Section 11 of MOFA was neither maintainable nor the Competent Authority had jurisdiction to entertain the said application.

8. Mr. Godbole would further submit that even the 24 twin bungalows which form part of 243 plots fell outside the scope of the term 'Flat' as what is sold is not just the bungalow but also open land. That therefore mere sale of 24 constructed bungalows to the members of Respondent No.2-Society would not bring the Society's application within the purview of Section 11 of the MOFA. He would then take me through the provisions of the Real Estate (Regulation and Development) Act, 2016 (**RERA**) in support of his contention that the definition of the term 'Promoter' under Section 2 (zk) of the RERA, includes a person who develops the land without construction. He would submit that similar provision is not to be found under the provisions of MOFA and therefore something which is absent in a statute cannot be read into the same.

9. Mr. Godbole would further submit that mere contractual obligations undertaken by Petitioners to convey plots with open spaces in favour of the Society would not confer any jurisdiction on the Competent Authority under Section 11 of the MOFA to grant a certificate of deemed conveyance. In the present case, Respondent No.2-Society has been registered as a Tenant Ownership Housing Society, which is completely different from a Tenant Co-partnership Housing Society defined under Rule 10 of the Maharashtra Co-operative Societies Rules, 1961. That a Tenant Ownership Housing Society holds the land whereas the structure is owned by the members.

10. Mr. Godbole, would then submit that even if application of MOFA to the agreements in question is assumed, conveyance can be granted only in accordance with the provisions of the agreement. In support of his contention, he would rely upon the judgment of this Court in *Mazda Construction Company and Others Vs. Sultanabaad Darshan Co-operative Housing Society*, 2012 SCC Online Bom 1266 and *ACME Enterprises and Another Vs. Deputy Registrar, Co-operative Societies and Others* 2023 4 AIR Bom.R. 817. He would submit that under the agreement, specific covenant confers a mere easementary right on the purchasers in respect of the internal roads. That contrary to the said covenant, the Competent Authority has illegally conveyed even the land covered by internal roads to the Society. He would submit that the Society, at the highest, is entitled to

land admeasuring 50,027.69 sq.mtrs. after excluding the area of internal roads admeasuring 23,816.14 sq.mtrs. Mr. Godbole would then take me through the Certificate of deemed conveyance registered by the Society on 24 July 2020. He would submit that after receipt of email dated 23 July 2020 intimating the date of listing of the petition on 24 July 2020, stamp duty of Rs.500/- was purchased by the Society at 7.40 p.m. on 23 July 2020 and the Certificate of conveyance was registered on 24 July 2020 before the petition could be taken up for hearing. That stamp duty for additional area of 32,531.14 sq.mtrs, which is not covered by the area of 243 plots, was not paid while registering the Certificate of deemed conveyance. The land is erroneously shown as forming part of the Municipal Corporation when infact it fell within the jurisdiction of Wagholi Gram Panchayat. He would then invite my attention to sub-section (5) of Section 11 of the MOFA, which mandates issuance of a summons to the Promoter before the registration of Certificate of deemed conveyance. That such a summons was not issued to Petitioners. He would invite my attention to the order dated 17 March 2020 annexed to the registered deed of deemed conveyance in which manipulation is made in paragraph 5 under heading 'observations'. He would therefore submit that the registration of the deed of deemed conveyance is liable to be set aside, both for violation of Section 11(5) of MOFA as well as manipulation effected in the order dated 17 March 2020. He would place reliance on judgment of

Single Judge of this Court in *Kashish Park (Realtors) Pvt. Ltd. & Ors Vs. State of Maharashtra & Ors.* (2021) 3 MhJL 778.

11. Pressing the contempt petition, Mr. Godbole would submit that the Respondent No.2-Society has committed breach of the Order passed by this Court on 17 December 2020 by addressing letter to Talathi/Circle Officer on 20 December 2020 itself for mutation of its name in the records of rights of the land. That the breach of the order was continued by addressing further letter dated 3 May 2021 for mutation of Society's name in lands covered by internal roads. He would submit that the Revenue Authorities have flouted the order of this Court by passing orders dated 21 September 2021 and 14 October 2021. That the deed of conveyance was acted upon in breach of the interim order passed by this Court for the purpose of mutating the name of the Society in the records of rights.

12. Mr. Deo, the learned counsel appearing for Respondent No.2-Society would oppose the petition and support the order passed by the Competent Authority. He would submit that the constructed bungalow would come within the purview of definition of the term "Flat" under MOFA. That Petitioners have admittedly constructed and sold twin bungalows on 24 plots, which are self-contained units and are accordingly covered by the definition of the term "Flat". That owners of the said bungalows are also members of the Respondent

No.2-Society as per the obligation put on them by Petitioners under the agreement. That therefore the Society has a right to seek deemed conveyance of the entire land which includes the land covered by the said 24 bungalows. In support of the contention, he would place reliance on the judgment of this Court in *K.V. Satyamurthy and Another V/s. Golden Beach Co-op. Housing Society Ltd. & Anr.* 2023 3 Bom. C.R.377. He would therefore contend that the objection of jurisdiction raised by the Petitioner is totally untenable and that the Competent Authority has rightly exercised the jurisdiction in granting deemed conveyance in favour of the Society. Mr. Deo would further submit that though the objection of jurisdiction is raised before the Competent Authority by the Petitioners, they were never averse to conveying the land in the name of the Society. That the main dispute is only with regard to the area of land to be conveyed and the right of the Society to get the conveyance is not in dispute. In this regard, he would place reliance on the acts of Petitioners and Societies in sharing drafts of conveyance deed. He would place reliance on the agreement to sale dated 21 November 2003 executed in favour of the member, Mr. Suhalal Nahar in which even the internal roads and open spaces are agreed to be sold to the said member. That the stamp duty for the agreement covered not just the plot of land, but also proportionate share in the internal roads and open spaces. That therefore the land totally admeasuring 77,754.75 sq. mtrs. covered by area of 243 plots alongwith the area of internal roads and open spaces has rightly been conveyed by the Competent Authority to the Society.

13. Mr. Deo would further submit that this Court may not enter into the dispute about the quantum of area of land to be conveyed as the Certificate of deemed conveyance is not a conclusive proof of ownership in the land. That if Petitioners have any dispute with regard to the area of the land conveyed, it is always open for them to file a civil suit to claim right, title and interest in part of the land covered by it. In support of his contention, he would place reliance on the judgment of the Division Bench of this Court in *ACME Enterprises* (supra), as well as the judgment of this Court in *Zainul Abedin Yusufali Massawawala and Others V/s. Competent Authority, District Deputy Registrar of Co-operative Housing Societies, Mumbai and Others.*, 2016 SCC Online Bom.6028.

14. So far as discrepancy in the order dated 17 March 2020 forming part of registered Certificate of deemed conveyance is concerned, Mr. Deo would submit that the said discrepancy does not change the purport and intention of the document. That the draft deed of conveyance is prepared by the Competent Authority in which Respondent No.2-Society has no role to play and that therefore a mere typographical error which has crept in the order attached to the registered deed is inconsequential.

15. So far as the allegation of violation of provisions of sub-section (5) of Section 11 of the MOFA is concerned, Mr. Deo would submit that Respondent No.2 is not responsible for non-issuance of

summons to the Petitioners before registering the Certificate of deemed conveyance. He would submit that the objective behind the said provision is to merely verify that document that is sought to be registered is in consonance with the order of the deemed conveyance. That in the present case, excepting a minor alteration in the order dated 17 March 2020 attached to it, the registered deed is in consonance with the order of deemed conveyance. That the stamp duty paid by individual members covered not just the area of the plots but also proportionate share in internal roads and open spaces and that therefore no additional stamp duty was payable at the time of registration of deemed conveyance. That even if there is any such objection about deficit stamp duty, the same is capable of being rectified. He would submit that the alleged non-compliance of the mandate under Section 11(5) of MOFA is merely an irregularity, which would have no bearing on the final outcome of the matter.

16. Lastly, Mr. Deo would submit that there is already a Civil Suit pending between the parties. That Regular Civil Suit No. 1812/2017 has been filed with regard to the right of use of internal roads and that therefore the rights and entitlements of parties would be determined in the said suit. He would pray for dismissal of the petition.

