

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

WRIT PETITION NO.- 15942 OF 2022

Nalini Thakkar and Others ...Petitioners

Vs.

Mulund Ambe Mahal CHS Ltd., and Others ...Respondents

Mr. Mayur Khandeparkar i/b Ms. Meena Shah and Maulik Tanna, for Petitioners.

Mr. A. S. Khandeparkar, Senior Counsel a/w Mr. Nihir Dedhia i/b Prerak Sharma, for Respondent No. 1- Society.

Mr. Karl Tamboli a/w Vaibhav Kulkarni, Mr Prerak Sharma i/b Prerak Sharma, for Respondent No. 2.

Mr. P.P. Pujari, AGP for State- Respondent No. 3.

CORAM:- N. J. JAMADAR, J.

RESERVED ON:- 19th JUNE, 2023

PRONOUNCED ON:- 7th SEPTEMBER, 2023

JUDGMENT:-

1) Rule. Rule made returnable forthwith and with the consent of the learned Counsel for the parties, heard finally.

2) This Petition under Article 227 of the Constitution of India assails the legality, propriety and correctness of an order passed by the Deputy Registrar and Competent Authority under the

Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (MOFA) (“MOFA, 1963”), dated 17th October, 2022, whereby the Competent Authority was persuaded to issue a Corrigenda so as to increase the area of the property in respect of which Deemed Conveyance had been granted by an order dated 29th May, 2014, from 1093.40 sq. meter to 1668.1 sq. meter.

3) Background facts leading to this Petition can be stated in brief as under:-

(a) Odhavji Kuvarji Anjaria, the predecessor in title of the petitioners, was the holder of land bearing Survey No.1000, Plot No. 823 (“the subject premises”). The predecessor in title of the petitioner executed an agreement to sell the subject premises in favour of Shivshakti Builders, respondent No. 2 – a Partnership Firm. According to the petitioners, on 14th February, 1978, respondent No. 2 constructed a building ‘Mulund Ambe Mahal’ (subject building) on a larger part of the property. Respondent No. 2 eventually sold the flats and shops in the subject building to the purchasers and those purchasers eventually formed a Co-operative Society being Mulund Ambe Mahal CHS Ltd, respondent No. 1 herein. As the respondent No. 2 failed to convey the property on which the subject building came to be

constructed to the society in accordance with the mandate contained in Section 11 of the MOFA, 1963, the respondent No. 1 - Society filed an application before the Competent Authority under Section 11 of the MOFA, 1963 to have a Deemed Conveyance executed and registered in its favour.

(b) The said application came to be allowed by an order dated 29th May, 2014. The Competent Authority granted Deemed Conveyance in respect of the property bearing Survey No.1000, Plot No. 823, CTS No. 938, 938/1 to 28 situated at Mauje Mulund (West) admeasuring 1093.40 sq. meters in favour of the respondent No. 1- Society.

(c) The petitioner assailed the said order before this Court in Writ Petition No.9705 of 2016. By an order dated 15th December, 2021, a learned Single Judge of this Court was pleased to repel the challenge holding, *inter alia*, that the endeavour of the petitioner was an indirect and systematic attempt to assert the dead rights under the agreement to sell dated 14th February, 1978, which stood completely extinguished. The Court was of the view that the petitioner had no subsisting interest in the subject premises and instead of respondent No. 2- Developer, the petitioners herein were putting hindrances in the conveyance of

the title to the respondent No. 1 – Society in conformity with the provisions of MOFA, 1963.

(d) The said order was challenged by the petitioners before the Supreme Court in SLP No. 7306 of 2022. By an order dated 18th July, 2022, the Supreme Court declined to interfere in the aforesaid order passed by this Court.

(e) In the meanwhile, respondent No. 1 - Society again approached the Deputy Registrar and Competent Authority for rectification of the order of Deemed Conveyance and the certificate dated 29th May, 2014 so as to correct the area of the property to be conveyed thereunder from 1093.40 sq. meter to 1668. 1 sq. meter. It was, *inter alia*, asserted that the area of the plot mentioned in the original application for Deemed Conveyance was 1093.40 sq. meters though the plan and the record of right indicated that the total area was 1668. 1 sq. meter, to which respondent No. 1- Society was entitled to.

(e) The petitioners resisted the said application on the ground, *inter alia*, that the Competent Authority was not empowered to review its own order and such an application was not tenable.

