



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7668 OF 2023

Prestige Garden A-1 CHSL	)	
Through Chairman/ Secretary,	)	
Situated on Final Plot No. 412,	)	
Eastern Express Highway,	)	
Village Panchakhadi District Thane	)	
Thane 4000 601.	)	<u>...Petitioner.</u>

Versus

- | | | | |
|----|--|---|--|
| 1. | State of Maharashtra |) | |
| | Through Office Government Pleader, |) | |
| | Appellate Side, High Court, Bombay. |) | |
| | |) | |
| 2. | Competent Authority, District Deputy |) | |
| | Registrar, Co-Operative Societies, Thane |) | |
| | |) | |
| 3. | M/s. Prestige Developers |) | |
| | B-2, 1 st Floor, Prestige garden, |) | |
| | Plot no.412, Eastern express Highway, |) | |
| | Almeida Raod Panchapakhadi, |) | |
| | Thane-400 601. |) | |
| | |) | |
| 4. | Aditya D Kedia |) | |
| | Partner of M/s Prestige developers |) | |
| | B-2, 1 st Floor, Prestige garden, |) | |
| | Plot no.412, Eastern express Highway, |) | |
| | Almeida Raod Panchapakhadi, |) | |
| | Thane-400 601. |) | |
| | |) | |
| 5. | Purshotamdas Kedia |) | |
| | M/G of M/s Nitin Casting Pvt. Ltd |) | |
| | B-2, 1 st Floor, Prestige garden, |) | |
| | Plot no.412, Eastern express Highway, |) | |
| | Almeida Raod Panchapakhadi, |) | |
| | Thane-400 601. |) | |
| | |) | |

6. Suraj Kumari Shantikumari Kedia)
M/G of M/s Nitin Casting Pvt Ltd)
B-2, 1st Floor, Prestige garden,)
Plot no.412, Eastern express Highway,)
Almeida Raod Panchapakhadi,)
Thane-400 601.)
)
7. Madhukumari Kedia)
M/G of M/s Nitin Casting Pvt Ltd)
B-2, 1st Floor, Prestige garden,)
Plot no.412, Eastern express Highway,)
Almeida Raod Panchapakhadi,)
Thane-400 601.)
)
8. Bharti Viswanath Kedia)
M/g of M/s Nitin Casting Pvt Ltd)
B-2, 1st Floor, Prestige garden,)
Plot no.412, Eastern express Highway,)
Almeida Raod Panchapakhadi,)
Thane-400 601.)
)
9. Jagdish Prasad)
M/G of M/s Nitin Casting Pvt Ltd)
Plot no.412, Eastern express Highway,)
Almeida Raod Panchapakhadi,)
Thane-400 601.)
)
10. M/s Rajshela Construction Private Ltd.)
Having office at M/s Nitin casting Ltd.)
3rd floor, Almeida road, Thane- 400 601.)
)
11. Harmony Co-operative Housing Society Ltd.)
Eastern express highway, Almeda Road)
Panchpakadi Thane-400 601.)
)
12. Ambience Co-operative Housing Society Ltd.)
Eastern express highway, Almeida Road)
Panchpakadi Thane-400 601.)
)
)
13. Prestige Garden B-1 and B-2 Co-operative)
Housing society Ltd., Eastern Express)
Highway, Almeida Road Panchakhadi)

- District Thane, Thane 4000 601.)
)
14. Prestige Garden A-2 Co-operative housing)
society Ltd, Eastern Express Highway,)
Almeida Road Panchakhadi Thane)
Thane 4000 601.)
)
15. M/s Protective Mercantile and trading)
Co. Ltd., Having office at M/s.)
Nitin Casting Ltd, 3rd Floor,)
Almeida road, Thane-400 601.) **...Respondents.**

*Mr. Harjot Singh i/b Raval Shah & Co., for the petitioner.
Ms. Madhubala Kajle, B panel Counsel and Ms. Vrishali Raje, AGP for the
respondent-State.
Mr. Rohan Cama and Kyus Modi i/b Nitin Deshmukh for respondent no. 3.
Mr. Prasad Dhakephalkar, Senior Advocate along with Mr. Vikramjit Garewal,
Dipesh Yadav i/b Narayan and Narayan for respondent no. 10.*

Coram : Sharmila U. Deshmukh, J.

Reserved on : March 8, 2024

Pronounced on : March 28, 2024.

JUDGMENT :

- 1. Rule.** Rule made returnable forthwith and heard finally with the consent of parties.

