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

WRIT PETITION NO. 7808 OF 2021

Audumber Chaya CHS Ltd.

Having its address at I.C Colony Road,
Borivali (West), Mumbai.

.. Petitioner

Versus

1. District Dy Registrar – Co-operative
Society, Mumbai -City (4),
Bhandar Bank Building, 2nd Floor,
P.L. Kale Guruji Marg,
Dadar (W), Mumbai 400 028.

2. Shanti Co-operative Housing Society Ltd.
Having its address at C.T.S. No.1313,
I.C. Colony Road,
Borivali (West), Mumbai – 400 028.

3. M/s. Space Form & Associates,
Flat No.4, Dhirendra Villa,
SV Road, Daulat Nagar,
Borivali (East), Mumbai – 400 066.

4. The Municipal Commissioner,
Mumbai Municipal Corporation,
Having its office at Mahanagar Palika
Building, CSMT, Mumbai – 400 001.

5. The State of Maharashtra.

.. Respondents.

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- Mr. Shariq Nachan a/w. Mr. Vijay Jadhav i/by Nikhil Adkine,
Advocates for Petitioner.
 - Mr. Mayur Khandeparkar, Mr. Shanay Shah, Mr. Vasim Shaikh,
Mrs. Prachi Badani i/by Mr. Pravin Mehta & Mithi Co. for
Respondent No.2.
 - Mrs. V.S. Nimbalkar, AGP for the State.
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CORAM : MILIND N. JADHAV, J.
RESERVED ON : JANUARY 21, 2023.
PRONOUNCED ON : NOVEMBER 28, 2023.

JUDGMENT:

- 1.** Heard. Taken up for final hearing by consent of parties.
- 2.** This Writ Petition is filed under the provisions of Article 226 and 227 of the Constitution of India by the Petitioner – Audumbar Chaya CHS Ltd. to challenge the legality and validity of the order dated 05.03.2021 (for short “**the impugned order**”) passed by the District Deputy Registrar Co-operative Society, Mumbai City (4) granting certificate of Deemed Conveyance in favour of Respondent No.2 – Shanti Co-operative Housing Ltd. Writ Petition is filed on 25.10.2021 and challenges all consequential actions pursuant to the impugned order and seeks a direction to the Corporation to revoke the redevelopment permission dated 06.10.2021 granted in favour of Respondent No.2.
- 3.** Record indicates that pursuant to passing of the impugned order, Deemed Conveyance has been executed and registered by the District Deputy Register, Cooperative Societies and Competent Authority under Section 5A of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short “**MOFA**”) to Respondent No. 2 on 11.06.2021.

4. Writ Petition is vehemently resisted by Respondent No.2. Respondent No.1 is represented by the learned AGP. Affidavit-in-Reply dated 17.01.2023 is filed by Respondent No.1.

5. In order to appreciate the *lis* between the parties, it would be appropriate to note the relevant facts for consideration.

- (i) Petitioner - Society is admittedly the owner of CTS Nos.1311, 1312, 1313, 1314 and 1287 situated at Village Eksar, Tal. Borivali. Building Nos.A1 and A2 belong to Petitioner – Society. Building No.A3 belongs to Respondent No.2 – Society and is standing on CTS No.1313. Building No.A1 stands on CTS No.1311 (part) and 1312 (part) on a plot ad-measuring 862.10 square meters, Building No.A2 stands on CTS Nos.1312 (part) and 1313 (part) on a plot of land ad-measuring 1434.69 square meters. One 13.4 meter internal DP road ad-measuring 558.11 square meters is carved out of CTS Nos.1311 (part) and 1312 (part) and cuts across building Nos.A1 and A2. Another 13.4 meter DP road is perpendicular to the above DP road. CTS No.1313 ad-measures 991.90 square meters. CTS No.1314 ad-measures 256.20 square meters whereas CTS Nos.1287 ad-measures 142.9 square meters. The total land of 5

CTS Nos. ad-measures 3473.74 square meters. Dispute between the two Societies is with respect of entitlement to areas of CTS Nos.1314 and 1287.