(f) By the impugned order, the Deputy Registrar and the Competent Authority was persuaded to allow the application heavily relying upon the observations of this Court in its

judgment dated 15th December, 2021 in Writ Petition No. 9705 of 2016, preferred by the petitioners. It was held that while granting Deemed Conveyance by order dated 29th May, 2014, the area of CTS No. 938 (1093.4 sq. meter) only was taken into account and the total area of CTS 938/1 to 938/28 was not considered. Therefore, the Competent Authority issued the Corrigenda so as to correct the area of the property to be unilaterally conveyed to the Society.

(f) Being aggrieved the petitioners have again invoked the writ jurisdiction of this Court.

4) I have heard Mr. Mayur Khandeparkar, the learned Counsel for the petitioners, Mr. A. S. Khandeparkar, the learned Senior Counsel for respondent No. 1- Society, Mr. Karl Tamboli, the learned Counsel for respondent No. 2- Developer and the learned AGP for the State- Respondent No. 3. The learned Counsel took the Court through the pleadings, material on record and the orders passed by the Competent Authority.

5) Mr. Mayur Khandeparkar, canvassed multi-pronged submissions. First and foremost, according to Mr. Mayur Khandeparkar, the Competent Authority is not vested with the power of review. Being an authority created under the statute, the Competent Authority is enjoined to discharge its functions

within the bounds of the law. No power of review has been conferred on the Competent Authority. Therefore, the Competent Authority could not have reviewed its own order so as to enhance the area of land to the prejudice of the petitioners. Secondly, by the impugned order, the Competent Authority granted respondent No. 2 reliefs which were not originally prayed. In the application, preferred in the year 2013, the respondent No. 1 had claimed Deemed Conveyance in respect of the area admeasuring 1093. 40 sq. meters only. Thus, the Competent Authority could not have granted more than what was prayed for by the respondent No. 1. Thirdly, none of the aforesaid contentions were adequately dealt with by the Competent Authority.

6) Mr. Mayur Khandeparkar would also urge that, at any rate, the material on record shows that the respondent No. 2 was not a promoter qua the unsold part of the subject premises. Ownership in respect of those portions continued to vest in the predecessor in title of the petitioners, during his lifetime, and in the petitioners, after his death. The Competent Authority, according to Mr. Mayur Khandeparkar, without adverting to the aforesaid facts, passed the impugned order which does not fall within the ambit of the restrictive power of correcting

typographical or clerical errors. The impugned order, on the other hand, constitutes a substantive review of original order.

7) Mr. A. S. Khandeparkar countered the submissions on behalf of the petitioners. Mr. A. S. Khandeparkar urged with a degree of vehemence that all these contentions, which are now sought to be raised were, in fact, duly raised in Writ Petition No.9705 of 2016 and summarily rejected. Mr. A. S. Khandeparkar would further submit that this Court in Writ Petition No. 9705 of 2016 made scathing observations. In the face of those observations, which manifest that this Court found that the petitioners had no subsisting interest in the subject premises, instant Petition is but a link in the chain of vexation and delay. Mr. A. S. Khandeparkar placed a very strong reliance on the observations of this Court in the judgment in Writ Petition No. 9705 of 2016, which according to Mr. A. S. Khandeparkar, unmistakably show that there is no semblance of title left in the petitioners.

8) Mr. Tamboli supplemented the submissions of Mr. A. S. Khandeparkar. It was urged that a cumulative reading of the agreement to sell executed by the predecessor in title of the petitioners in favour of respondent No. 2 dated 14th February,

1978 and the MOFA agreement executed by respondent No. 2-Developer in favour of one of the flat purchasers and MOU executed by and between the petitioners and respondent No. 2 – Developer, leads to a legitimate inference that what was conveyed to the respondent No. 2 under the agreement to sell dated 14th February, 1978 was the entire subject premises admeasuring (1995 sq. yards) equivalent to 1668. 1 sq. meter. Since in the order passed by the Deputy Registrar in the year 2014, there is a reference to CTS No. 938/1 to CTS No. 938 /28 as well, the endeavour of the petitioners to question the rectification on the ground that it amounts to review of the order does not merit acceptance. In substance, the petitioners having been divested of all the right, title and interest in the subject premises have no cause to question the impugned order, submitted Mr. Tamboli.

