

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.555 OF 2018**

1. A. H. Wadia Trust

A public Charitable Trust registered under
The Maharashtra Public Trust Act, 1950
Under Registration No.PTR No.Bom E-470,
Having its office at :
70, Temple Bar Building, Dr. V. B. Gandhi Marg,
Mumbai 400023.

2. Jehangir Adi Wadia

3. Muncherji Nusserwanji Muncherji Cama

4. Adil Jehangir Wadia

5. Sheroo Jehangir Wadia

Plaintiff Nos.2 to 5, being the present Trustees
of the Plaintiff No.1 A.H. Wadia Trust, having their
office at 70, Temple Bar Building, Dr. V. B. Gandhi Marg,
Mumbai 400 023.

... Petitioners

Versus

1. State of Maharashtra

P.W.D. Building, High Court Compound,
Mumbai 400 023.

2. District Deputy Registrar of Co-operative Societies (II),

Eastern Suburban, Mumbai, in his capacity as Competent Authority under Section 5A of MOFA, having his office at 2nd Floor, Konkan Bhavan, Ward No.201, Navi Mumbai 614.

3. Jai Anand Co-operative Housing Society Limited, a Co-operative Housing Society, registered under the provisions of the Maharashtra Co-operative Societies Act, 1960, having its registered office at CTS No.608, 608 (1 to 4), Jawakar Lane, Chunabhatti (E), Mumbai 400022.

4. Subedar Asharam Pardeshi, Residing at Room No.11, Asharam Ramsumer Chawl, Chawl No.173/A, Azad Galli, Sion Chunabhatti, Mumbai 400022.

5. Jaiprakash Asharam Rajak, Residing at Room No.11, Asharam Ramsumer Chawl, Chawl No.173/A, Azad Galli, Sion Chunabhatti, Mumbai 400022.

6. Damayanti Asharam Rajak, Residing at Room No.11, Asharam Ramsumer Chawl, Chawl No.173/A, Azad Galli, Sion Chunabhatti, Mumbai 400022.

7. Sadhana Jethulal Kanojia,
Residing at Room No.11, Asharam Ramsumer Chawl,
Chawl No.173/A, Azad Galli, Sion Chunabhatti,
Mumbai 400022.

8. Rekha Upendra Doshi,
406-407, 4th Floor, A Wing, Bhagnagri Society,
NSM Marg, Near Chunabhatti Station, Sion,
Chunabhatti West, Mumbai 400022.

9. Payal Jignesh Shah,
Flat No.15, 1st Floor, A Wing, Plot No.208,
Meena Sadan, Sion East, Mumbai 400022.

10. Nirali Kunal Gathani,
Flat No.19-20, Ground Floor, B Wing,
Bhagnagri Society, NSM Marg,
Near Chunabhatti Station, Sion,
Chunabhatti West, Mumbai 400022.

... Respondents

Mr. Maneesh Trivedi a/w Tinaz Kapadia i/by LR & Associates for the Petitioners.
Mr. Manish Upadhye, AGP for Respondent Nos.1 and 2.
Mr. Pramod N. Patil a/w Mr. Ajit Hon a/w Mr. Shamsundar Solanke for
Respondent No.3.
Mr. Mayur Khandeparkar, Amicus Curiae a/w Ms. Anisa present.

CORAM : **ARIF S. DOCTOR, J.**
DATE : **10TH APRIL 2023**

ORAL JUDGMENT:

1. The present Writ Petition impugns an order dated 9th December 2013 passed by Respondent No. 2, granting a Unilateral Deemed Conveyance of land, being Survey No.292, Hissa No.1 (part), C.T.S. No.608, 608/1 to 4, admeasuring 1246 square yards equivalent to 1041.65 square meters, situate at Village Kurla, Chunabhatti, Mumbai Suburban District (*“the said land”*) in favour of Respondent No.3.

THE BRIEF FACTS

2. Petitioner No.1 is a Public Charitable Trust registered under the provisions of the Maharashtra Public Trust Act, 1950 and is admittedly the owner of the said land. Petitioner Nos. 2 to 5 are the Trustees of Petitioner No. 1.