17. I have also heard Mr. Mali, learned AGP appearing for Respondents No.1 to 3 in the Writ Petition and Respondent Nos.2 to

4 in the Contempt Petition. Mr. Mali has placed on record certified copy of the order of deemed conveyance dated 17 March 2020, which would show that the copy of the said order attached alongwith the registered deed of conveyance contains a variation in para-5 under the heading “observation”.

REASONS AND ANALYSIS:

18. Having considered the submissions canvassed by the learned counsels for the parties and after perusal of the records of the case in the light of applicable provisions of law and the cited judgments, following broad issues arise for consideration:

- A. Whether an open plot of land is a ‘Flat’ within the meaning of MOFA?
- B. Whether a constructed bungalow along with open plot of land is a ‘Flat’ within the meaning of MOFA?
- C. Whether a Society comprising purchasers of open plots and purchasers of constructed bungalow is entitled to seek deemed conveyance of land under Section 11 of MOFA?
- D. If the Society’s application for deemed conveyance was maintainable under Section 11 of MOFA, what is the area of land which could be conveyed in its favour?
- E. Whether registration of a deed of deemed conveyance without following provisions of Sub-Section 5 of Section 11 would be valid?

F. Whether there is breach of interim order passed by this Court on the part of Society and revenue officials?

19. The first three issues relate to Competent Authority's jurisdiction to entertain Society's application under Section 11 of MOFA for grant of unilateral deemed conveyance and arises on account of the plea raised by Petitioners that none of the agreements executed with its members can be construed as the ones executed under Section 4 of MOFA as what is agreed to be sold by those agreements are not 'Flats'. The fourth issue would arise only if the first three issues are answered in Society's favour. Fifth issue about registration of deed of deemed conveyance would arise only if the impugned order of deemed conveyance dated 17 March 2020 is upheld. The last issue arises on account of Contempt Petition No. 454 of 2022 filed by Petitioners alleging breach of interim order dated 17 December 2020 passed by this Court restraining the Society from acting on the deed of deemed conveyance.

20. Having set out the broad issues for consideration, I now proceed to answer each of them.

A. WHETHER OPEN PLOT OF LAND IS A 'FLAT'

21. As observed earlier, Competent Authority's jurisdiction to pass the order of unilateral deemed conveyance is questioned on the ground that the agreements executed with the members of Society are

not governed by the provisions of MOFA as what are sold are vacant plots of land, which are not covered by the definition of the term 'Flat'. That if an agreement is not for sale of a 'Flat', the same cannot be construed as agreement within the meaning of Section 4 of MOFA.

22. Both the sides have placed on record, three sample agreements as under:

- i) Agreement dated 21 November 2003 executed in favour of Shri. Suhalal Kacharadas Nahar and others in respect of Plot No.85 admeasuring 151.13 sq.mtrs.
- ii) Agreement dated 29 December 2004 executed in favour of Hanmant Dongargaonkar in respect of Plot No.91 admeasuring 174.72 sq.mtrs.
- iii) The undated agreement of Mrs. Alka Adwait Phadkay and Mr. Advait Raghunandan Phadkay in respect of Plot No.187A admeasuring 123.97 sq.mtrs alongwith duplex residential unit consisting of ground floor, mid landing level and first floor having total carpet area of 109.54 sq.mtrs.

23. It is admitted position that out of total 243 bungalow plots, Petitioners have constructed and sold bungalows on 24 plots and remaining 219 plots have been sold without any construction. In respect of 219 plots, agreements in the formats indicated at serial nos. (i) and (ii) above are executed. The purchasers were given an option to construct a bungalow thereon on their own or to get the same

constructed through Petitioner No.2. Relevant Clause-7 in those two agreements read thus :

The First Party herein shall develop the said land as per the specifications and development items as stated in the Annexure-2 annexed hereto. If the Purchaser herein desire to develop the said plots out by constructing boundary walls and internal development or construction of bungalow etc. then he shall get done the same from the Second Party by paying the agreed cost between them separately or through a person of his/her/their choice.

24. There is thus no doubt to the position that in respect of 219 plots, the Petitioners had neither constructed nor agreed to construct any structure on such plots and what is purchased by the said 219 members of the Society are mere vacant plots of land.

25. The term 'Flat' is defined under Section 2(a-1) of MOFA as under:

"Flat" means a separate and self-contained set of premises used or intended to be used for residence, or office, showroom or shop or godown or for carrying on any industry or business (and includes a garage), the premises forming part of a building and includes an apartment.

Explanation-Notwithstanding that provision is made for sanitary, washing, bathing or other conveniences as common to two or more sets of premises, the premises shall be deemed to be separate and self-contained;

26. Thus, as per the definition of the term 'Flat' under Section 2(a-1) of MOFA, any separate or self-contained unit used or intended to be used for residence or office or showroom or godown or for carrying on any industry or business including a garage, including

an apartment is a 'Flat'. To qualify as a 'Flat', the premises must be separate and self-contained having facility for sanitary, washing, bathing or other conveniences. It therefore appears that some sort of construction is contemplated under Section 2(a-1) of MOFA, which can be put to various uses as provided for in the definition. Additionally, such constructed premises must have sanitary, washing, bathing facility or other conveniences, whether independently or in common with other premises.

27. Since an apartment is also included in the definition of the term 'Flat', it would be necessary to refer to the definition of the term 'Apartment' under the provisions of The Maharashtra Apartment Ownership Act, 1970 (**Apartment Ownership Act**) which reads thus :

(a) "apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified;

28. Thus, even an apartment means a separate and self-contained part of an immovable property which must include one or more room or enclosed spaces. An apartment would again need to be a constructed unit.

29. Considering the definitions of ‘Flat’ under MOFA and ‘Apartment’ under the Apartment Ownership Act, some construction is contemplated on the land for being treated as a flat or an apartment. Therefore, a vacant plot of land would not fit into the definition of the term ‘Flat’ under MOFA or an ‘Apartment’ under the Apartment Ownership Act. To this extent, the submission of Mr. Godbole that an open plot of land would not fit into the definition of the term ‘Flat’ under MOFA appears to be correct.

30. As opposed to the provisions of MOFA, the definition of the term ‘Promoter’ under RERA includes a person developing land without undertaking any construction thereon. The definition of the term ‘promoter’ under section 3(zk) of RERA reads thus:

(zk) “promoter” means—

(i) a person who constructs or causes to be constructed an independent building or a building consisting of apartments, or converts an existing building or a part thereof into apartments, for the purpose of selling all or some of the apartments to other persons and includes his assignees; or

(ii) a person who develops land into a project, whether or not the person also constructs structures on any of the plots, for the purpose of selling to other persons all or some of the plots in the said project, whether with or without structures thereon; or

(iii) any development authority or any other public body in respect of allottees of—

(a) buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

(b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

(iv) an apex State level co-operative housing finance society and a primary co-operative housing society which constructs apartments or buildings for its Members or in respect of the allottees of such apartments or buildings; or

(v) any other person who acts himself as a builder, coloniser, contractor, developer, estate developer or by any other name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale; or

(vi) such other person who constructs any building or apartment for sale to the general public.

Explanation.—For the purposes of this clause, where the person who constructs or converts a building into apartments or develops a plot for sale and the person who sells apartments or plots are different person, both of them shall be deemed to be the promoters and shall be jointly liable as such for the functions and responsibilities specified under this Act or the rules and regulations made thereunder;

31. Thus development and sale of open plots of land would also be governed by provisions of RERA. In contrast, definition of the term 'Promoter' under section 2(c) of MOFA reads thus:

(c) "**promoter**" means a person and includes a partnership firm or a body or association of persons, whether registered or not who constructs or causes to be constructed a block or building of flats, or apartments for the purpose of selling some or all of them to other persons, or to a company, co-operative society or other association of persons, and includes his assignees; and where the person who builds and the person who sells are different persons, the term includes both;

32. Under MOFA, construction or cause of construction of a block or building of flats/apartments is mandatory for fitting a person within the definition of the term 'promoter'. Thus where mere open plots of land are sold without any construction, the person developing such land would not become promoter under MOFA. Possibly the

Legislature has expanded the scope of regulation of activity of sale of mere vacant plots of land by bringing the same within the ambit of RERA. However something which is not provided for in MOFA cannot be read into it by making a reference to a subsequent legislation.