9) Before adverting to deal with the aforesaid rival submissions, I deem it apposite to note few uncontroverted facts so as to narrow down the controversy. Execution of the agreement to sell on 14th February, 1978 by the predecessor in title of the petitioners in favour of respondent No. 2 is incontestable. Under the said agreement to sell, the vendor agreed to sale the property bearing plot No. 823, Survey No. 1000

admeasuring 1995 sq. yards. Indisputably, the respondent No. 2 – Developer constructed the subject building and sold the flats and shops therein, to purchasers, who formed the respondent No. 1- Co-operative Housing Society.

10) Though there is controversy over the alleged termination of the agreement to sell dated 14th February, 1978, the parties especially the petitioners and respondent No. 2 do not seem to be at issue on the point that a MOU came to be executed between the petitioners and respondent No. 2 on 29th March, 2004 purportedly confirming the sale and development rights in respect of the subject premises. It is a different matter that the petitioners claim to have terminated the aforesaid MOU as well by giving notices in the year 2009 and 2010.

11) In the articles of agreement executed by respondent No. 2 in favour of the purchasers, the area of land on which the building was to be constructed was shown as Plot No. 823, admeasuring 997 ½ and 823 part admeasuring 997 ½ sq. meters. There is indeed a controversy over the area, which the respondent No. 2 – Developer agreed to convey to the respondent No. 1- Society under MOFA, 1963 to which I shall advert little later.

12) The facts that the respondent No. 1- Society had sought an order of unilateral Deemed Conveyance and it came to be granted by an order dated 29th May, 2014 passed by the Deputy Registrar and the challenge thereto failed up to the Supreme Court are also incontestable. The controversy between the parties essentially revolves around the legality and validity of the impugned order of the issue of Corrigenda. As a subset, the parties are at issue as to whether respondent No. 2 - Developer had agreed to convey the entire subject premises to respondent No. 1- Society.

13) To begin with, the challenge on the ground of absence of statutory authority. Mr. Mayur Khandeparkar strenuously submitted that disguised as rectification, the Competent Authority has granted a prayer, which was not made in the original application. It clearly transgresses the scope of rectification. To bolster up of this submission, Mr. Mayur Khandeparkar placed a heavy reliance on a decision of a learned Single Judge of this Court in the case of **Kashish Park Realty Private Limited and Others Vs. The State of Maharashtra and Others¹**.

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14) The learned Counsel for the respondent, however, urged that the exercise clearly falls within the bounds of “rectification” of a patent error.

15) It is trite in the absence of a prescription in the Statutes/ Rules empowering a judicial tribunal or administrative authority to review its own order, an application for review of judicial/ quasi-judicial order is not tenable. An order of review in the absence of such a mandate can be termed a jurisdictional error.

16) In the case of **Kashish Park** (supra), the learned Single Judge in the facts of the said case held that the order of issue of Corrigenda challenged therein was bereft of reasons and far exceeded the scope of rectification. The observations in paragraph No. 28 are material and, hence, extracted below.

“..28...In the present case, the impugned Corrigenda do not meet the mandate and legal requirement set out in the aforesaid summarization. The impugned Corrigenda, which are bereft of reasons have resulted in miscarriage of justice and are not sustainable. Furthermore, the impugned Corrigenda are totally at variance with and diametrically contrary to the findings recorded in the orders dated 22/7/2020. The impugned Corrigenda do not rectify a procedural error or an error apparent on the face of record but reverses the natural sequitur and consequences of the findings recorded in orders dated 22/7/2020, which is not permissible even in exercise of powers of review. Issuance of such Corrigenda is clearly an arbitrary exercise of authority without jurisdiction. ”

17) Though Mr. Mayur Khandeparkar endeavored to impress upon the Court that the impugned order is vulnerable for not having considered the challenge mounted by the petitioners to the tenability of the application for rectification, yet I find it rather difficult to accede to this submission. The Competent Authority has ascribed reasons which weighed with it in correcting the area of the property in respect of which Deemed Conveyance was to be executed and registered. The impugned order cannot be termed as bereft of reasons, though the justifiability of those reasons can be put in contest.

18) This takes me to the pivotal issue as to whether the impugned order is a review disguised as a rectification. For an answer, it is necessary to delve into the nature of the instruments under which the parties professed to convey the subject premises, the agreement executed under MOFA, 1963, the application made under Section 11 (3) of MOFA, 1963 before the Competent Authority and the original order passed by the Competent Authority in the year 2014.