3. The Petitioner No. 1 by a registered Lease dated 7th January 1967 granted a monthly lease of the said land to one Asharam Pardeshi (*“the Lessee”*). The said Lease permitted the Lessee to construct structures on the said land after obtaining the Petitioners’ permission. Clause 3 of the said Lease expressly prohibited the Lessee from subletting, mortgaging, creating any third-party rights or parting with possession of the said land, without obtaining prior permission of the Petitioners. The said Lease also provided that in the event of

determination of the said Lease, the Lessee would dismantle all structures, standing on the said land and would hand over the said land to the Petitioners in its original condition.

4. The Lessee thereafter assigned all his rights in the said land by executing a General Power of Attorney in favour of one Yogendra P. Doshi and Respondent No. 8 (Rekha Upendra Doshi) ("*the Promoters/Developers*"). The Promoters/Developers thereafter constructed a multi-storied building upon the said land. The members of Respondent No. 3 are the flat purchasers all of whom have purchased their respective flats from the Promoters/Developers under Agreements for Sale which are stated to be governed by the provisions of The Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) (Amendment) Act, 2005 ("*MOFA*").

5. Given the breaches of the said Lease committed by the Lessee, the Petitioners vide their Advocates' notice dated 2nd September 2005 terminated the said Lease. The Petitioners thereafter filed a Suit in the Court of Small Causes Mumbai, under Section 41 of the Presidency Small Causes Court Act, 1882 against the Lessee and the Promoters/Developers *inter alia* seeking quiet, vacant and peaceful possession of the said land. The Promoters/Developers in their joint Written Statement the said Suit annexed *inter alia* (i) a letter dated

27th April 1993 addressed by the erstwhile manager of Petitioner No. 1 to the Promoter/Developer granting a no objection certificate (NOC) for developing the said land and (ii) the impugned order.

6. It was pursuant to this that the Petitioners made an application under the provisions of the Right to Information Act, 2005 and obtained copies of the papers and proceedings in the Application for Deemed Conveyance filed by Respondent No.3. It was then that the Petitioners became aware for the first time that the said land had been conveyed in favour of Respondent No.3 pursuant to an Application for Deemed Conveyance to which neither were the Petitioners made a party nor served with a notice of.

7. It was thus that the present Writ Petition came to be filed. Respondent No.3 filed an Affidavit in Reply opposing the Writ Petition and essentially contending that only the Promoter as defined under Section 2 (c) of the MOFA is to be joined as a Party to an Application for Deemed Conveyance and that the landowner is neither a necessary party nor is required to be heard when deciding an Application for Deemed Conveyance. Given the issue that fell for consideration in the present Writ Petition, this Court by an order dated 17th March 2023 appointed Mr. Mayur Khandeparkar as Amicus Curiae to assist the Court in determining the issues.

SUBMISSIONS OF MR. TRIVEDI ON BEHALF OF THE PETITIONERS

8. Mr. Trivedi at the outset pointed out that there was no dispute that Petitioner No.1 was the owner of the said land. He placed reliance upon the judgment of this Court in the case of *Tushar Jivram Chauhan and Anr. Vs. The State of Maharashtra & Ors.*¹ to submit that the scheme of the MOFA contemplated that the Authority concerned was required to (a) consider the documents on record and (b) give a fair and equal opportunity of hearing to all concerned including owner, promoter, builder, and purchaser before passing an order of Deemed Conveyance. He submitted that, despite this, admittedly, the Petitioners though being owners of the said land, were neither made a party to the Application for Deemed Conveyance nor had the Petitioners been given notice of the hearing of the said Application. He submitted that therefore Respondent No. 3 had been divested of its title to its land without so much hearing the Petitioners. Learned Counsel then submitted that Respondent No. 3 had willfully and deliberately not joined the Petitioners as a party to the Application for Deemed Conveyance in order to surreptitiously obtain a Deemed Conveyance in respect of the said land knowing fully well that Respondent No.3 was not entitled to such an order in law.

1 2015(4) ALL MR 223

9. Mr. Maneesh Trivedi then invited my attention to Form VII being the requisite format in which an Application for Unilateral Deemed Conveyance was to be filed and pointed out therefrom that the Form itself specifically contemplated that the Respondent to an Application for Deemed Conveyance were "*Promoter/s Opponent/s*". Basis this, he submitted that Form VII itself provided that in certain cases a party other than the Promoter would require to be joined and heard in a Application for Deemed Conveyance. He submitted that in the facts of the present case given that Respondent No.3 had sought a Conveyance of the land of which Petitioner No.1 was the owner, it was incumbent upon Respondent No.3 to have joined the Petitioners as a party to the said Application. He additionally submitted that it was equally the duty of Respondent No.2 to have ensured that the Petitioners were parties to the said Application and had been duly served.