- (ii) Petitioner – Society is registered in the year 1974. It consists of two buildings known as 'A1' and 'A2' standing on CTS Nos.1311 and 1312. Building A1 consist of 25 flats / members whereas building A2 consist of 40 flats / members. Both building A1 and A2 are under redevelopment / reconstruction since 2007. Petitioner contends that by Indenture dated 22.01.1975 the original owner conveyed the entire plot including area in the 5 CTS Numbers to the Petitioner. Copy of the deed of Indenture dated 22.01.1975 is annexed to the Petition, second schedule of which refers to area ad-measuring 2949 square meters. This position is however disputed by Respondent No.2 by stating that the entire plot was never conveyed and only land below building Nos.A1 and A2 was conveyed.
- (iii) Though it is not argued by either sides, to complete the above fact, in the Affidavit-in-reply of Respondent No.2, at page No.164 of Petition, Respondent No.2 has appeared an agreement for sale between Petitioner and one of its member which records that pursuant to

Agreement dated September, 1973 with the original owner the Petitioner – Society entered into the said property on or about 27.09.1979. The said property refers to CTS Nos.1313, 1314 and 1287.

- (iv) In 1982, Petitioner put the flat purchasers of Respondent No.2 in possession of their respective flats.
- (v) Sometime in October 2005, Petitioner was approached by flat purchasers / occupants of building A3 who expressed their desire to bifurcate the plot on which it was standing from the Petitioner's plots. Building No. A3 consists of 20 flats. At that time building Nos. A1 and A2 were managed by Petitioner – Society whereas flat purchasers of building A3 refused to be under the management of Petitioner and managed their own affairs and both parties did not interfere with the management of each other's properties. It is informed that occupants of building Nos.A1 and A2 were class IV employees of RBI and occupants of building No.A3 were officers of RBI.
- (vi) Petitioner entered into Development Agreement dated 21.10.2007 with M/s. Aditya Enterprises (Developer) for redevelopment of Petitioner's two buildings i.e. A1

and A2. Occupants of building A3 initially did not support redevelopment of Building Nos. A1 and A2 as their plot was not bifurcated out of the larger plot belonging to Petitioner. There was dispute between the parties regarding TDR and FSI that would be utilized / available. However, occupants of building A3 sometime in 2009 gave their express no objection / consent for redevelopment of Petitioner's building Nos. A1 and A2 subject to Petitioner agreeing in return to bifurcation of their plot (A-3) and giving them a separate conveyance of the plot on which building A3 was standing. Dispute arose in respect of granting consent at the then time which resulted in the developer filing Suit No.680 of 2010 in this Court against the Petitioner and its dissenting members for seeking specific performance of the Development Agreement. This Suit is pending.

- (vii) Interlocutory order was passed by this Court holding that developer could commence construction only after obtaining consent of the occupiers of building A3. Record indicates that all occupants of building A3 gave their express consent to the developer.

- (viii) In reciprocity, in the year 2013 occupants of building A3 resigned from their membership of Petitioner – Society. Petitioner returned / refunded back their share value / shares which enabled the Chief Promoter of Respondent No.2 - Society to seek registration of Respondent No.2 as separate Society.
- (ix) By order dated 15.05.2014, Divisional Joint Registrar Co-operative Societies, Mumbai Division, Mumbai directed Deputy Registrar to register Respondent No.2 as Society and registration certificate was issued to Respondent No. 2.
- (x) Record indicates that admittedly thereafter a compound wall was constructed separately by Respondent No.2 – Society which exists on site till date. Parties have disagreement with respect to entitlement of the area of their plots out of the larger / entire area as noted above.
- (xi) In 2013 both parties approached the Municipal Corporation and after submitting the necessary documents got their respective plots demarcated after seeking approval from the Municipal Corporation.
- (xii) Petitioner thereafter continued with redevelopment of

its property namely building Nos. A1 and A2. Developer obtained various permissions for redevelopment of building Nos. A1 and A2 and the same is almost underway and about to be completed. In view of this development, Respondent No.2 persuaded Petitioner to execute conveyance in respect of the property on which building No.A3 was standing (which is refuted by the Petitioner). Petitioner did not respond to Respondent No.2's request as its redevelopment is yet not completed. It needs to be stated at this stage that the developer was involved in the picture as he had filed the substantive suit against the Petitioner for specific performance of the development Agreement which is still pending in this Court.

- (xiii) In the above circumstances, on 27.01.2021 Respondent No.2 filed Application seeking unilateral deemed conveyance in its favour before Respondent No.1 – Competent Authority under Section 11 of MOFA. On the same day, Respondent No.1 issued notice to the Petitioner and the original owner intimating them about the next date of hearing being kept on

18.02.2021 at 2:00 p.m.