33. Therefore a mere open plot of land, where nothing is constructed or agreed to be constructed, would not qualify as a 'Flat' within the meaning of MOFA. Therefore, the agreements in respect of 219 members of Respondent No.2-Society, who agreed to purchase mere open plots of land cannot be treated as agreements under the provisions of Section 4 of MOFA.

B. WHETHER CONSTRUCTED BUNGALOW IS A 'FLAT'

34. In the present case, the Petitioners have admittedly sold constructed bungalows to 24 members of the Society. Clause-3 of the sample agreement in respect of the 24 bungalow purchasers read thus :

3. CONSIDERATION OF THE SAID PROPERTY:-

Relying upon the Purchaser/s representation and the assurance, the First Party herein has agreed to sell and the Purchaser/s herein has/have agreed to purchase Plot No. 187A admeasuring area about 123.97 sq.mtrs. alongwith duplex residential unit to be constructed thereon having carpet area about 109.55 sq.mtrs. i.e. 1179.20 sq.ft. consisting of ground floor living, dining, kitchen and bedroom with attached toilet, at mid landing

level one terrace admeasuring 3.80 sq. mtrs. and at first floor, a lounge, two bedrooms with attached toilet having sloping roof, which property is more particularly described in the Schedule-III written hereunder and hereinafter referred to or called as "THE SAID PROPERTY", at or for total lump sum consideration of Rs. 32,51,000/- (Rupees Thirty Two Lac Fifty One Thousand Only) including the price for the plot land area, construction cost, but excluding all expenses of service tax, stamp duty, fine and registration fees, the expenses for obtaining electric connection from M.S.E.B. etc., which shall be paid by the Purchaser/s to the respective authorities directly or to the First Party as the case may be.

35. Mr. Godbole has not disputed the position that Petitioners have constructed/agreed to construct bungalows/duplex residential units in 24 out of 243 plots. However, it is Mr. Godbole's contention that even a constructed bungalow will not be covered by definition of the term 'Flat' within the meaning of MOFA. This contention is premised on a submission that what is sold under those agreements are not just constructed units, but also open land surrounding the same. That since open land is also sold to said 24 members, even their agreements cannot be treated as the ones executed under Section 4 of MOFA.

36. The definition of the term 'Flat' under MOFA has already been reproduced above, under which every separate and self-contained set of premises used for residence (or other defined purposes) is treated as a 'Flat'. Even as per the definition of the term 'Apartment', a separate and self-contained part of any immovable property including one or more rooms or enclosed spaces becomes an 'Apartment'. An Apartment under the Apartment Ownership Act

becomes a 'Flat' under MOFA. The explanation to the definition of the term 'Flat' provides that the premises are deemed to be separate and self-contained, if a provision is made for sanitary, washing and bathing and other conveniences. Schedule-III to the sample agreement for purchase of bungalow read thus:

SCHEDULE-III

(DESCRIPTION OF THE SAID PROPERTY)

All that, Plot No. 187A admeasuring area about 123.97 sq.mtrs. i.e. about 1334.41 sq. ft. out of area admeasuring 4757.91 sq.mtrs. out of the sanctioned layout for vacant plot of land admeasuring area about 140866.42 sqm. i.e. 14 Hectors 08.6642 Ares being Tukada/Plot No.A, B & C, part of Gat No.1420, admeasuring area about 31 Hectors 57 Ares (old Gat No.2406), situated at Village Wagholi, within the registration District Pune, Sub Registration District Haveli No. 7, Taluka Haveli, within the limits of Grampanchayat Wagholi, Taluka Panchayat Haveli, Zilla Parishad Pune and which plot No. 187A area admeasuring 123.97 sq.mtrs. is bounded as follows:-

On or towards East	: By Unit No. 186B.
On or towards South	: By Part of Gat No. 1420.
On or towards West	: By Unit No. 187B.
On or towards North	: By Colony Road.

Alongwith ground floor and first floor residential unit consisting of, ground floor living, dining, kitchen and bedroom with attached toilet. at mid landing level one terrace and at first floor, a lounge, two bedrooms with attached toilet having sloping roof. The structure is having total carpet area about 109.55 sq.mtrs. i.e. 1179.20 sq.ft.

37. The agreement shows that the constructed units agreed to be sold by Petitioners *inter-alia* include attached toilet and several rooms. Thus, the constructed units agreed to be sold by the

said agreements are separate and self-contained units. They are also separate and self-contained part of immovable property. Therefore, such constructed units would become 'Flat' under Section 2 (a-1) of MOFA as well as 'Apartment' under Section 3(a) the Apartment Ownership Act. True it is that along with constructed units, some open space surrounding it is also sold. If Mr. Godbole's contention is to be accepted, it would mean giving a restrictive meaning to the term 'flat' under MOFA by excluding every premises which, though qualifies as a flat, but comes with some added property may not strictly qualify as a flat. It is like excluding a unit in a building with attached terrace from definition of the term 'flat' under MOFA as the terrace by itself may not fit into the definition of a 'flat'. One of the stated objectives behind enactment of MOFA is '*regulation of the construction, sale, and management and transfer of flats*'. It is therefore difficult to accept that the legislature intended to give a restrictive meaning to the term 'flat' by excluding any separate and self-contained premises from its ambit merely because some vacant land surrounding it is also sold with those premises. Therefore, in my view, mere sale of some open land surrounding a bungalow/unit in the present case would not throw such bungalow/unit out of the definition of the term 'Flat' under MOFA. The moment it is proved that what is sold or agreed to be sold is a separate and self-contained unit, such unit would be covered by definition of the term 'flat' and the agreement for sale of such unit would be treated as the one executed under the provisions of Section 4 of the MOFA. Therefore,

the contention raised on behalf of the Petitioners that 24 plots alongwith bungalows are not covered by definition of the term 'flat' under MOFA is completely unfounded and deserves outright rejection.

38. The issue as to whether a bungalow can be treated as a 'flat' has also been considered by Single Judge of this Court in **K.V. Satyamurthy** (supra) on which strong reliance has been placed by Mr. Deo. In that case, three conjoint units, each forming part of 12 buildings/structures, were constructed and sold. An argument was raised that since the units were independent standalone structures, they were not covered by definition of the term 'Flat' under MOFA. This court negated the contention by holding as under:

24.

B. Second, the Petitioners' contention that (i) bungalows are independent standalone structures and not buildings as contemplated in Section 2(a-1) of MOFA and (ii) that a flat under Section 2(a-1) of MOFA must necessarily form part of a building is nothing more than a red herring. The Petitioners have premised their contention solely based upon the nomenclature bungalow used in the said Agreements for Sale read with the layout plan and nothing more. Respondent No. 1 has in its Affidavit-in-Reply, supported with photographs set out that what has in fact been constructed and sold by the Petitioners were not independent standalone structures but were in fact three conjoint units, each of which formed part of twelve buildings/structures. There is no denial to this. Thus the very premise, upon which the Petitioners have approached this Court is wrong.

C. Third, even assuming that the said bungalows were independent standalone structures as contented by the Petitioners, that fact alone would not be enough to exclude the same from the provisions of MOFA if they were all constructed and sold as part of one common layout. In the present case, it is not even the Petitioners' contention that the said bungalows were not part of the same layout or that they were sold as individual sub plots. Additionally, there is nothing in the definition of flat or the judgment of the Hon'ble Supreme Court in the case of Nahalchand Laloochand (supra) to even remotely suggest that a single standalone structure would not be a building for the purposes of Section 2(a-1) of MOFA. Before proceeding further, it is crucial to note that one of the questions which fell for consideration before the Hon'ble Supreme Court in the case of Nahalchand Laloochand (supra) was "(i) whether stand alone "garage" or in other words "garage" as an independent unit by itself is a "flat" within the meaning of Section 2(1-a) of MOFA?".....