10. Learned Counsel then without prejudice to the above, submitted that there was no dispute that Petitioner No.1 was a Public Charitable Trust and that any alienation of the said land would necessarily require prior approval of the Charity Commissioner under Section 36 of the Maharashtra Public Trusts Act, 1950. He submitted that in the present case, it was not in dispute that no such prior approval of the Charity Commissioner had even been applied for, much less obtained. He therefore submitted that the question of alienation of

the said land in favour of anyone did not arise, and consequently, the grant of a Deemed Conveyance of the said land also did not arise absent such permission.

11. Mr. Trivedi then took pains to point out that the Developer/Promoter who was a party to the Application for Deemed Conveyance had in fact objected to the grant of the order of Deemed Conveyance. He pointed out that there was no Conveyance granted by the Petitioners in favour of the Developer/Promoter and consequently the question of any Deemed Conveyance being granted in favour of Respondent No.3 based on the title of the Promoter could never arise.

12. For all of the aforesaid reasons, Mr. Trivedi submitted that the impugned order was bad in law and that Respondent No. 2 had acted in haste and with complete non-application of mind and/or then in complete dereliction of his duty in passing the impugned order.

SUBMISSIONS OF MR. PATIL ON BEHALF OF RESPONDENT NO.3

13. Mr. Patil learned Counsel appearing on behalf of Respondent No.3 at the outset submitted that the very object for which MOFA had been enacted was to safeguard the interest of innocent flat purchasers from the malpractices

and sundry abuses by Promoters and Developers of property. He submitted that in the instant case the grievance of the Petitioners was clearly with the Promoters/Developers and the Lessee of the said land and not Respondent No.3.

14. He then without prejudice to the aforesaid submitted that only the Promoter was required to be heard in an Application for Deemed Conveyance. In support of his contention, he invited my attention to the definition of “Promoter” under MOFA and pointed out that Sub Section (4) of Section 11 contemplated that before passing an order of Deemed Conveyance, a reasonable opportunity of being heard was required to be given to the Promoter only and no one else. He submitted that in the instant case, Respondent Nos.8 and 9, being the Promoters/Developers, were admittedly heard by Respondent No. 2 before the impugned order was passed. He submitted that neither Section 11 read with Section 2(c) of MOFA, nor the Rules framed thereunder required and/or stipulated issuance of a notice to any person or entity other than a Promoter. He therefore submitted that the impugned order had been passed in full compliance with the provisions of Section 11 of MOFA.

15. He then, without prejudice to the aforesaid contention submitted that in the present case, a public notice had infact been issued and published in the newspapers. He therefore submitted that the Petitioners were deemed to

have notice of the Application for Deemed Conveyance. He submitted that the Petitioners could not therefore be heard to say that no notice of the hearing of the Deemed Conveyance Application had been given. Learned Counsel submitted that the impugned order had been passed in full compliance with the provisions of Section 11 of the MOFA. He submitted that the Petitioners had not challenged the provisions of Section 11 of the MOFA which in terms provided only for a Promoter to be given a reasonable opportunity of hearing in an Application for Deemed Conveyance.

16. Mr. Patil then, without prejudice, submitted that the Writ Petition suffered from gross delay and laches. He pointed out that the notice of termination in respect of the said Lease was issued in the year 2005 and hence the Petitioners were aware that the construction was being carried out on the said land since the year 2005. He submitted that despite this the Petitioners did not take any steps to stop the said construction. He submitted that though the Petitioners had become aware of the impugned order on 18th August 2016, the Petitioners did not file the present Writ Petition until 19th December 2017 i.e., after a delay of over one year and four months. He submitted that there was absolutely no explanation for the delay of one year and four months in filing of the present Writ Petition. He placed reliance upon a judgment of this Court in the case of *Nalini Thakkar and Others Vs. Mulund Ambe Mahal Co-op. Hsg.*

*Soc. Ltd. and Others*² to submit that a party who claims to be the owner of a property and who has slept over its rights for several years, cannot be permitted to assert their dead rights by challenging the Unilateral Deemed Conveyance. He pointed out that this judgment had been confirmed by the Hon'ble Supreme Court.