CHALLENGE IN THE PETITION:

- 2.** Exception is taken to the certificate of unilateral deemed conveyance issued by the District Deputy Registrar, Co-operative Societies and Competent Authority under the provisions of Section

11 of the Maharashtra Ownership Flats (Regulations of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA). By the impugned Order and Certificate, the Society is granted unilateral deemed conveyance of the constructed area being 3461.43 sq. mtrs.

FACTUAL MATRIX:

3. From the record the facts which are required to be explicated are that the Petitioner-Society is constructed on Final Plot No.412, situated at Eastern Express Highway Village, Panchpakadi, Taluka and District: Thane. The predecessor in title of Respondent No.10 was the owner of larger lands bearing Final Plot Nos.410 and 412 of TPS I Thane admeasuring 21210.51 square meters. Phase wise development of the larger lands was proposed and the development rights were entrusted by Respondent No.10 to Respondent No.15, who in turn assigned development rights in respect of portion of the larger land to the Respondent No.3. The Petitioner-Society is one such construction by the Respondent No.3 under the development rights assigned by the Respondent No.15. There are other structures erected by the Respondent No.15 on other portions of the larger land. It appears that the development is proposed on the larger land which is a multi building layout.

4. The Respondent No.3 who was assigned development rights in respect of portion of the property executed individual Agreements with the Flat Purchasers for sale of residential flats under Section 4 of MOFA in A-1 Wing of the proposed building known as "Prestige Garden". The Agreements describe the portion of the larger land being developed by Respondent No.15 as Property No I and the portion being developed by Respondent No.3 as Property No II. The Petitioner-Society is constructed on Property No II consisting of ground floor, stilt area and covered stilt parking 8 number plus 7 shops and upper 12 floor, open space parking area etc having 57 flats and 7 shops.

PROCEEDINGS BEFORE THE COMPETENT AUTHORITY:

5. Application was preferred by the Petitioner-Society under Section 11(3) of MOFA on 7th November, 2019 seeking issuance of certificate of unilateral conveyance of land admeasuring 1490.89 sq. mtrs alongwith the building constructed thereon based on architect's certificate dated 16th October 2018. Alongwith the owners of property, the developers as well as the other co-operative societies situated on the larger land were arrayed as Respondents. It was contended that the Society was registered in the year 2010 and there was failure to convey the land and building for about eight years.

Legal notice dated 22nd October, 2018 came to be issued to the Respondent owners as well as the developer calling upon them to convey the land and building to the Society, which was not complied with. Resultantly, the application was filed under Section 11(3) of MOFA. The Architect's certificate annexed to the application gives the statement of plot area, the FSI and tenement thus:

SOCIETY NAME & ADDRESS

Building No.A1 "Prestige Garden A 1 CHSL" in layout of plot No. 412 Town Planning Scheme No. 1, Eastern Express Highway, Thane (W) has been developed and constructed by M/s. Nitin Casting Ltd.

A)	Plot Area Statement of Society	Area in sq.mt.
1)	Total Plot area as per survey carried out in possession of society.	1132.78
2)	Ground / plinth area of buildings	451.73
3)	Total built up area as per O.C. granted u/r no TMC/TD-DP/TPS/2175/V.P. No. 93/062 dtd. 29/08/2005.	1132.78
4)	Common open space 15%.	2914.30
5)	Common amenity space.	Nil
6)	Construction on open space if any	Nil
7)	If there are more than one societies on the Sanctioned layout plan, then proportionate area to be conveyed including open and amenity space.	N.A. 5 Societies
	A) Total open space area.	262.87
	B) Area under internal road	358.10
	C) Area under common amenities	Nil
	Total A+B+C	620.97
	D) Net plot area including proportionate Area to be transferred to Society open and amenity space (1132.78+620.97)	1753.75

B) FSI Statement :

1)	Allowed FSI and area in sq.mt.	3461.43
2)	Consumed FSI and area in sq.mt	3461.43
3)	Balance FSI and area in sq.mt.	Nil

C) Tenement Statement :

1)	Tenement of Society as per sanctioned plot	7 nos
2)	Tenement of Society at actual	57 nos
3)	Tenement as per complete on certificate.	64 nos

RESPONSE OF THE RESPONDENT NO.3 AND RESPONDENT NO. 10:

6. The stand of the Respondent Nos.3 and 10 while opposing the application was more or less common. Referring to the various clauses of the Agreement for sale executed with the individual flat purchasers, it was contended that the land is to be conveyed to the Apex Society after the full development of the larger land. Placing reliance on the provisions of Real Estate (Regulation & Development) Act, 2016, it was contended that in case of development of multiple building layout, in the first instance the structure is to be conveyed and land is required to be conveyed to the Apex Society. The Respondent No.3 expressed its willingness to execute conveyance of the building in favour of the Petitioner-Society and after full development of the larger land, to convey the land in favour of the Apex Society formed of all the Societies of all the buildings. It was contended that there was no basis for seeking conveyance of the area

of 1490.89 square meters.