19) In the agreement to sell dated 14th February, 1978, the predecessor in title of the petitioners agreed to sell the land and structures standing thereon situated at plot No. 823, Survey No.

1000 admeasuring 1995 sq. yards. In clause 12 of the said agreement to sell, it was further clarified that the area of the property agreed to be conveyed thereunder was 1995 sq. yards and if it turned out that the area was more or less, there would be no change in the consideration agreed to be paid. In the Schedule appended to the agreement the property to be conveyed thereunder was described in two parts: Plot No.823 admeasuring 997/ ½ and Plot No. 823 part admeasuring 997 ½.

20) From the perusal of the agreement to sell dated 14th February, 1978, it becomes evident that the entire subject premises along with structures standing thereon comprised in Survey No. 1000, Plot No. 823 admeasuring 1995 sq. Yards was agreed to be sold. (1995 sq. yards is equivalent to 1668 sq. meters). Conversely, it does not appear that the vendor had reserved unto himself any portion of the property bearing Survey No. 1000, Plot No. 823.

21) Then come the agreements executed by the respondent No. 2 – Developer in favour of the then prospective purchaser of the units in the subject building constructed on the subject premises. In addition to the usual clauses, which are required to be incorporated in an agreement envisaged by MOFA ,1963, the

Schedule appended to the said agreement (dated 19th June, 1982 in favour of one Sudhakar J Shetty) indicates that the property which was the subject matter of the said agreement was Survey No. 1000, Plot No. 823, admeasuring 997 ½ and Plot No. 823 part admeasuring 997 ½ sq. meters, which corresponds to the description of the property in the agreement to sell dated 14th February, 1978.

22) Mr. Mayur Khandeparkar would, however, urge that the aforesaid description of the property in the schedule appended to the agreement cannot be construed de-hors the recitals in the agreement. It was submitted that though the entire subject premises was described in the schedule as the subject matter of the agreement under MOFA, 1963, yet the clauses in the said agreement make it abundantly clear that the respondent No. 2 had not agreed to convey the portions of the property especially the structures B, C and D, which stood thereon, and reserved unto itself the right to develop the area covered by those structures. Special emphasis was laid on clauses 30 and 41 of the agreement dated 19th June, 1982. They read as under:-

“...30. There are certain existing structure as shown on the plan annexd as marked “A”, and out of the said structure, the New building is constructed by the Builder after demolishing the Building structure A, E & F. The tenants accommodated in the New Building and the

tenants will become members of the Company or the Society including the Buyer before the execution of the lease in favour of the company or the Society. The structure B, C & D will remain with the builder, and the occupier of the New Building will not take any objection or question for the same. Subject to the permission of competent authority appointed under the Urban Land (Coiling & Regulations) Act, 1976 the Builders shall execute a lease for 999 years at an yearly rent of Rs.1/- to be paid by the said New Building Occupier, of the said land under the Building directed thereon in favour of the said society, Limited Company or an Association of Apartment Owners as the case may be within six months from the formation and registration of the said Society Limited Company or an Association of Apartment Owners as the case may be or from the date on which all the building intended to be put on the tenements therein are given to the respective Buyer/s thereof whichever is later provided that the Builders have been paid and have received full consideration equivalent to the total of the price payable by all the flat/shop/garage holders.

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41. On the date of execution of this agreement there are 6 structures marked A, B, C, D, E & F on the plan hereto annexed as Exhibit "A" and a well. All structures marked A, B, C, D, E & F were residential premises and F is a sanitary block. This agreement is subject to the absolute right of the Builder in respect of the entire plot more particularly described in the Schedule hereunder written and the said 6 structures and the said well referred to above and shown on the plan hereto annexed also as referred to above. It is agreed that when the building as shown on the plan hereto is ready in all respects and occupied by the flat buyers and the shop premises buyers, the builders and/or other necessary parties shall execute a lease in respect of the building under construction as shown on the plan herein annexed in red boundary line and marked on the plan hereto annexed with the words "NEW BUILDING" for a term of 999 years at an yearly rent of Rs.1/- to be paid by the said now building occupiers. The Co-operative Housing Society or the premises Co-operative Society or the Limited Company or the Association of Apartment owners as the case may be shall be given right to use underground tank, water mains electricity, cable, telephone wires etc. under and above said land more particularly described in the Schedule hereunder written but without any right of ownership thereof. *It is distinctly understood that the entire land including all*

structures thereon shall belong to the builders abovenamed absolutely and that a lease of 999 years of the said New Buildings shall be given by the builders and/or other necessary parties to the body of the flat or premises buyers in the said New Building when the flat or premises buyers form and register themselves into a Co-operative Society, a Limited company or an Association of Apartment Owners.”