... In the present case, it is not even the contention of the Petitioners that the said bungalows were not self-contained. The only contention is that since the bungalows were independent standalone structures, they were not buildings as contemplated under Section 2(a-1) of MOFA and consequently, fell foul of the definition of flat under MOFA. The Petitioners interpretation of Section 2(a-1) is really missing the wood for the trees. To accept the Petitioners' contention in the facts of the present case would result in the absurd conclusion that even though the said bungalows met both (i) the self-contained test as also (ii) the user test, the same would be excluded from the definition of flat only because the structure in which they were contained was independent and standalone. Such an interpretation would be in complete derogation of the provisions of MOFA as also the very object and purpose for which it is enacted. The definition of flat must be construed keeping in mind the very object and purpose, for which, MOFA was enacted and not to derogate from it. Therefore, I am unable to accept the Petitioners' contention that the definition of flat is an exhaustive one. The definition of flat must be construed broadly and keep in mind the purpose for which MOFA was enacted and not in the narrow and pedantic way the Petitioners would like me to. I find that in the facts of the present case the Petitioners' reliance upon the judgment of the Hon'ble Supreme Court in the case of Nathi Devi (supra) is entirely misplaced.

D. Respondent No. 1 has in its Affidavit-in-Reply along with photographs adequately demonstrated that what has in fact been constructed and sold are 36 units in 12 blocks comprising of 3 units each. The said

units though called bungalows under the respective Agreements for Sale would clearly fall within the definition of apartment and thus be included in the definition of flat under Section 2 (a-1) of MOFA. The Petitioners have placed reliance upon a judgment of the Hon'ble Supreme Court in the case of Notified Area Committee Nangal Township (supra) to contend that bungalows in one row separating each other cannot be construed as one building. The said judgment has absolutely no applicability to the facts of the present case since the term "building" was being interpreted therein for the purpose of assessment of annual rental value under the provisions of Punjab Municipal Act, 1911. It was in this context that the Hon'ble Supreme Court, in the facts of that case, held that since each of the bungalows and quarters had separate boundary was and were compact unit with distinct and separate house numbers, the same were liable to be independently assessed and not clubbed as one building for the purposes of assessment.

- E. Crucially, in a case like the present one, when the nomenclature used in the Agreement for Sale could present a doubt as to the applicability if MOFA, it is imperative that the Agreement for Sale be read as a whole to see whether or not the same would in fact be covered by MOFA. In the facts of the present case there is no dispute that the Petitioners had (a) constructed and sold the 36 bungalows (b) that the 36 bungalows were all part of one common layout (c) that the Petitioners were the owners of the entire land which formed part of the common layout and (d) that the terms of the said Agreements for Sale in terms provided that the Petitioners would convey the said land to the ultimate entity to be formed by the bungalow purchasers. Given this, I find that there is not even a modicum of doubt that the said Agreements for Sale were squarely covered by MOFA. In these facts to permit the Petitioners to resile from their obligations under MOFA based solely on the nomenclature used in the Agreements for Sale would amount to putting a premium on dishonesty.

39. Thus, this Court in *K.V. Satyamurthy* has, in no uncertain terms, held that a bungalow which is treated as a standalone structure is also covered by definition of the term 'flat' under MOFA. In the present case therefore, 24 constructed bungalows would be 'flats' within the meaning of MOFA. I accordingly hold that the agreements

executed by Petitioners with 24 members for purchase of constructed bungalows are governed by the provisions of Section 4 of MOFA.

C. ENTITLEMENT OF SOCIETY WITH COMPOSITE MEMBERS (PURCHASERS OF OPEN PLOTS AND CONSTRUCTED BUNGALOWS) TO SEEK DEEMED CONVEYANCE OF LAND.

40. As observed earlier, present case involves a situation where 219 agreements executed for sale of open plots of land are not governed by the provisions of Section 4 of MOFA whereas 24 agreements executed for sale of constructed bungalows are the ones executed under Section 4 of the Act. There is no dispute to the position that all $219 + 24 = 243$ purchasers are members of Respondent No.2-Society. The Society thus comprises of composite members with Section 4 agreements and without Section 4 agreements. Petitioners had made it mandatory for all 243 members to become part of same Society. In this regard, it would be necessary to refer to both the sets of agreements (for sale of plots and for sale of bungalows) *qua* condition for becoming member of the Society. Clause-10 of the Agreement executed for sale of open plots provided as under:

10. FORMATION OF CO-OPERATIVE HOUSING SOCIETY OF ALL PLOT HOLDERS :-

With intention to have the harmony in maintenance of the internal roads, street lights, common water and drainage system, open space, garden, club house etc., the First party herein has decided to form KAMAL

BAUG CO-OPERATIVE HOUSING SOCIETY LTD., which will be duly formed and registered under The Maharashtra Co-operative Societies Act 1960 and Rules made there under. The Purchaser herein undertake to become member of the aforesaid proposed society and abide all rules and regulations, bye-laws. The Owner herein shall pay to the proposed society the maintenance cost on behalf of the Purchaser herein at Rs. 10/- per sft. i.e. Rs. 107.64 per Sq. mtr. of his respective plots area and further undertake to pay the maintenance amount if demanded by the society for the reason the interest on the deposit fund amount become insufficient. The Purchaser herein undertakes to sign necessary forms, applications, swear affidavit etc. under the provisions of aforesaid Act, which require for formation of the society and Purchaser become the member of the society. The First Party herein specifically inform to the Purchaser that, he will initiate the procedure of formation of society after sale of 90% plots out of the layout of the said land. The First Party further specifically informed to the Purchaser that, the said land will be developed in four sub-phases and which phases being Phase-1A, 1B, 1C & 1D shown on the plan annexed hereto as Annexure-1 and accordingly has reserved right to form one or more co-operative societies or institute etc. for each phase and further form a federation of such societies and such federation shall be the owner and possessor of all internal roads and open spaces as shown in the layout and common maintenance of such open space and internal road and main water line, drainage line, street light etc. will be controlled by such federation, but the maintenance of internal water line, drainage line, has to be maintained by respective plot holders or such societies as the case may be."

41. Clause-17 of Agreement for sale for constructed bungalows provides as under:

17. FORMATION OF ORGANISATION OF PLOT HOLDERS AND DUPLEX UNIT HOLDERS AND PROJECT ON THE SAID ENTIRE LAND:-

With intention to have the harmony in maintenance of the internal roads, street lights, common water and drainage system, open space, garden, club house etc., the First party herein has decided to form a co operative housing society of the purchasers of the plots under name and style as KAMAL BAUG CO-OPERATIVE HOUSING SOCIETY LTD., hereinafter is referred as THE SAID SOCIETY". The Purchaser/s herein un-

undertake to become member of the aforesaid society and abide all rules and regulations, bye-laws and pay the one time maintenance deposit fund amount at Rs.100/- per sq.mtrs. and further undertake to pay the maintenance amount if demanded by the society for the reason the interest on the deposit fund amount become insufficient. The Purchaser/s herein undertakes to sign necessary forms, applications, swear affidavit etc. under the provisions of aforesaid Act, which require for formation of the society and Purchaser/s become the member of the society.

Thus, it was mandatory for all 243 purchasers to become members of Kamal Baug Co-operative Housing Society. After providing for mandatory membership of same Society to all the purchasers, the Petitioners undertook to convey the land in favour of that Society. It would be therefore necessary to make a reference to the relevant clauses under which Petitioners undertook to execute conveyance in favour of the Society. Clause-13(C) of the Agreement for sale of open plots provided as under :

13.

C. The Purchaser herein admits and agrees to always admit that the First Party and the Second Party are always ready and willing on all payment payable by the Purchaser under this agreement to the first party, to execute the conveyance in respect of the said plots after formation of Co-operative Housing Society as aforesaid, in favour of the such society in which the Purchaser herein will be member for said plots.”

42. Similarly, Clause-15(C) of the Agreement for Sale of constructed bungalows provided as under:

15C. The First Party has informed to the Purchaser that, there are certain unsold plots, amenity spaces, duplex twin bungalow units and further construction of duplex units and commercial buildings in amenities

spaces are in progress and considering these aspects, the conveyance of the said entire land will be executed by the First Party in favour of the said Society in which the Purchasers will be member for the said Plot, after completion of all construction and sale of all plots, duplex units, tenements etc. The Purchaser herein with due diligence admit and accept that the conveyance will be executed as aforesaid by the First Party and will not demand the conveyance prior to completion of the project on the said entire land.”

43. Thus, for both flat purchasers as well as bungalow purchasers, Petitioners specifically undertook to execute conveyance of the ‘entire land’ in favour of Respondent No.2-Society.