- (xiv) Petitioner has denied receipt of this notice.
- (xv) According to Respondent No.1 – Competent Authority, copy of the notice calling Petitioner to obtain copy of the application filed by Respondent No.2 and attend the hearing on 18.02.2021 was served on Petitioner and was received by some person on behalf of Petitioner by hand on 10.02.2021. In support thereof Respondent No.1 has relied upon the status of delivery of the consignment containing the above notice at page No.326 (part of Exh.“NN”).
- (xvi) That apart, Respondent No.1 and Respondent No.2 have relied upon public advertisement / news paper notice publishing the date of hearing to be held on 18.02.2021 at 02.00 p.m. published on 30.01.2021 in the news papers Business Standard (English) and Pudhari (Kokan Edition).
- (xvii) On 05.03.2021, Respondent No.1 passed the impugned order granting Deemed Conveyance and certificate under Section 11 of the MOFA in favour of Respondent No.2.

- (xviii) On 11.06.2021, the unilateral Deemed Conveyance was registered by the Sub-Registrar Assurances, Borivali in favour of Respondent No.2 – Society.
- (xix) Dispute raised by Petitioner is in respect of the area granted in the deemed conveyance to be in excess of Respondent Nos. 2's entitlement.
- (xx) Hence, the present Writ Petition.

6. Mr. Nachan, learned Advocate for the Petitioner – Society has made the following submissions:-

- (i) that Petitioner is the owner and undisputedly in possession of plot bearing CTS Nos.1311, 1312, 1314 and 1287. In 1974, Petitioner constructed building Nos.A1 and A2 for its existing 65 members. Later in 1979, Petitioner constructed building No. A3 (19 members plus 1 encroacher of Plot No. 1313) and inducted these 20 new members as members of the Petitioner Society, but later members of Building No. A3 standing on Plot CTS No.1313 created disputes and therefore in 2014 Respondent No.2 formed a separate Society viz. Respondent No.2. The said newly formed Society made an Application for Deemed Conveyance under MOFA in 2021. The Application maliciously

included the areas of plot bearing CTS Nos.1314 and 1287 which belong to Petitioner. That the Respondent No.2's Building No. A3 is standing only on plot bearing CTS No.1313 and Respondent No.2 has no nexus with plots bearing CTS Nos.1314 and 1287. Respondent No.1 acted hand in glove with the Respondent No.2 and allowed the Application by proceeding ex-parte against Petitioner;

- (ii) that Respondent No.1 relying on the false Affidavits and fabricated area certificate provided by Respondent No. 3 and without verifying the actual facts and calculations on record passed the order for Deemed Conveyance which resulted in illegally transferring areas of plots bearing CTS No.1314 and 1287 to Respondent No. 2 although Respondent No. 2 have no right and entitlement to the same;
- (iii) that Respondent No.2's claim to area of plots bearing CTS Nos.1314 and 1287 is based only on the fabricated area certificate issued by its Architect which purportedly claims that Respondent No.2 is entitled to the proportionate share in Recreation Ground (RG) from the entire layout by deliberately excluding the

entire area of building A1 as well as the area to be earmarked for the Recreation Ground of building A1; that taking benefit of this false and fabricated calculation by the Architect, Respondent No.2 convinced Respondent No.1 to pass the impugned order behind the Petitioner's back; that the alleged layout has not been approved by any of the the Competent / Planning Authorities;

- (iv) that genesis of the dispute is that the newly inducted members belonged to a more sophisticated background; therefore these members' always ill-treated the original 65 members of building Nos. A1 and A2 only because they were class IV employees of Reserve Bank of India, whereas the members of Respondent No.2 i.e. 20 members of building No. A3 belonged to the upper class; that because of the aforesaid reason members of building No.A3 did not support any meetings conducted by Petitioner Society and never contributed in the common maintenance and created their own Ad-hoc group to decide their day to day chores, expenses and conduct their separate meetings to take various decisions;