IMPUGNED ORDER DATED 18TH DECEMBER, 2019:

7. The Competent Authority appointed under Section 5A of MOFA after scrutinizing the record and considering the submissions of the parties came to a conclusion that the Petitioner Society is duly registered under Section 10 of MOFA and the promoters had failed to comply with Rule 9 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1964 (Rules of 1964) and to convey his title within the prescribed period of four months. The Competent Authority held that the Architect's certificate submitted by the Petitioner mentions constructed area of 3461.43 square meters for the conveyance of which the Respondents have no objection and it would be appropriate to grant conveyance of the constructed area of 3461.43 square meters. It was held that the Petitioner Society was part of larger layout which layout is in the process of development and it would be appropriate to convey the land and common amenity spaces after the development of the layout of the Apex Society. Broadly the findings of the Competent Authority can be summarized thus:

- . The Respondents have failed to comply with their obligation under Rule 9 of The Maharashtra Ownership Flat

(Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1964 by not conveying their title within a period of four months from date of registration of the Petitioner-Society.

. The Petitioner-Society is part of layout in which there are other buildings constructed who have formed their independent co-operative society and the development of the entire layout is not completed.

. It will be appropriate to convey the land underneath the building, the open spaces, common amenities, roads etc after completion of development of the entire layout to the Apex Society.

DEVELOPMENT SUBSEQUENT TO THE PASSING OF THE IMPUGNED ORDER:

8. Pursuant to the certificate issued by the Competent Authority, the Deed of Unilateral Deemed Conveyance came to be registered on 13th October, 2020 bearing Registration No.TBB-9/13110 of 2020 conveying land admeasuring 3461.43 square meters to the Petitioner-Society.

9. By communication dated 27th May, 2021, the Respondent No. 10 pointed out that the conveyance has been wrongly granted in respect of the land admeasuring 3461.43 square meters. Resultantly, the District Deputy Registrar brought the error to the notice of the

Petitioner-Society vide communication dated 10th June, 2021 directing them to register the enclosed Deed of Rectification which was in consonance with the order of the Competent Authority dated 18th December, 2019 granted conveyance only in respect of the constructed area.

10. In accordance with the directions of the District Deputy Registrar, the Petitioner-Society executed Deed of Rectification dated 4th August, 2021 correcting the description of the conveyed property from "land bearing Final Plot No.412 admeasuring 3461.43 square meters" to the "right, title and interest in 3461.43 square meters of constructed area in the building A-1 standing on portion of Final Plot No 412". The Deed of Rectification was executed by the Chairman and Secretary and witnessed by two members of the Managing Committee.

11. After having executed the Deed of rectification in the year 2021, the present petition has been filed on 8th February 2023 taking exception to the order dated 18th December 2019 passed by the Competent Authority as well as the Deed of Unilateral Deemed Conveyance dated 13th October 2020 and the Deed of Rectification dated 4th August 2021.

SUBMISSIONS:

12. Heard Mr. Harjot Singh, learned counsel appearing for the petitioner, Mr. P. K. Dhakephalkar, learned Senior Advocate appearing for respondent no.10, Mr. Rohan Cama, learned counsel appearing for respondent no.3 and Ms. Madhubala Kajle, learned AGP for the respondent-State.

13. Mr. Singh, learned counsel appearing for the petitioner would submit that the obligation of promoter was to convey the land and building under the provisions of section 11 of the MOFA. Pointing out to the architect's report at page no. 77, he would submit that by the application filed under Section 11 of MOFA, the Petitioner-Society had sought conveyance of an area of 1132.78 sq.mtrs as per the OC granted which showed the total built up area of 1132.78 sq. mtrs along with the area of internal road admeasuring 358.10 sq. mtrs. Pointing out to the flat purchasers agreement, he would submit that clauses 41 and 44 of the flat purchasers agreement would indicate that even separate conveyance can be executed in favour of the independent co-operative society and that the petitioner-society which had been formed can be granted conveyance of the land as well as building. He submits that the building was constructed in the year 2000 and the agreements were executed in the year 2005 and till the

year 2019, the promoter had not complied with his obligations.