23) Mr. Tamboli would submit that the aforesaid interpretation sought to be put on the aforesaid clauses does not flow from the agreements executed between the parties, if read cumulatively. Laying emphasis on the latter part of Clause 41 (italicized portion) that the entire land including all structures thereon belonged to the builders absolutely and that only a lease of 999 years of the new building should be given by builders when the purchasers formed themselves into a Co-operative Society or a Limited Company or an association of apartment owners, Mr. Tamboli submitted that the aforesaid clauses in the agreement dated 19th June, 1982 do not derogate from the complete vesting of the entire survey No., 100, plot No. 823 admeasuring 1995 sq. yard under the agreement to sell dated 14th February, 1978, in respondent No. 2.

24) Mr. Tamboli invited the attention of the Court to the MOU dated 29th March, 2004 whereby the petitioners confirmed the

agreement to sell dated 14th February, 1978, particularly, the first clause of the said MOU, which reads as under:-

“ As the Second party desire to develop the balance portion of the said property as per the present rules and regulations of the Municipal Corporation and other Government Authorities, are also desires to acquire the confirmation of the Agreement dated 14th February, 1979 and fresh power of Attorney from the Legal heirs of Odhavji Kuvarji Anjaria, the First Party herein on the terms and conditions as well mentioned in Agreement dated 14th February, 1979 as also mentioned hereunder. The First Party have agreed and are willing to execute necessary Power of Attorney, Confirmation of the Agreement, Declaration etc for purpose of development of the caption property by the Second Party...”

25) Mr. Mayur Khandeparkar joined the issue by submitting that even the said MOU stood terminated by the petitioners. An endeavour was made to invite the attention of the court to the public notice issued on behalf of the petitioners and a legal notice dated 4th February 2010 (Exh J to the affidavit in rejoinder).

26) I am afraid that the proceedings before the Competent Authority, or for that matter this Petition, can not be converted into a proceedings for adjudicating the contentious issues between the petitioners and respondent No. 2-Developer. The fact remains that pursuant to the agreement to sell, respondent No. 2

developed the subject premises and sold the units therein to the purchasers and thus subjected himself to regime under MOFA, 1963. In this view of the matter in the instant Petition, the petitioners can not be permitted to agitate the ground that their predecessor in title had not conveyed the entire subject premises in favour of respondent No. 2.

27) The ambit of the power of the Competent Authority and the scope of inquiry under Section 11 of MOFA 1963 are well settled. The authority to grant deemed conveyance is conditioned and controlled by the primary obligation of the promoter to convey to the organization of flat purchasers right, title and interest in the land and buildings, in accordance with the agreement executed under Section 4. Competent authority cannot convey more than what the promoter had agreed to convey under the agreement executed under Section 4. What competent authority is thus required to consider is, the extent of the obligation incurred by the promoter, whether the obligation to execute the conveyance became enforceable and whether the promoter committed default in, or otherwise disabled himself from, executing the conveyance.

28) The enquiry is thus of limited nature. The competent authority cannot delve into the aspects of title. Nor the finding of

the competent authority precludes a party from agitating the grievance as to the entitlement of the organization of purchasers to have the conveyance, before the Civil Court. The remit of enquiry by the competent authority is, thus, whether the conditions stipulated for enforcement of the obligation to execute the conveyance have been satisfied and, if yes, order an unilateral deemed conveyance.

29) It is in the aforesaid context, reference to the judgment of this Court in Writ Petition No. 9705 of 2016 assumes significance. The observations of this Court in paragraph Nos. 13, 14 and 15 are material and, hence, extracted below.

“13. At the outset, it is required to be noted that it is not in dispute that the petitioners had entered into an agreement to sell dated 14 February, 1978 with the developer which is almost about four decades back. The said agreement was admittedly acted upon, on which there is no dispute, as the developer exercising complete rights unhinderedly completed the construction of the building which he ought to have conveyed in favour of the society as per the provisions and obligations as mandated under the Act. The developer after following the procedure of law formed a society on 5 December, 1984. There appeared to be no embargo at any point of time or any prohibition which was asserted by the petitioners in the developer completing the construction of the building and handing over of the tenements in favour of the flat purchasers, who are now members of the society. Further a perusal of the Memorandum of Understanding dated 29 March, 2004 which came to be entered almost after about 26 years between the petitioners and the developer would indicate and as rightly pointed out by Mr. Khandeparkar that a complete arrangement was

agreed between the said parties, at least in regard to the area ought to be entitled to the society, and the construction of the building undertaken by the developer, was not a matter of any issue or dispute between the parties.