- (v) Respondent No. 2 i.e. 'Shanti CHSL Ltd.' having total of 20 members on plot bearing CTS No.1313 having plot area 919.90 square meters presently have access to their building through the access road provided from plot bearing CTS No.1314 viz. 'Audumber Chhaya CHS Ltd' which is touching the DP road as its right of way; that plot bearing CTS No.1287 of 'Audumber Chhaya CHS Ltd' admeasuring 142.90 square meters is a completely landlocked plot abutting CTS No.1313;
- (vi) that 'Audumber Chhaya CHS Ltd' which consists of 65 members of A1 and A2 building are suffering due to the Court case / Suit which is pending; that as the potential FSI, TDR and occupation certificate is pending because of Respondent No.2's dishonest and illegal act of wrongfully taking conveyance of CTS No.1314 and CTS No.1287, the Developer who is redeveloping Building Nos. A1 and A2 building has withheld the rent, corpus fund and occupation certificate to Petitioner's members; that Petitioner is suffering from the year 2008 till date; that Respondent No.2 was always aware that they would only be entitled to conveyance after completion of development of A1 and A2 building or

else those buildings would not receive Occupation Certificate; that Respondent No.2 is now attempting to consume the FSI of CTS No.1314 and CTS No.1287 solely for its own benefit;

(vii) that petitioner has not transferred the right in plot bearing CTS Nos.1314 and 1287 to Respondent No. 2 nor consented that Respondent No.2 has any vested interest in the two plots; that rights of Respondent No.2 were only restricted to plot bearing CTS No.1313 on which building No. A3 is standing; that Respondent No.2 with the intention to grab additional area has deliberately projected before Respondent No.1 that they are entitled to the area of plot bearing CTS Nos.1314 and 1287;

(viii) that the impugned order passed by the District Dy. Registrar Co-operative Society has been passed ex-parte without notice to Petitioner; that postal acknowledgment at page No.326 of the reply contains no stamp of the Society supporting the proof of delivery nor any indication about who was served with the notice. This assumes significance in the light of the fact that the buildings of the Petitioner and Respondent

No.2 stand on the very same plot next to each other and the Respondent No.2 could have directly served the Petitioner Society if they legitimately intended to do so.

6.1. In support of his above submissions, Petitioner has referred to and relied upon the following decisions of this Court:-

- (i) *Tushar Chauhan and Anr. Vs. The State of Maharashtra and Ors.*¹, and
- (ii) *Mazda Construct Company and Ors. Vs. Sultanabad Darshan CHS. Ltd. and Ors.*²

7. *PER-CONTRA*, Mr. Khandeparkar, learned Advocate for Respondent No.2 has drawn my attention to the Affidavit-in-Reply dated 25.02.2022 and additional Affidavit-in-Reply dated 25.08.2022 filed on behalf of Respondent No.2 – Society to oppose the present Petition and contended that in so far as contention of Petitioner of non-service is concerned, the same is ex-facie belied by the notice of filing Application and next date of hearing being served by office of Respondent No.1 on the Petitioner and the original owner through Indian Post. Further, according to him the order dated 11.03.2022 passed by this Court assumes significance. By this order, this Court directed the learned AGP to verify whether the person who had endorsed / acknowledged the receipt of notice by the Registrar,

1 2015 (4) Mh.L.J. 867

2 2012 SCC Online Bom. 1266

belongs to the Petitioner Society. This verification is brought to light by an Additional Affidavit dated 25.08.2022 filed by Respondent No.2 wherein it annexed a letter dated 26.03.2022 addressed by Respondent No.1 to the Office of AGP which records that the acknowledgment was that of the Petitioner. That in any event, by Affidavit dated 17.02.2023 of Respondent No.1, it has now been confirmed by Respondent No.1 that the notice was duly served upon the Petitioner.

7.1. He would submit that formal and personal notice was effected upon by Respondent No.1. In any event, public notices were also given of the proceedings by Respondent No.1; that a Public notice is an adequate notice as envisaged in law and no defence can be taken by a party that they did not or were not aware about the same as a publication is constructive notice of its contents thereof; that the law in this regard is well settled as held by this Court in *ABCN Logistics Private Limited Vs. Reliance General Insurance Company Limited*,³

7.2. He would next submit that according to the Petitioner, it is the owner of the larger plot, which includes the Respondent No.2's plot / subject plots and therefore, it has an objection that conveyance be granted in favour of Respondent No.2 by Respondent No.1. According to him this is factually incorrect. He has drawn my attention to the Indenture dated 22.01.1975 and the Schedule

appended thereto which makes it clear that it is only the Petitioner's plots bearing CTS Nos.1311, 1311/1, 1311/2 and 1312 that were conveyed to the Petitioner by the original owner. It is alleged that Respondent No.2's plot / subject plots comprising of CTS Nos.1313, 1314 and 1287 were not part of the Indenture and/or the Second Schedule appended thereto; and on this ground alone, the contention of the Petitioner that it is the owner of the entire layout ought to be rejected. This as I have observed while narrating the facts may not be correct as Respondent No. 2's own document refers to a September 1973 agreement between Petitioner and the original owner whereby Petitioner got possession of plot bearing CTS Nos. 1313, 1314 and 1287.