17. Learned Counsel then submitted that the Petitioners' grievances were of a civil nature and were *qua* the Lessee and the Promoter/Developer. He pointed out that the Petitioners had themselves averred in the Writ Petition that the Petitioners had under a registered Lease Deed dated 7th January 1967, granted the Lessee, a Lease in respect of the said land with the permission to erect structures thereon. He submitted that by the letter dated 27th April 1993, the Petitioners had granted an NOC to the Lessee for developing the said land and that the MCGM had duly approved the said plans. He submitted that the contention of the Petitioners that the said letter was fraudulent, unauthorized and that the Petitioners' manager did not have the authority to issue the said letter, were not issues which could be gone into by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. He submitted that these issues were all civil disputes which would require to be determined by the appropriate Civil Court. Learned Counsel then submitted that it was well settled

2 2021 SCC OnLine Bom 6590

that the Competent Authority in exercising its jurisdiction under Section 11 of the MOFA does not decide questions of title. He submitted that all the questions of title can only be decided by the Competent Civil Court. In the instant case, he submitted that the Petitioners were infact asserting title to the said land and thus the same could only be adjudicated upon in an appropriate civil proceeding. In support of his contention, he placed reliance upon the following judgments: -

- (i) *Angeline Randolph Pereira Vs. Suyog Industrial Estate Premises Co-operative Society Ltd.*³
- (ii) *Shri Vishnu Krishna Dhadphale (deceased) through Shri Hemant Vishnu Dhadphale Vs. Competent Authority & District & Ors.*⁴

18. Learned Counsel then submitted that if the impugned order was set aside, grave prejudice would be caused to the members of the Respondent-Society, since several of them had taken loans from the banks and financial institutions for purchase of their respective flats. He submitted that it was common knowledge that banks and financial institutions grant loans/financial assistance only after ascertaining the title of the property. He submitted that in the instant case, the respective banks/financial institutions had granted loans/financial assistance to the flat purchases after duly ascertaining the title of

3 2018 SCC OnLine Bom 687 : (2018) 3 AIR Bom R 825

4 2017 SCC OnLine Bom 4834

the said land and they did not find anything on record to indicate a claim adverse to that of the Petitioners in respect of the said land. He made this submission without prejudice to the contention that the Petitioners were not required to be heard under Section 11 of the MOFA. For all these reasons, he submitted that the present Writ Petition be dismissed with costs.

SUBMISSIONS OF MR. KHANDEPARKAR, *AMICUS CURIAE*

19. Mr. Khandeparkar, learned Amicus Curiae at the outset submitted that it was only too well settled that in an Application for Unilateral Deemed Conveyance, what can be conveyed is only the right, title and interest of the Promoter and nothing more. In support of his contention, he placed reliance upon the judgment of this Court in the case of *Surendra Chunilal Gupta Vs. Hemresha Co-operative Housing Society Limited and Ors.* while referring to the judgment of *Mazda Constructions* 2013 (2) ALL MR 278, as follows: -

"...that what is to be conveyed under a deemed conveyance is an unilateral act which enables the flat purchasers to acquire the promoter's right, title and interest in the land and the building. Therefore it cannot be said that an unilateral deemed conveyance conveys something more than what belongs to the promoter..."

Learned Amicus Curiae submitted that in the facts of the present case it might not be necessary for this Court to decide the larger issue as to

whether Petitioner No.1 as the landowner would be required to be made a party and/or given notice of the Application for Deemed Conveyance, since the impugned order granted to Respondent No. 3 title to the property, which the Promoters themselves did not have. In support of his contention, he pointed out that it was an admitted fact that (a) the Petitioners had granted only a Lease of the said land to the said Lessee and (b) the Lessee had assigned all its rights to the Promoters/Developers. He, therefore, submitted that at the very highest, Respondent No. 3 could only be granted a Lease of the said land and nothing more since the Promoter/Developer did not themselves have a Conveyance of the said land. He submitted that on this ground alone, the impugned order was vulnerable and liable to be set aside.