14. Be that as it may, once the society was registered anything which may happen between the petitioners and the developer ought not to be of any relevance in so far as the right of the society, which is statutory in nature to avail of a deemed conveyance and more particularly considering the mandatory provisions of Section 10 read with Section 11 of the Act. The developer admittedly had failed to make a conveyance in favour of the society. Eventually the society was required to invoke the jurisdiction of the competent authority by making an application for a deemed conveyance on 26 July, 2013, which is granted by the impugned order. If these are the admitted facts, in my opinion, the first contention as urged on behalf of the petitioners that it was an obligation on the part of the competent authority to look into clause 14 of the agreement entered by the developer alongwith the flat purchasers namely that the agreement would not be construed a transfer, assignment, demise or conveyance of the said right, title and interest in the said land to undertake the building therein till a proper Lease for 999 years at an yearly rent of Rs.1/- to be paid by the buyer and registered in favour of a limited company, association of apartment owners or a Co-operative Housing Society as the case may be to be formed, is completely irrelevant. In fact, such a clause in my opinion, supports the flat purchasers, as the said clause reflects that a long lease for 999 years was entitled in favour of the society, such lease of 999 years would be required to be understood to be as good as an ownership being conferred on the society. There cannot be any other reading of such clause, to hold that such clause restricted the rights of the developer to convey the land in favour of the society. The contention as urged on behalf of the petitioners referring to clause 14 of the agreement is thus required to be rejected.

15. In so far as the other contention as urged on behalf of the petitioners that there is likelihood that the rights of the petitioners would be affected by the said deemed conveyance also cannot be

accepted. It appears to be quite clear that the petitioners at no point of time had asserted in any proceedings or by any other method as known to law, any of their rights either under the original agreement dated 14 February, 1978 or the subsequent MOU entered with the developer. It is only when a deemed conveyance was sought to be obtained by the society by making an application before the competent authority, the developer remaining a mute spectator, the petitioners appears to have grabbed an opportunity to assert, and probably their dead rights which they could not have at all asserted against the developer, so as to have a back door entry. The petitioners on such plea cannot in any manner create hurdles in the society obtaining a deemed conveyance in respect of the plot and which ought to have been granted by the developer to the society. If at all the petitioners had any interest in the said land which was subject matter of the agreement dated 14 February, 1978 which the petitioners had failed to assert, and such rights which today are possibly barred by limitation, could not have been asserted in this indirect manner in obstructing the society from obtaining a deemed conveyance. In my opinion, the entire endeavour of the petitioners is an indirect and a systematic attempt by which they intend to assert dead rights under the agreement to sell dated 14 February, 1978 which, as noted above, completely stood extinguished and certainly qua the society. Such back door entry to assert such unasserted rights is certainly not permissible. In my opinion, the petitioners' case is mischievous so as to cause an unwarranted harassment to the society, when the building of the society stands demolished having outlived its life. As noted above the developer has remained to be a mute spectator. I would not be surprised that having taken such position, he has put up the petitioners to oppose a deemed conveyance for extraneous considerations."

30) This Court went on to note that if at all the petitioners had any interest in the subject premises, the petitioners failed to assert the same and such rights were possibly barred by

limitation and could not have asserted in an indirect manner by obstructing the Society from obtaining a Deemed Conveyance. This Court held, in no uncertain terms, that the petitioners could not have asserted dead rights under the agreement to sell dated 14th February, 1978, which completely stood extinguished and certainly qua the society.

31) In view of the aforesaid analysis and enunciation by this Court in an earlier round of litigation between the same parties, I find it rather difficult to accede to the submission of Mr. Mayur Khandeparkar that the aforesaid observations do not preclude the petitioners from agitating the issue that under the agreement envisaged by MOFA, 1963, the respondent No. 2 did not agree to convey the entire subject premises. It is true a society of flat purchasers is entitled to obtain conveyance of only that property which the promoter/developer agreed to convey. A Society has no right to insist on the conveyance of a property beyond the obligation incurred by the promoter, under MOFA, 1963. This principle, however, in the peculiar facts of the case, does not enure to the benefit of the petitioners. The reasons are not far to seek.