44. I have already held that the agreements executed by Petitioners in respect of the 24 bungalow purchasers are governed by the provisions of Section 4 of the MOFA. Petitioners have undertaken to convey the entire land in favour of a Co-operative Society, of which the said 24 purchasers were to become members. Thus, *qua* 24 members of Respondent No.2-Society, there is an obligation on the Petitioners to convey the land to the Society. Since the agreements of those 24 members are governed by the provisions of Section 4 of the MOFA, there is a statutory obligation on the Petitioners under Section 11 of MOFA to convey the land in favour of the Society of which they have become members. In respect of rest of the 219 members, there is a contractual obligation for Petitioners to convey land in favour of the Society of which they are members. Both the set of purchasers are members of the same Society.

45. Thus, there are two types of members of Respondent No.2-Society, viz. (i) for whom there is a statutory obligation on the part of the Petitioner to convey the land and (ii) where there is a contractual obligation on the part of the Petitioners to convey the land. The question is whether the statutory right of such 24 members to get conveyance of land under Section 11 of MOFA can be defeated on account of non-existence of such a statutory obligation in respect of rest of the members, in respect of whom there is merely a contractual obligation to convey the land. In my view, the very objective behind introducing the concept of unilateral deemed conveyance under Section 11 of MOFA was to prevent a mischief by the promoters and developers who were avoiding conveyance of the land after sale of the flats in the project. It would be profitable to make a reference to the Statement of Reasons and Objects of Maharashtra Act IV of 2008, by which provision for unilateral deemed conveyance was introduced in MOFA by amending Section 11:

STATEMENT OF OBJECTS AND REASONS

The Maharashtra Ownership Flats (Regulation of the promotion, of construction, sale, management and transfer) Act, 1963 has been enacted by the Government of Maharashtra in the year 1963 to regulate for a certain period in the State, the promotion of the construction of, the sale and management, and the transfer of flats on ownership basis. The said Act has been enacted to effectively prevent the sundry abuses and malpractices which had been on increase, consequent upon the acute shortage of housing in the several areas of the State.

2. It has come to the notice of the Government that the objective behind enactment of the said law is not fully achieved and its implementation has not been effective enough to curb certain malpractices and sundry abuses by the promoters or developers of the properties. Therefore, to make provisions of the said Act more effective and to safeguard interests of the purchaser of the flats, the Government of Maharashtra considers it expedient to carry out certain amendments to the existing provisions of the said Act. The important amendments proposed to be carried out are as follows:-

(a) It is proposed to provide for appointment of one or more Competent Authorities for different local areas who would, on failure on the part of the promoter,-

(1) to form a co-operative society of the persons who have purchased the flats from the promoter, on application received from such purchasers, direct the District Deputy Registrar, Deputy Registrar or, as the case may be, the Assistant Registrar of Co-operative Societies to register the co-operative society of such flat owners:

(i) to execute a conveyance within the prescribed period as provided in section 11, on receiving an application from the flat owner members of a co-operative society, issue a certificate to such society certifying that the said society was entitled to have a conveyance registered and that it is a fit case for execution of a unilateral conveyance as a 'deemed conveyance in favour of the said society. by the Registration Officer under the Registration Act, 1908.-

(b) To serve as a deterrent, a provision is also being made for disqualifying a promoter, convicted under the said Act (except under section 12A), for a period of five years so as to debar him from being granted any permission by the local authorities under the relevant laws for undertaking construction of flats.

(c) The proceedings before the Competent Authority are given the status of judicial proceedings for the purposes of sections 193 and 228 of the Indian Penal Code and every Competent Authority is to be deemed to be a Civil Court for the purpose of sections 345 and 347 of the Code of Criminal Procedure, 1973.

3. The Bill seeks to achieve the above objectives.

46. Thus, the fact that failure of most of the promoters and developers in the State of Maharashtra to convey the lands in favour of the societies and association of apartments necessitated the Legislature to step in and amend the provisions of Section 11 of MOFA by Maharashtra Act-IV of 2008 for making a provision for unilateral deemed conveyance. The provision is beneficial to the flat purchasers or members of the Society or Association. The issue therefore is whether such a beneficial provision introduced for the benefit of flat purchasers or members of the Society or Association can be interpreted in such a manner that it deprives them of the very benefit that is intended to be conferred upon them by a statutory provision.

47. It may well be contended that something which is not provided for in MOFA cannot be read into it. There can be no dispute about that proposition. However, it is well settled that when two interpretations are possible, the one which is more in consonance with the objectives of the enactment and for the benefit of the person for whom the Act is enacted, should be preferred. The Apex Court in *Union of India vs Prabhakaran Vijaya Kumar and others* (2008) 9 SCC 527 held as under:

11. No doubt, it is possible that two interpretations can be given to the expression "accidental falling of a passenger from a train carrying passengers", the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the

train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. **Hence, in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred** vide Kunal Singh v. Union of India (SCC para 9), B.D. Shetty v. Ceat Ltd. (SCC para 12) and Transport Corpn. of India v. ESI Corpn.

12. It is well settled that if the words used in a beneficial or welfare statute are capable of two constructions, the one which is more in consonance with the object of the Act and for the benefit of the person for whom the Act was made should be preferred. In other words, beneficial or welfare statutes should be given a liberal and not literal or strict interpretation vide Alembic Chemical Works Co. Ltd. v. Workmen (AIR para 7), Jee-wanlal Ltd. v. Appellate Authority (AIR para 11), Lalappa Lingappa v. Laxmi Vishnu Textile Mills Ltd.⁶ (AIR para 13), S.M. Nilajkar v. Telecom District Manager (SCC para 12).

14. In our opinion, if we adopt a restrictive meaning to the expression "accidental falling of a passenger from a train carrying passengers" in Section 123(c) of the Railways Act, we will be depriving a large number of railway passengers from getting compensation in railway accidents. It is well known that in our country there are crores of people who travel by railway trains since everybody cannot afford travelling by air or in a private car. **By giving a restrictive and narrow meaning to the expression we will be depriving a large number of victims of train accidents (particularly poor and middle-class people) from getting compensation under the Railways Act.** Hence, in our opinion, the expression "accidental falling of a passenger from a train carrying passengers" includes accidents when a bona fide passenger i.e. a passenger travelling with a valid ticket or pass is trying to enter into a railway train and falls down during the process. In other words, a purposive, and not literal interpretation should be given to the expression.

(emphasis supplied)

48. In the case of *K. H. Nazar vs Mathew K. Jacob and others* (2020) 14 SCC 126, the Apex Court while interpreting whether a rocky land which is used for quarrying purposes can be

treated as a “commercial site” and thereby stand excluded from the applicability of the Kerela Land Reforms Act, 1963 held in Para Nos. 11, 12 and 19 as follows:

11. Provisions of a beneficial legislation have to be construed with a purpose-oriented approach. The Act should receive a liberal construction to promote its objects. Also, literal construction of the provisions of a beneficial legislation has to be avoided. It is the court's duty to discern the intention of the legislature in making the law. Once such an intention is ascertained, the statute should receive a purposeful or functional interpretation.

12. In the words of O. Chinnappa Reddy, J., the principles of statutory construction of beneficial legislation are as follows: (Workmen case10, SCC p. 76, para 4)

"4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as 'social welfare legislation and human rights' legislation are not to be put in Procrustean beds or shrunk to Lilliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the "colour", the "content" and the "context" of such statutes (we have borrowed the words from Lord Wilberforce's opinion in *Prenn v. Simmonds*¹¹). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations. In one of the cases cited before us, that is, *Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court*¹², we had occasion to say: (*Surendra Kumar Verma case*¹², SCC p. 447, para 6)

\$6. ... Semantic luxuries are misplaced in the interpretation of "bread and butter" statutes. Welfare statutes must, of necessity, receive a broad interpretation. Where legislation is designed to give relief against certain kinds of mischief, the court is not to make inroads by making etymological excursions." "

19. The findings recorded in the majority opinion on the issue pertaining to the environment is not relevant for the decision of the dispute. The concern of the Court should have been restricted to the gamut of the expression "commercial site". The interpretation of Section 81 which exempts certain lands and sites should be interpreted in a manner, which promotes the object of the Act and restricts concentration of large swathes of land in favour of a few individuals. Wider construction of the words "commercial site" would defeat the laudable object of the Act.