7.3. That under MOFA, Section 11 makes it obligatory on the Petitioner (being the Promoter) to take all such necessary steps to complete the title and convey to the organisation of persons (being Respondent No. 2 Society herein), right, title and interest in the land and building and execute all relevant documents thereof.

7.4. In support of his contentions, Respondent No.2 has relied upon the following decisions:-

- (i) *Mazda Construction Company and Ors. Vs. Sultanabad Darshan CHS Ltd. and Ors.*;
- (ii) *Zainab Abedin Yusufali Massawala and Ors. Vs.*

*Competent Authority District Deputy Registrar of Co-operative Housing Societies, Mumbai and Ors.*⁴; and

(iii) *Angeline Randolph Pereira Vs. Suyog Industrial Estate Premises Co-operative Society Ltd.*⁵

8. I have heard Mr. Nachan, learned Advocate appearing for Petitioner, Mr. Khandeparkar, learned Advocate for Respondent No. 2 and Mrs. Nimbalkar, learned AGP appearing on behalf of Respondent Nos. 1 and 4 and with their able assistance perused the pleadings and record of the case. Submissions made by them have received due consideration of this Court.

9. At the outset, it needs to be stated that the primary ground raised by the Petitioner is that the Respondent No. 1 - Competent Authority did not grant an opportunity to the Petitioner while allowing the application filed by Respondent No. 2 seeking deemed conveyance. Record reveals that Application No. 16 of 2021 was filed by Respondent No. 2 under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short 'the MOFA Act') with the Respondent No. 1. At Exhibit - 'LL' is the notice issued by the Competent Authority dated 27.01.2021. The said notice calls upon the Opponents out of which Petitioner is Opponent No. 2 to obtain the

⁴ 2016 SCC Online Bom. 6028

⁵ 2018 SCC Online Bom. 687 : (2018) 3 AIR Bom. R 825

copy of the application alongwith its annexures from the office of this Competent Authority during office hours and intimates the hearing date for oral arguments on 18.02.2021 at 2.00 p.m. At Exhibit - 'LL' is the Track Consignment Report which even if believed to be true shows that the consignment allegedly served on Petitioner has been received on 10.02.2021 at 14.24 hours. This is strongly and vehemently opposed and rejected by Petitioner as having received. At page No. 326 is the postal acknowledgment form, *inter alia*, regarding the said consignment having received by the Petitioner. Signature of some person is there in the receiver's column and one illegible Phone Number appears to be scribbled in the farthest column. At Exhibit - 'OO' is the advertisement issued in the Business Standard news paper on 30.01.2021 intimating the hearing in the case for deemed conveyance fixed on 18.02.21 at 2.00 p.m. Similarly, at Exhibit - 'PP' is the notice issued in the Kokan Pudhari newspapers on 30.01.2021. The impugned order of deemed conveyance certificate under Section 11 of MOFA is at Exhibit - 'QQ' page No. 329 which is dated 05.03.2021. At page No. 329 in the reference i.e. subject to the said judgment / order it is stated that application of Shanti Co-operative Housing Society Limited i.e. Respondent No. 2 is received in the office Competent Authority on 27.01.202. Thus it is seen that on the date of its receipt itself with alarming agility and alacrity the notice was issued by the Competent Authority on the same date itself. It is further stated

in the reference to the order that hearings were held from time to time in the said matter. This observation on the face of record deserves to be rejected as no details are mentioned on which dates the hearings were held. Perusal of the judgment further reveals that on receipt of the documents by the office of Respondent No. 1, Competent Authority issued notice on 27.01.2021. Reference given to the public notice of the same date is apparently incorrect. It further states that notice is given to give sufficient opportunities to all parties concerned as required under the act and the principles of natural justice. This is however not seen as done. Thereafter the judgment proceeds to state that hearing was conducted on various dates and after giving proper opportunities to all the parties concerned the matter was closed for orders on 02.03.2021. It is needs to be stated here that the first date of the hearing mentioned in the notice issued on 27.01.2021 is 18.02.2021. The further dates on which hearings were held from time to time i.e. various dates for giving proper opportunities to all the parties concerned are not mentioned in the judgment. In fact, the entire matter for grant of deemed conveyance has proceeded before the Respondent No. 1 Competent Authority in the most secretive manner so as to ensure that the Petitioner is kept away and deemed conveyance is granted to the Respondent No. 2. Had the hearing been conducted on various dates and after giving proper opportunities to all the parties concerned as stated in the order, the various dates about