32) First and foremost, the agreement under MOFA, 1963 would not derogate and detract from the title of respondent No. 2 under the agreement to sell dated 14th February, 1978. Incontrovertibly under the said agreement to sell dated 14th February, 1978, the predecessor in title agreed to sell the entire Survey No. 1000, Plot No. 823 admeasuring 1995 sq. yards. Second, if the agreement under MOFA, 1963 is read as a whole, it does not necessarily follow that the entire land was not agreed to be conveyed in favour of the society of purchasers. As extracted above, respondent No. 2 laid claim of absolute title over the entire land and all the then-existing buildings thereon and professed to grant only a lease of 999 years to the society of the flat purchasers. Therefore, the said agreement can not read in such a fashion as to vest reversionary right, title and interest in the portion of the subject premises in favour of the vendors of respondent No. 2. Thirdly, the MOU dated 29th March, 2004 confirms the execution of the said agreement to sell dated 14th February, 1978 in favour of the respondent No. 2. Even at that point of time, it appears, it was not in the contemplation of the parties that some portion of the subject premises was retained by vendor. Lastly, as indicated above, in this Petition, the question as to whether there was a complete

vesting of the title to the entire Survey No. 1000, Plot No. 823, admeasuring 1995 sq. yards (1668 sq. meters), in the respondent No. 2 cannot be delved into.

33) This leads me to the consideration of the application preferred by respondent No. 1 – Society before the Competent Authority. Undoubtedly, in the application there is reference to Survey No. 1000, Plot No. 823, CTS No. 938, admeasuring 1093.4 sq. meter only. An order of unilateral Deemed Conveyance was also sought in respect of the said property admeasuring 1093.4 sq. meters. The order passed by the Competent Authority on 29th May, 2014, indicates that after referring to the property cards, the Competent Authority granted the conveyance in respect of Survey No. 1000, Plot No. 823, CTS No.938, 938/1 to 28 admeasuring 1093.4 sq. meter. Evidently, the property card of CTS No. 938 shows the area of the said property as 1093.4 sq. meters. The area covered by the rest of the properties registered at property No. 932.1 to 932.28, was not taken into account. It is this discrepancy in the area, which the Competent Authority sought to rectify by the impugned order.

34) If the Court proceeds on the premise that title to Survey No. 1000, Plot No. 823 admeasuring 1998, sq. yards, which for

the reasons indicated above is the justifiable course, vested in respondent No. 2 developer, and the respondent No. 2, in turn, developed and agreed to convey the entire subject premises to the Society, the impugned order would fall in the realm of rectification. Even otherwise, since the petitioners do not profess to draw support and sustenance to their contention from the agreement to sell dated 14th February, 1978 executed by their predecessor in title in favour of respondent No. 2 but from the agreement executed by respondent No. 2 in favour of the prospective purchasers (under MOFA 1963), the person who can legitimately raise the grievance is the respondent No. 2. That being not the case, the petitioners cannot assail the order of rectification by submitting that the original agreement, or for that matter, the MOU dated 29th March, 2004 stood terminated. That dispute is clearly beyond the remit of the proceeding under Section 11 (3) of MOFA, 1963. The petitioners ought to have agitated the said grievance by approaching the jurisdictional Court for appropriate reliefs.

35) To add to this, the unsustainability of the petitioners' stand has been ruled by this Court in empathetic terms in writ Petition No. 9705 of 2016.

36) For the foregoing reasons, I do not find any merit in this Petition. Hence, the following order.

ORDER

- I) The Petition stands dismissed.
- II) Rule stands discharged.
- III) Parties to bear their own costs.

[N. J. JAMADAR, J.]

At this stage, the learned Counsel for the petitioners seeks continuation of the statement made on behalf of the respondent No. 1 that the respondent No. 1 would not take steps pursuant to the impugned order.

The learned Counsel for the respondent Nos. 1 and 2 opposes the prayer on the ground the re-development project has been stalled.

In the light of the nature of the controversy, I deem it expedient in the interest of justice to direct that the impugned order shall not be given effect to for a period of four weeks from today.

Ordered accordingly.

[N. J. JAMADAR, J.]