49. Similarly, in the case of *ESI Corporation vs Radhika Theatre* 2023 SCC OnLine SC 63, the Apex Court held as under:

14. Thus, the ESI Act being a social welfare legislation, any interpretation which would lean in favour of the beneficiary should be given. The object and purpose of the ESI Act has been elaborately considered by this Court in the case of Bangalore Turf Club Limited (supra). After considering catena of earlier decisions under the ESI Act, it is observed and held that ESI Act should be given liberal interpretation and should be interpreted in such a manner so that social security can be given to the employees.....

50. If Petitioners' contention is to be accepted, the Society will be deprived of seeking deemed conveyance only on account of the fact that agreements in respect of part of its members are not governed by the provisions of MOFA. This would also result in a situation where though some of its members are entitled to exercise statutory right of seeking deemed conveyance under Section 11 of the Act, they would be deprived of that right only on account of nature of agreements executed with rest of the members. In my view, considering the very objective behind enacting MOFA as well as the behind the Amendment Act of 2008 introducing the concept of unilateral deemed conveyance, the provision is required to be

interpreted in a manner which is beneficial to the members of the Society and not in a manner which would benefit a promoter or developer.

51. I accordingly hold since the agreements in respect of part of the members of Respondent No.2-Society are governed by the provisions of Section 4 creating a statutory right in their favour of seeking deemed conveyance under Section 11 of MOFA, the Society is entitled to seek unilateral deemed conveyance under Section 11 of the Act. In my view, therefore the Competent Authority has rightly exercised jurisdiction in granting deemed conveyance of the land in favour of the Society. The objection of jurisdiction therefore deserves to be repelled.

D. SOCIETY'S ENTITLEMENT TO THE AREA OF LAND WHICH COULD BE CONVEYED

52. Having held that the Competent Authority had jurisdiction to pass the order of unilateral deemed conveyance, which is impugned in the present petition, the next question is about the correctness of that order. There is dispute amongst the parties about the exact land which could be conveyed in favour of the Society. The Society demanded land totally admeasuring 84,939.44 sq.mtrs. The Petitioners had agreed to convey land admeasuring 50,027 sq.mtrs.

The Competent Authority has granted conveyance in respect of the land admeasuring 77,754.75 sq.mtrs.

53. Before entering into the dispute about the exact entitlement of Respondent No.2-Society about the area of the land, it must be observed at the very outset that the law is now well settled that Certificate of deemed conveyance granted under Section 11 of MOFA is not determinative of final adjudication between the rights and entitlements of parties. Reference to few decisions in this regard would be apposite. In *Zainul Abiddin Yusufali* (supra), the Division Bench of this Court held that despite grant of deemed conveyance by the Competent Authority, it is open for the parties to approach Civil Court to question such conveyance by filing a civil suit. This Court held in para-9 as under :

9. We are of the clear opinion that the society approached the Competent Authority with a limited request, namely, that having formed a legal entity namely the co-operative housing society of the flat purchasers, it is the obligation now of the promoter to convey the right, title and interest in the building and the land beneath, so that the legal entity will be entitled to enjoy the right, title and interest in the property. If while granting the deemed conveyance, the Competent Authority has in any manner, travelled beyond the stipulations in the agreement, and the grievance of the petitioners is that a larger property is allowed to be claimed by the society contrary to the covenant and recitals of the two agreements, **then the remedy of the petitioners even in terms of two decisions of this court in Tushar Jivram Chauhan v. State of Maharashtra (2015) 4 Mah L 867 and Mazda Construction Company v. Sultanabad Darshan CHS Ltd., 2012 SCC OnLine Bom 1266 relied upon by Mr. Khandeparkar is not to file a writ petition under Article 226 in this court, but to approach competent civil court and establish this right, title and interest in relation to the larger**

property. While establishing and seeking to prove it, the petitioners can also allege that contrary to the Development Agreement and a MOFA Agreement, the society claimed a larger property and relying upon those submissions the Competent Authority has granted the relief in relation thereto. That is the prejudice caused and which the petitioners can seek a redressal thereof by approaching such a court. During the course of such proceedings, the petitioners can highlight the alleged wrongful conduct of the society in firstly bringing a suit and withdrawing it and for the same relief namely for failure to discharge MOFA obligations, then approaching the Competent Authority belatedly and obtaining the Deemed Conveyance in the absence of the petitioners. Therefore, that adjudication, if at all one can term it, and the order therein, would not be binding on the petitioners, ought to be the eventual declaration. That, they can claim irrespective of any application under Section 11 of MOFA, which has been made in this case. **From the contents thereof or the observations and conclusions in the impugned order, we are of the opinion that the jurisdiction of the competent civil court is not barred, despite such document being placed on record and relied upon by respondent no. 3. The Civil court will adjudicate the issue of right, title and interest of the petitioners in the larger property by independently applying its mind and on a total appraisal of the oral and documentary evidence before it. Once all such remedies are intact, then, we do not think that in writ jurisdiction we should entertain such a dispute.**

(emphasis supplied)

54. In *Mazda Constructions* (supra), a Single Judge of this Court held that in exercise of writ jurisdiction and while examining the legality, validity or correctness of order of deemed conveyance, High Court cannot examine issues which essentially partake the character of civil dispute.

55. In *ACME Enterprises* (supra), a Single Judge of this Court held in para-38 as under :

38. I, therefore, find substance in the submission of Mr. Khan-deparkar that the resistance sought to be put-forth on behalf of the petitioners to the execution of conveyance in favour of petitioner No. 2 Society is in the realm of dispute as to title and can legitimately form a subject matter of a substantive suit. **In a long line of decisions, adverted to above, right from Mazda Construction (supra) it has been reiterated that in exercise of writ jurisdiction and under the garb of examining the legality, validity and correctness of an order of deemed conveyance this Court cannot examine issues which essentially partake the character of title dispute and complicated question as to entitlement to have further development rights. The proper remedy for the aggrieved party is to institute a substantive suit before the competent Civil Court.** In my view, the facts of the instant case do not warrant a different approach. The petition thus deserves to be dismissed.

(emphasis supplied)

56. In *Tirupati Shopping Centre Premises Co-operative Society Ltd. V/s. Shabayesha Construction Company Pvt. Ltd.* (2021) 6 MhLJ 557, the Division Bench of this Court held as under :

55. In our view, the proceedings under Section 11 of the MOFA are filed in view of the default committed by the promoter to execute a deed of conveyance in favour of the society by complying with its application under the provisions of the MOFA by executing a deed of conveyance. The competent authority is thus empowered to pass an order of deemed conveyance ex parte. Such order passed by the competent authority does not create title in respect of such property conclusively in favour of the society. Such an order of deemed conveyance is subject to the final adjudication of title in the appropriate civil proceedings either before the civil court or by Arbitral Tribunal in case of their being an arbitration agreement between the parties. There is no such provision under MOFA that the order passed by the competent authority under Section 11 of the MOFA is final in all respect including on the issue of title in the property and bars the civil court or the Arbitral Tribunal from deciding the issue of title independently.

57. It is thus a well settled position that mere grant of Certificate of unilateral deemed conveyance under the provisions of Section 11 of MOFA, does not finally determine rights and entitlements of the parties, who are free to file a civil suit for seeking appropriate declaratory and injunctive reliefs.

58. As observed above, Petitioners were never averse to conveying the land in favour of the Society. By their letter dated 15 February 2017, Petitioners had forwarded draft of conveyance deed for area admeasuring 50,027.69 sq.mtrs, which included the land covered by 243 plots admeasuring 45,223.61 sq.mtrs plus proportionate open space for the said plots admeasuring 4,803.83 sq.mtrs. As against total area of 50,027 sq.mtrs offered by Petitioners, the Society demanded conveyance in respect of the entire land admeasuring 84,939.44 sq.mtrs. The Competent Authority however has not agreed with the demand of the Society and has deducted an area of 7,184.69 sq.mtrs and has issued Certificate of deemed conveyance in respect of the area admeasuring 77,754.75 sq.mtrs.