the efforts that were taken to ensure that proper opportunities were given to all parties concerned would have been stated. It is stated that guidelines issued by the State Government in its Circular dated 22.06.2018 ought to have been followed to the hilt in the facts of this case. The Competent Authority merely closed the matter for orders on 02.03.2021 i.e. after 14 days of the 1st date of hearing. The Competent Authority has not followed the directives issued by the State Government for considering cases of deemed conveyance of a Society wherein on the larger plot of land several other societies co-exists. The very regime which is provided by the State Government in the circular dated 22.06.2018 has been given a complete go-by in the present case. The swiftness with which the Competent Authority has proceeded *ex-parte* in the present case raises several questions about omissions on the part of the Competent Authority. Nothing precluded or prevented the Competent Authority to ensure that the Petitioner Society was heard in the matter and only after hearing the Petitioner Society an appropriate order could have been passed in the facts and circumstances of the present case. Reference to the conveyance of 1975 and Agreement of 1973 as alluded to herein above ought to have been seen and considered before passing the order *ex-parte*. No report has been prepared, plans and maps have not been checked as required by the Circular dated 22.06.2018. Petitioner Society is admittedly the owner of the entire larger layout by virtue of the conveyance in the

year 1975 and the Agreement of 1973 which is in Respondent No. 2's own reply affidavit at page No. 164 of the Petition. Though it is pleaded by the Respondent No. 2 that pursuant to action of subdivision of Petitioner No. 2's area both parties were entitled to separate areas, then there was no reason to not hear the Petitioner's objections, if any. The Competent Authority ought to have heard the Petitioner if it had any other objection to the Respondent No. 2 claiming any larger area than the plot area of buildings A-3. This has not been done. On the contrary, it is stated in the judgment that on behalf of the opponents (to be read as Petitioner Society) nobody was present. The manner in which the proceedings have been conducted and concluded with undue haste before the Respondent No. 1 are not only suspicious but a clear attempt to ensure that the Petitioner could never remain present before the Competent Authority and an ex-parte order like the one impugned herein granting deemed conveyance could be passed. It is seen that the application filed by Petitioner for deemed conveyance has 10 annexures. It is duty of the Competent Authority to ensure that in case where more than one Society exists on a larger plot of land and specifically where there are disputes which are pending, then the opponent Society is also heard to ensure that the application and annexures filed by the Respondent No. 2 are not only received by the Opponent Society but the Society is also given an opportunity of hearing. This is primarily to avoid multiplicity of

litigation. The same has not been done in the present case for obvious reasons. This is so because admittedly a substantive Suit for specific purpose filed by the developer against the Petitioner Society is still pending in this Court. Respondent No. 2 though is clearly aware of the same, has suppressed this vital fact from the Competent Authority.

10. It is seen that members of Respondent No. 2 Society had given their individual consent for redevelopment of Petitioner's two buildings and categorically agreed and admitted that the plot on which their building No. A3 is standing would be conveyed to them only after completion of redevelopment of Petitioner's building. Order dated 16.06.2010 passed by this Court in the Suit filed by the Developer clearly records that MCGM has refused to grant permission for redevelopment to Petitioner based on the conditional consent given by the members of Respondent No. 2 wherein they had insisted on a separate building and bifurcation of land by demarcation and obtaining conveyance for their Society. Paragraph Nos. 3 and 4 of the said order record that insistence of members of Respondent No. 2 Society would lead to further disputes and litigation in future and therefore, it was made clear that they ought to give their unconditional consent which was given by them. It is further seen that there was understanding between parties namely Petitioner and