20. Learned Amicus Curiae then in answer as to whether the owner of land in respect of which a lease had been granted would have to be joined as a Party to an Application for Deemed Conveyance, submitted that the same would depend on the facts of each individual case. He submitted that in cases where a Lessor had permitted the construction and/or sale of the building in question, then the provisions of Section 11 of MOFA would apply. He submitted that in such cases the society/ flat purchasers would have the right to invoke the provisions of MOFA and seek a Unilateral Deemed Conveyance against the Lessor. He submitted that this was primarily because Section 16 of MOFA

expressly provided that the provisions of MOFA were in addition to the provisions of the Transfer of Property Act, 1882. He submitted that when deciding whether a Lessor could be regarded as a Promoter, two possible scenarios could arise (i) where the Lessor has carried out or caused the construction in question to be carried out and (ii) where only the Lessee has carried out the construction in question independent of the Lessor. He submitted that in the first scenario it would be necessary for the society/flat purchasers to join the Lessor as a party to the Application for Deemed Conveyance and for the Lessor to be given a reasonable opportunity of hearing before any order is passed. In the second scenario where only, the Lessee had carried out the construction, the society/flat purchasers were not required to join the Lessor as a party to an Application for Deemed Conveyance. He submitted in the second scenario, the the society/flat purchasers would be entitled to a Unilateral Deemed Conveyance pursuant to which the society/flat purchasers would step into the shoes of the Lessee. He submitted that such transfer although under the provisions of MOFA would be subservient to the Lease Deed. He submitted that in such cases, the rights of the Lessor to proceed against the Lessee and/or the society under the relevant provisions of law *inter alia* the Presidency Small Causes Court Act and/or the Transfer of Property Act would remain unaffected.

21. Learned Amicus Curiae then submitted that the fact that Petitioner No.1 was a Public Charitable Trust, was also another important aspect to be considered. He submitted that any alienation of land by the Petitioners could never have been done without the prior sanction of the Charity Commissioner under Section 36 of Maharashtra Public Trusts Act, 1950. He submitted that in the present case, it was common ground that such sanction had never been granted. He submitted that this aspect also ought to have been considered by Respondent No. 2 before passing the impugned order since by virtue of the impugned order, a Public Charitable Trust was divested of its right, title and interest in its own land.

22. Learned Amicus Curiae then submitted that Respondent No. 2, when discharging its functions and duties in deciding an Application for Deemed Conveyance, did not have the power to rewrite a contract. He submitted that Respondent No.2 was only required to complete the process of Unilateral Deemed Conveyance under Section 11 in accordance with Section 4 of the MOFA of Agreement. He submitted that Respondent No. 2 when deciding an Application for Unilateral Deemed Conveyance was required to ascertain viz.

- a. Whether the Party/Entity from whom a Unilateral Deemed Conveyance was sought was the Promoter as contemplated under Section 2(c) of MOFA.
- b. Whether the documents relied upon and annexed to the Application for Deemed Conveyance conveyed title to the Promoter and support the prayer for Deemed Conveyance of the Promoters title.
- c. Whether there had been any default in execution of Deemed Conveyance on the part of the Promoter.
- d. Whether the area in respect of which Deemed Conveyance was sought for was in terms of the Section 4 Agreement or the Government Resolution of 22nd June 2018.

REASONS AND FINDINGS

23. I have heard learned Counsel for the Parties as also learned Amicus Curiae and considered the case laws cited and have no hesitation in holding that the impugned order deserves to be set aside for the following reasons, viz.

- A. The position in law is well settled i.e., the society/flat purchasers in an Application for Unilateral Deemed

Conveyance are only entitled to whatever right, title and interest the Promoter has in the said land. In the facts of the present case it is not in dispute that the Petitioners have only granted a Lease in respect of the said land to the Lessee. The Lessee in turn has assigned all its right, title and interest in the said land to the Promoters/Developers. Thus, even assuming that such assignment was valid, all that Respondent No.3 could have sought for in the Application for Deemed Conveyance was for a Lease of the said land and not a Conveyance. Respondent No. 3 however, whether consciously or then ill-advisedly in the Application for Deemed Conveyance sought a Conveyance of the said land in its favour and not a Lease. The submission of learned Amicus Curiae that the impugned order is vulnerable on this ground alone is therefore one which is not without merit, and I am in full Agreement with the same. The impugned order in my view deserves to be set aside on this ground alone since the effect of impugned order is *firstly*, to convey to Respondent No. 3 right, title and interest in the said land which the Lessee and/or the Promoter/Developer themselves did not have

and *secondly* to divest the Petitioners of divested its right, title and interest in the said land, without so much as affording the Petitioners an opportunity of a hearing.