59. It is Petitioners' contention that the Respondent No.2-Society cannot claim any right, title or interest in respect of the internal roads admeasuring 23,816.14 sq.mtrs. It is submitted that Certificate of deemed conveyance cannot be granted contrary to the covenants of the agreement. Reliance in this regard is placed on the

judgment of this Court in *Mazda Constructions* (supra) and *ACME Enterprises* (supra). Petitioners rely upon Clauses-10, 13B and 14 of the agreement to suggest that the plot purchasers were granted mere easementary rights in the internal roads and that therefore they cannot claim any ownership in the same.

60. Thus, the entire controversy is about conveying land admeasuring 23,816.14 sq.mtrs covered by internal roads. There are two factors emanating out of the covenants of the agreement which do seem to suggest that Petitioners had agreed to convey the land covered by internal roads as well in favour of the Society. Firstly, clause 15C of agreement executed with bungalow purchasers contained obligation to convey 'entire land' in favour of the society. The clause, which is also reproduced above, reads thus:

15C. The First Party has informed to the Purchaser that, there are certain unsold plots, amenity spaces, duplex twin bungalow units and further construction of duplex units and commercial buildings in amenities spaces are in progress and considering these aspects, **the conveyance of the said entire land will be executed by the First Party in favour of the said Society** in which the Purchasers will be member for the said Plot, after completion of all construction and sale of all plots, duplex units, tenements etc. The Purchaser herein with due diligence admit and accept that the conveyance will be executed as aforesaid by the First Party and will not demand the conveyance prior to completion of the project on the **said entire land**."

(emphasis and underlining supplied)

Secondly, the clause relating to payment of stamp duty seems to suggest that the agreements were not restricted to only land covered by individual plots and even the internal roads and open spaces were agreed to be sold. The relevant clause reads thus :

10. PAYMENT OF STAMP DUTY REGISTRATION FEE ETC.:-

The Purchasers herein shall bear and pay stamp duty and registration fees of all other incidental charges in respect of the said plot, which includes the plot of land and sanctioned layout and proportionate share in area under internal roads and open space, for this agreement and any other instrument which is to be executed in pursuance of this agreement to convey the said plot in favour of the purchasers herein or in favour of the Society in which Purchasers will be a member.

From the above two factors, it cannot be said with a degree of certainty that Petitioners had kept the lands covered by internal roads or amenity spaces outside the scope of agreements. These findings are however recorded only to examine if the Competent Authority has committed any patent error and shall not be construed as final determination of rights between the parties.

61. It appears that the Society has already filed Regular Civil Suit No. 1812 of 2017 with regard to right to use the internal roads. Perusal of the impugned order dated 17 March 2020 would indicate that the Competent Authority has granted undivided right to purchasers of Plots No.204 to 210, 212 to 229, 230 and 136 in respect of the land covered by open spaces and internal roads. Thus,

the ownership rights in land covered by internal roads of said excluded plot owners is recognized by the impugned order. The end result appears to be that all the plot owners for whom those internal roads have been constructed have been granted ownership rights therein by the order of deemed conveyance. Having already sold all the plots (except Plots No.230 and 136 which are retained by Petitioners, whose undivided right in land covered by open spaces and internal roads is recognized), it is incomprehensible as to why, and for what purpose, the Petitioners are insisting on keeping the land covered by internal roads outside the scope of deemed conveyance. Again, this finding is only *prima-facie* and in the event, Petitioners have any ownership rights in respect of the land covered by internal roads, it is for them to exercise the same by filing appropriate civil proceedings as the order of deemed conveyance would not have the effect of extinguishing such a right, if Petitioners actually possess the same. Therefore, it is not necessary to delve deeper into the correctness of the order passed by the Competent Authority conveying even land admeasuring 23,816.14 sq.mtrs covered by internal roads in favour of the Society. So long as interest of other plot owners (who do not form part of the Society) are taken care of, it cannot be said that the impugned order granting deemed conveyance is either patently illegal or suffers from the vice of perversity. I am therefore not inclined to interfere in the order only on account of dispute sought to be created by Petitioners over ownership rights in

respect of the land admeasuring 23,816.14 sq.mtrs covered by open spaces and internal roads.

62. I therefore do not find any error in the impugned order dated 17 March 2020 granting deemed conveyance in favour of the Respondent-Society in respect of the land admeasuring 77,754.75 sq.mtrs, subject to granting undivided rights in respect of the land covered by open spaces and internal roads to the excluded plot owners. The order of deemed conveyance also includes sufficient caveats whereby the Society is enjoined upon an obligation to maintain internal roads, open spaces and amenity spaces either by itself or by appointing an agency. The Society is also directed to grant access to the excluded plot owners to such open spaces, amenity spaces and internal roads. Since the order does not suffer from any patent illegality or perversity, no interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India is warranted.

E. VALIDITY OF REGISTRATION OF DEED OF DEEMED CONVEYANCE

63. Having upheld the order dated 17 March 2020, the next issue sought to be raised by the Petitioners is about the registration of Certificate of deemed conveyance. Reliance is placed on sub-section (5) of Section 11 of the MOFA which reads as under:

11. Promoter to convey title, etc., and execute documents, according to agreement.

(1)

(2)

(3)

(4)

(5) On submission by such society or as the case may be, the company or the association of apartment owners, to the Sub-Registrar or the concerned appropriate Registration Officer appointed under the Registration Act, 1908, the certificate issued by the Competent Authority along with the unilateral instrument of conveyance, the Sub-Registrar or the concerned appropriate Registration Officer shall, notwithstanding anything contained in the Registration Act, 1908, issue summons to the promoter to show cause why such unilateral instrument should not be registered as 'deemed conveyance' and after giving the promoter and the applicants a reasonable opportunity of being heard, may, on being satisfied that it was a fit case for unilateral conveyance, register that instrument as 'deemed conveyance'.

64. Thus, under the provisions of sub-section (5) of Section 11, it is mandatory on the part of the Sub-Registrar or the Registration Officer to issue a summons to the Promoter to show cause as to why his unilateral instrument should not be registered as deemed conveyance and to grant a reasonable opportunity of hearing to both the sides. In the present case, admittedly the Sub-Registrar or the Registration Officer failed to issue any show cause notice to the Petitioners, much less any opportunity of hearing was granted to them.

65. In *Kashish Park (Realtors) Pvt. Ltd.* (supra), this Court has held the provisions of sub-section (5) of Section 11 to be mandatory and has set aside registration of conveyance on account of

violation of that mandatory provision. This Court held in paras-29 and 30 as under :

29. This provision under section 11(5) is essentially in two parts. The first part mandates (i) issuance of summons to the promoter to show cause why the unilateral instrument should not be registered as deemed conveyance and (ii) giving the promoter and the applicant a reasonable opportunity of being heard. The later part gives discretion to the Sub Registrar to register the unilateral instrument as deemed conveyance on being satisfied that it is a fit case for registration of unilateral conveyance. Thus, issuance of summons to show cause, giving opportunity of hearing and arriving at subjective satisfaction that it is a fit case for registration of unilateral conveyance are the prerequisites of registration of deemed conveyance under sub-section (5) of section 11 of MOFA. This statutory mandate has been provided by the legislature as check against potential abuse of rights conferred on the fat purchasers to have unilateral deemed conveyance executed and registered in their favour.

30. In the instant case, it is not in dispute that respondent No.8-Sub-Registrar has registered the unilateral instruments as deemed conveyance without issuing summons and without affording an opportunity of hearing to the petitioners, as contemplated under sub-section (5) of section 11 of MOFA. It is thus evident that respondent No. 8 has clearly abdicated the obligations and duty cast on him by registering the deemed conveyance in contravention of statutory mandate under sub-section (5) of section 11 of MOFA. Needless to emphasize that the exercise of powers by a statutory authority cannot be unbridled, unfettered or arbitrary but has to be within the framework and in consonance with the legislative provisions and the object which legislation intends to achieve. In the instant case, respondent No. 8 has flouted and set at naught the statutory mandate, thereby reducing it to a dead letter. Such action cannot be countenanced.