Respondent No.2 Society that until redevelopment of Petitioner's buildings is completed, Respondent No. 2 shall not insist for separate conveyance. Such understanding is also recorded in the affidavit-cum-indemnity dated 28.06.2010 which was furnished to Respondent No. 2 on its insistence which clearly record the understanding between parties that Respondent No. 2 would be entitled to conveyance of its plot (Building No. A3) only once the ongoing redevelopment construction of building Nos. A1 and A2 is completed. It is seen that Petitioner's members have been out of their houses since 2007 - 2008 and today because of the deemed conveyance obtained exparte by Respondent No. 2, the Developer has withheld the transit rent to the members of the Petitioner Society. The fact that the suit filed by the Developer is still pending in this Court is also an important issue for consideration when the Competent Authority decides the application for deemed conveyance of Respondent No. 2. For this reason not only the Petitioner becomes a relevant party to the proceedings but the Developer who is the Plaintiff in the said Suit also is a proper and necessary party and required to be heard for his objections, if any. It is therefore seen that in order to avoid hearing the Petitioner and the Developer, Respondent No. 2 proceeded in the most hasty manner. All this clearly leads to an act of suppression on the part of Respondent No. 2 of all such relevant documents and material which need to be considered by the Competent Authority before granting

deemed conveyance. Another important aspect which needs to be mentioned is that it is the case of Respondent No. 2 that the original indenture dated 22.01.1975 did not convey the entire layout to the Petitioner and therefore by virtue of that and the intervening facts and circumstances, Respondent No. 2 became entitled to the balance land comprising of CTS Nos. 1313, 1314 and 1287. This is argued by the Respondent No.2. If that be the case, then it needs to be stated that Respondent No. 2 came into existence only in the year 2013 and it was only the Petitioner who was entitled to the entire larger layout in the year 1975. Further there is a stoic silence about the Agreement of September 1973 by virtue of which Petitioner has been in possession of the above 3 CTS numbers. If that be the case, then it is imperative for Respondent No. 1 – Competent Authority to hear the Petitioner in the Application seeking deemed conveyance certificate applied for by Respondent No. 2. The specious ground that Petitioner Society was served and reference of acknowledgment of the Indian Post is placed on record has been considered by me it is an unnecessary technical ground raised only to avoid hearing the Petitioner with an ulterior motive. I also find that the stamp of the Petitioner Society is not appended in the acknowledgment column of the receipt of the packet. This is an admitted position as borne out by the document. If this be so, then it was all the more reason for the Competent Authority to ensure that a fresh service was effected on the Petitioner. Though it is

stated in the impugned judgement / order that Petitioner was duly served on all the dates of hearing, neither the dates of hearing have been mentioned nor the details of service of those subsequent dates between 18th February and 2nd March have been stated in the impugned judgment / order. As noted above, the alarming swiftness with which the matter for grant of deemed conveyance in favour of Respondent No. 2 has been proceeded with in the present case arouses not only suspicion but grave doubt.

11. The next question which requires consideration by the Court is the area certificate referred to and relied upon by the Respondent No. 2 which forms the basis of this entire controversy. It appears that the area certificate which is at Exhibit - 'H' page No. 59 of the Petition has been considered by the Competent Authority as sacrosanct for grant of deemed conveyance to the Respondent No. 2. The area certificate is prepared by the Architect of Respondent No. 2, *inter alia*, stating that Petitioner Society as per approved plan 1979 has total built-up area of layout of 2663.86 square meters along with 15% R G (406.60 square meters) and internal road (37.67 square meters). The area certificate is issued on 25.01.2021. It then proceeds to state as per the latest approval issued by the MCGM on 03.11.2015 read with MCGM letter dated 23.09.2013, the area of Petitioner Society has been subdivided out of larger layout and has got the approval and redevelopment for

the area admeasuring 2854.90 square meters. So far these facts are concerned they are admitted facts and there is no dispute on these facts. However, the area certificate next states that in view of approval of redevelopment for the area of 2854.90 square meters in favour of the Petitioner Society, the balance area which remains belongs to Respondent No. 2 and therefore Respondent No. 2 would be entitled to the entire balance area admeasuring 1319 square meters. The Petitioner's query and dispute before me is that Respondent No. 2 is undoubtedly entitled to the area of plot on which building No. A-3 is standing namely CTS No. 1313 admeasuring 919.90 square meters. Petitioner however takes strong objection to the Respondent No. 2 being entitled to the entire remaining balance area as per this area certificate. The area certificate when seen, appears to be issued like a certificate of title and entitlement. It is not endorsed by any planning authority nor does it have any supporting material as to how Respondent No.2 becomes entitle to the entire balance area.