- B. Additionally, I find that Respondent No. 2 has acted with complete non application of mind or then in willful dereliction of its duty. It is well settled that the jurisdiction of the competent authority in deciding an Application for Deemed Conveyance is summary and not ministerial. This necessarily postulates that the competent authority is *inter alia* required to apply its mind and (i) verify the eligibility of the Applicant (ii) examine the documents annexed to the Application (iii) ascertain whether the documents annexed to such Application establish the title of the Promoters (iv) whether the prayer for Deemed Conveyance is in consonance with the documents/agreements annexed to the said Application. In the present case it is indeed befuddling as to how Respondent No. 2 has granted a Unilateral Deemed Conveyance when *ex facie* the Promoters themselves were only at the highest, Lessees of the said land (assuming the assignment in their favour by

the Lessee was valid). It is for this reason I find that Respondent No. 2 has acted with complete non application of mind which has resulted in manifest injustice to the Petitioners who have been deprived of their title to the said land without even being made a party to the said Application and without being heard.

- C. The contention of learned Counsel for Respondent No. 3 that no one other than the Promoter is to be joined as a party or heard in an Application for Deemed Conveyance is entirely untenable. This Court in the case of ***Tushar Jivram Chauhan and Anr.*** (supra) expressly set out that the scheme of MOFA contemplates that the Competent Authority is required to give a fair and equal opportunity of hearing to all concerned, including owner, promoter, builder, and the purchaser of the said property in question. Form VII also sets out that the counter party to an Application for Deemed Conveyance is “*Promoter/s Opponent/s*” thus making it clear that the Promoter is not the only counter party in an Application for Deemed Conveyance. An Applicant who seeks a Deemed Conveyance would

therefore necessarily have to annex all the relevant documents which establish the title of the Promoter and where necessary give notice to such parties of the said Application for Deemed Conveyance as also join any person/entity whose right, title and interest in the said land sought to be conveyed is likely to be affected by an order of Unilateral Deemed Conveyance. In the present case, it was more so incumbent upon Respondent No. 3 to have made the Petitioners a party to the Application given the submission of Learned Counsel for Respondent No. 3 that the Petitioners' conduct was such that the Petitioners caused construction on the said land and would therefore fall under the definition of Promoter under Section 2 (c) of MOFA.

- D. The contention of learned Counsel for Respondent No. 2 that the Petitioners' claim is essentially a civil claim in which the Petitioners are asserting title to the said land is also entirely without merit. While there is no dispute with regards to the proposition of law laid down in the judgments relied upon by learned Counsel for Respondent

No. 2, I find that the same is entirely inapplicable to the facts of the present case since the Petitioners' challenge is to the legality of the impugned order which is passed in complete disregard of the relevant provisions of MOFA. The challenge to the impugned order is on the ground that the same has been issued with total non-application of mind, in violation of the principles of natural justice and relevant provisions of MOFA. Similarly, the contention of Respondent No. 2 that the Writ Petition is barred by limitation is also equally without basis. In the present case, the delay claimed by Respondent No. 2 in its Affidavit in Reply is of about one year and four months. While this itself is by no stretch of imagination delay of a nature so as to disentitle the Petitioners to the relief sought for. It is equally well settled law that there is no rule of law, which says Courts under Article 226 of the Constitution of India cannot enquire into claims despite the passage of time where the illegality is patent. The test is to see whether the illegality complained of is manifest and whether the same can be sustained solely on the ground of laches. The test is not the physical running of time but the fact that justifiable

reasons exist for warranting a Court's action in cases where injustice has been done or justice has been denied. All that the Court has to see is whether the delay and laches on the part of the Petitioners is such as to disentitle the Petitioners of the relief claimed. It is now well settled that where a case has been made out to merit interference under Article 226 relief would not be denied solely on the ground of delay. The judgement in the case ***Nalini Thakkar and Others*** (supra) upon which reliance was placed by Respondent No. 3 is also of no assistance to Respondent No. 3 and is entirely inapplicable to the facts of the present case. The Petitioner in that case unlike in the present case, had in the year 1978 entered into an Agreement for Sale with the Developer. It was in this context that this Court *inter alia* observed as follows, viz.

- "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 Sale 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."

Thus clearly the said judgment is entirely inapplicable to the facts of the present case.

24. In view of the aforesaid findings, the present Writ Petition is allowed.

25. The order dated 9th December 2013 is set aside. Needless to state, Respondent No. 3 is at liberty to file a fresh Application for Deemed Conveyance should Respondent No. 3 so choose to.

26. Before parting with this judgment, I must record my appreciation for the most able assistance rendered by the Amicus Curiae in presenting the case and the law without, at any stage, adopting an adversarial stance.

(ARIF S. DOCTOR, J.)