66. Beyond contending that the error was on the part of the Registration Officer and that the error would amount to a mere irregularity, the Respondent No.2 has failed to justify as to how breach of mandatory provisions under sub-section (5) of Section 11 of

MOFA can be countenanced. It is Petitioner's case that, the registration was hurriedly done by purchasing the stamp duty on the evening of 23 July 2020 after receipt of notice of hearing of the present petition and the registration was effected in a hasty manner on 24 July 2020 before the petition could be taken up for hearing. I find considerable force in this submission of the Petitioners. The issuance of show-cause notice and grant of opportunity of hearing to the Promoter under sub-section (5) of Section 11 is a mandatory requirement. The provision is made to ensure that a party in whose favour order of deemed conveyance is passed, does not get an instrument registered contrary to or in excess of what is granted under the order. The Promoter is given an opportunity to raise objections to the instrument, which is sought to be registered, if the same is drafted contrary to the order of deemed conveyance passed by the Competent authority. This is actually what has happened in the present case where there appears to be some manipulation in the contents of para-5 under the heading "Observations" of order dated 17 March 2020. As directed by this Court by its order dated 17 December 2020, though the Competent Authority has failed to file an Affidavit, certified copy of the order dated 17 March 2020 is placed on record and para-5 under the heading "Observations" therein matches with the copy of the order produced by the Petitioners at Exhibit-K to the petition. The said para-5 reads thus :

मा.जिल्हाधिकारी कार्यालयाकडील सुधारीत रेखांकन व बांधकाम परवानगी मिळणेबाबतच्या -आदेशानुसार रस्ते, सुविधा जागा व खुली जागा यांची देखभाल अर्जदार यांनी करावयास हवी अथवा ते देखभाल करण्यासाठी सुयोग्य प्राधिकरणाच्या ताब्यात द्यावेत. या जागा व रस्ते सर्व जनतेच्या वापरासाठी खुले असतील तसेच रस्ते शेजारच्या जमिन मालकास वापरण्यास खुले ठेवले पाहिजेत. तसेच रस्त्याच्या मोबदल्याबाबतच्या अटि व शर्ती अर्जदार संस्थेचे सभासद व जाबदेणार यांचेमधील करारनाम्यानुसार राहतील.

67. However alongwith the Deed of Deemed Conveyance registered on 24 July 2020 at Serial No.7185, copy of the order dated 17 March 2020 is attached, para-5 whereof read thus :

मा.जिल्हाधिकारी कार्यालयाकडील सुधारीत रेखांकन व बांधकाम परवानगी मिळणेबाबतच्या -आदेशानुसार रस्ते, सुविधा जागा व खुली जागा यांची देखभाल अर्जदार यांनी करावयास हवी अथवा ते देखभाल करण्यासाठी सुयोग्य प्राधिकरणाच्या ताब्यात द्यावेत. या जागा व रस्ते शेजारच्या जमिन मालकास वापरण्यास खुले ठेवले पाहिजेत. तसेच रस्त्याच्या मोबदल्याबाबतच्या अटि व शर्ती अर्जदार संस्थेचे सभासद व जाबदेणार यांचेमधील करारनाम्यानुसार राहतील.

68. Thus, the sentence 'या जागा व रस्ते शेजारच्या जमिन मालकास वापरण्यास खुले ठेवले पाहिजेत' is replaced by the sentence 'या जागा व रस्ते सर्व जनतेच्या वापरासाठी खुले असतील तसेच रस्ते शेजारच्या जमिन मालकास वापरण्यास खुले ठेवले पाहिजेत.'

69. The only justification sought to be offered by Respondent No.2-Society for this manipulation in the copy of order attached to the registered deed of conveyance is that the draft was prepared by the

Competent Authority. I am unable to accept the said justification. Firstly, the Society as well as the Sub-Registrar, Haveli-14 showed undue haste in registering the deed of deemed conveyance in violation of a procedure under sub-section (5) of Section 11 of MOFA. Secondly, no particulars are given as to how and when the Competent Authority prepared the draft of deed of deemed conveyance. Thirdly, the manipulation is not in the deed of deemed conveyance but in the order dated 17 March 2020 attached alongwith the said deed. Therefore, in these circumstances, the violation of provisions of sub-section (5) of Section 11 cannot be brushed aside as a mere irregularity. Consequently, registration of deed of deemed conveyance on 24 July 2020 deserves to be set aside.

70. On the basis of registered deed of conveyance, further mutation entries have been effected. Since the registration of deemed conveyance is set aside, the said mutation entries are automatically rendered otiose and are also required to be set aside.

71. Thus, though the order of deemed conveyance dated 17 March 2020 is being upheld, the registration of deed of deemed conveyance effected in violation of provisions of sub-section (5) of Section 11 as well as by attaching manipulated copy of order dated 17 March 2020 is required to be set aside. It is however clarified that the registration of the Deed is rendered illegal in the present case in view

of peculiar facts and circumstances of the case and issue as to whether every registration effected in violation of Sub-Section 5 of Section 11 would be rendered void or not is left open to be decided in an appropriate case.

F. BREACH OF INTERIM ORDER DATED 17 DECEMBER 2020

72. Coming to the aspect of breach of interim order dated 17 March 2020 committed by the Society and Revenue Officials, I am of the view that this Court had restrained the Society from acting on the deed of conveyance. Undisputedly, the Society has committed breach of that Order by addressing communications to revenue officials and getting its name mutated to record of rights after passing of Order dated 17 December 2020. It appears that the Revenue Officials were not made aware of interim Order passed by this Court on 17 December 2020 in Society's letters. Petitioners have filed Contempt Petition No. 454/2022 for initiation of contempt of court proceedings against office bearers of the Society and Revenue Officials.

73. Since the registration of the deed of conveyance is being set aside, all actions taken in pursuance of such registration, including the mutation entries, are automatically rendered superfluous. Therefore, though there is a technical breach of Order passed by this

Court on 17 December 2020 on the part of the Society, I am not inclined to initiate any proceedings for contempt of this Court in the facts and circumstances of the present case. No doubt, the Society has shown overzealousness in registration of the deed of conveyance, possibly to prevent this Court from passing any restraint order on registration and has also entered into correspondence with the revenue authorities for mutation of its name in breach of order passed by this Court on 17 December 2020. However, since all the actions taken in pursuance of registration of deed of deemed conveyance are being set aside, the office-bearers of the Society need not be further taken for contempt of this Court for breach of order dated 17 December 2020. They therefore deserve not just an admonition for overreaching the Order passed by this Court, but the Society needs to be saddled with some token costs for both breaching the Order passed by this Court as well as getting the Deed registered with manipulated copy of the Order dated 17 March 2020. This Court would have been justified in imposing exemplary costs on the Society for the conduct it has exhibited. But token costs are imposed considering the fact that the manipulation in the Order dated 17 March 2020 is not material, unindicative of any ulterior motive and also because all actions taken in breach of interim Order of this Court are required to be reversed due to registration of the Deed being rendered illegal. It is clarified that the costs are imposed on the Society for its overzealous conduct and imposition of costs are not for committing contempt of this Court.

74. I accordingly proceed to pass the following order :

- (i) Order dated 17 March 2020 passed by the Competent authority granting Deemed Conveyance of land admeasuring 77,754.75 sq.mtrs is upheld.
- (ii) Registration of Deed of Deemed Conveyance dated 24 July 2020 at Serial No. 7185 by Sub-Registrar, Haveli-14 is set aside. The consequent Mutation Entries effected on the strength of registered deed of deemed conveyance dated 24 July 2020 are also set aside.
- (iii) Respondent No.2-Society shall be at liberty to place a fresh Deed of Deemed Conveyance by annexing certified and correct copy of the order dated 17 March 2020 before the concerned Registration Officer, who shall scrupulously follow the provisions of sub-section (5) of Section 11 of MOFA before registration of such Deed. Further actions for effecting mutations in the revenue records shall be taken consequent to fresh registration of Deed, if and when effected.
- (iv) Parties shall be at liberty to file appropriate civil proceedings for claiming right, title or interest in respect of any of the portions of land covered by the Certificate of deemed conveyance. All contentions of the parties in that regard are kept open.

- (v) Respondent No. 1 Society shall pay costs of Rs. 25000/- to District Legal Services Authority, Pune within 4 weeks and produce receipt of payment of costs before the Registrar while presenting the Deed of Deemed Conveyance for registration.

75. With the above directions, the Writ Petition and the Contempt Petition are **disposed of**. There shall be no order as to costs.

SANDEEP V. MARNE, J.