12. Be that as it may, this is a disputed question of fact. Respondent No. 2 and the Competent Authority it appears were clearly aware about this disputed question of fact. I say so because admittedly Respondent No. 2 was aware of the fact that a substantive suit filed by the developer against Petitioner is pending in this Court. It was the duty of the Competent Authority therefore to ensure that

Petitioner was heard in the matter. Equally it was the duty of Respondent No.2 to have placed on record the September 1973 Agreement to disprove the claims of the Petitioner. Once the Competent Authority would have heard the Petitioner and got itself satisfied that dispute about conveyance of the entire layout in favour of the Petitioner as far back in the year 1975 was restricted because of the bifurcation which took place and Respondent No. 2 got segregated, only then the issue of areas could be proportionately determined. This is so because Respondent No.2 was not in existence in 1975. This crucial exercise is deliberately avoided by Respondent No.2. There is no adjudication of this issue or fact by the Competent Authority. This issue needs to be considered but has not been considered. Rather it has not been brought to the notice of the Competent Authority at all by Respondent No.2. One of the reasons being that Petitioner was not allowed or if I may state so prevented and precluded from appearing before the Competent Authority to ensure that the above issue was not agitated. In the above circumstances, the fundamental reliance of the Respondent No. 1 Competent Authority duly supported by the Respondent No. 2 Society that Petitioner was served with the notice of hearing and did not remain present is unacceptable and deserves to be dismissed. Both Petitioner and Respondent No.2 are neighbouring Societies. It is crystal clear that Respondent No. 2 has proceeded in the most

surreptitious manner in the present case to ensure that the deemed conveyance is issued by the Competent Authority without the Petitioner Society being heard. The case of the Respondent No. 2 Society is that it is entitled to a conveyance of all that piece and parcel of land bearing CTS No. 1313 (Plot or which Building No. A/3 is standing) and CTS No. 1314 and 1287. If that be so, it was therefore, the duty of the Competent Authority to ensure that this right was borne out by appropriate record and entilment of Respondent No.2 to be entitled to all 3 CTS Nos. It appears that this exercise has been clearly avoided by the Respondent No.2 as can be seen from the facts in the present case. The impugned order of the grant of deemed conveyance is a cursory order which is vague and insufficient and on the face of record deserves to be rejected. It needs to be reiterated that observations of the Competent Authority that proper opportunities were given to all concerned parties is therefore a wrong observation and finding. The reasons given in paragraph Nos. 12 and 13 of the impugned order of deemed conveyance are totally unsatisfactory in the absence of hearing the Petitioner Society. Respondent No.2's right and entitlement to CTS Nos.1314 and 1387 has not been proved. In view of the above observations and findings the impugned judgment and order dated 05.03.2021 passed by the Respondent No. 1 granting the order of deemed conveyance and certificate under Section 11 of the MOFA to the Respondent No. 2

Society is quashed and set aside fully. Resultantly the registered agreement dated 11.06.2021 is also quashed and set aside.

13. In view of this order, the original application No. 16 of 2021 is directed to be reheard afresh by the Respondent No. 1 Competent Authority in accordance with the guidelines issued in the Government Circular dated 22.06.2018 and Respondent No.1 to ensure that Petitioner Society is duly heard in the matter. Both, the Petitioner and Respondent No. 2 Society shall present themselves before the Respondent No. 1 Competent Authority alongwith an authenticated copy of this order on 01.12.2023 at 12.00 noon for fixing the schedule of hearing of application No. 16 of 2021.

14. Both Petitioner and Respondent No. 2 are permitted to file additional affidavits / documents in support of their respective cases. Both Petitioner and Respondent No. 2 are permitted to file their Affidavit-in-reply / Rejoinder and all pleadings shall be completed before the hearing is held by the Respondent No. 1 Competent Authority for adjudicating application No. 16 of 2021 afresh. The above entire exercise of adjudication of application No.16 of 2021 shall be completed by the Competent Authority within a period of eight months from today and shall be culminated by passing a reasoned / speaking order. Needless to state that the Competent Authority shall not be influenced by any of the observations stated in

the present judgment / order while adjudicating the above application as the same have been stated only in so far as to decide the present Writ Petition. The decision of the Competent Authority on Application No. 16 of 2021 shall be passed strictly in accordance with law. It is clarified that, in the meanwhile the redevelopment permission granted to the Respondent No.2 Society shall be held in abeyance until the above application is decided and shall be subject to the outcome of the above decision by the Competent Authority.

15. With the above directions, Writ Petition stands allowed.

[MILIND N. JADHAV, J.]

Ajay

RAVINDRA
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AMBERKAR
Digitally
signed by
RAVINDRA
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