14. *Per contra* Mr.Dhakephalkar, learned Senior Advocate appearing for respondent no.10 submits that it is clear from the Competent Authority's order that what was granted was only the conveyance of constructed area. He submits that in respect of other three societies constructed on the same plot, only the structure had been conveyed. He submits that by virtue of the unilateral deemed conveyance, the petitioner-society had executed conveyance in respect of the land admeasuring 3461.43 sq.mtrs which was thereafter rectified by virtue of the rectification deed executed by the petitioner-society itself. He submits that the recital in the deed of rectification shows that the petitioner-society had admitted that description of the subject matter appearing in the unilateral deed of conveyance is erroneous and not consistent with the certificate issued under section 11(4) of MOFA and is liable to be rectified. He submits that the cause title would show that other societies have also been impleaded in the application which shows that land has not been conveyed to the other societies. Pointing out to the decision of this court in the case of ***Mazda Construction Company v. Sultanabad Darshan CHS Ltd [2012 SCC OnLine Bom 1266]*** he submits that learned Single Judge of this court has clearly held that provisions of MOFA provide for grant or

conveyance in terms of the agreement between the parties. He submits that in the present case, area of the internal road is also sought to be conveyed and learned Single Judge in the case of ***Mazda Construction (supra)*** has held that if the claims in respect of common amenities are contested, the same should not have been included in the area forming part of deemed conveyance. He would further submit that the plan would indicate that the petitioner-society is a part of larger plot which is yet to be developed. Pointing out to the findings of Competent Authority, he would submit that the Competent Authority has considered the fact that the entire lay out is yet to be developed and accordingly only the constructed area has been conveyed to the petitioner-society, which is in accordance with the terms of the agreement of flat purchasers. In support of his contentions, he relied upon the decision of ***Mazda Construction Company v. Sultanabad Darshan CHS Ltd [2012 SCC OnLine Bom 1266]***.

15. Mr. Cama, learned counsel appearing for respondent no.3 would submit that petition itself is not maintainable firstly on the ground of estoppel and secondly on the ground of delay and laches. He submits that the order of competent authority was passed on 18th February 2019 and thereafter unilateral deed of conveyance was executed on

13th October 2020 and the deed of rectification is executed on 4th January 2021 whereas the present petition has been filed on 8th February 2023. He submits that having taken benefit of the concession given by respondent no. 3 as regards the constructed area, the petitioner-society now cannot seek to challenge the order dated 18th December 2019. He would submit that the party cannot be permitted to approbate and reprobate and once having executed the deed of rectification, it is now not open to challenge the order of competent authority. He draws attention of this court to the deed of rectification and would submit that the present petition has been affirmed by one of the witnesses to the deed of rectification. He submit that the entire petition is silent and there is no explanation given for the delay in filing present petition nor any explanation has been offered as to why after having executed the deed of rectification, the order of competent authority is now being challenged. He would further submit that apart from the challenge to the order of competent authority, the petitioner-society also seeks to set aside the registered deed of rectification which cannot be granted in writ jurisdiction and the proper course is to adopt appropriate remedies under the civil law. He submits that the entire lay out is about 1 lakh square feet and Clauses 41 and 44 of the flat purchasers agreement when read together makes it clear that in respect of

Property No.I, it was agreed that either there should be a single co-operative society or a corporate body or separate co-operative societies for different structures, however, conveyance shall be executed only after the entire property is fully developed. He submit that it is therefore clear that what was envisaged by the agreement was the formation of apex federation or society to which the property was to be conveyed. He would point out the provisions of RERA Act and Rules framed thereunder and would submit that the conveyance of constructed structure is permissible under RERA. He would further submit that the certificate issued by the competent authority has rightly granted the conveyance of constructed structure after taking into consideration the relevant clauses of agreement and statutory provisions which permit only the constructed structure to be conveyed. He submits that as held in the case of ***Mazda Constructions (supra)***, proper remedy is to file a suit in respect of the right, title and interest in the land. In support of his contentions, Mr. Cama relied upon following decisions :

- [a] ***State of Punjab v. Dhanjit Singh Sandhu [(2014) 15 SCC 144];***
- [b] ***Sunil Subhash Ekhande v. State of Maharashtra [2023 SCC OnLine Bom 1577];***
- [c] ***Union of India v. N. Murugesan [(2022) 2 SCC 25];*** and
- [d] ***Rajasthan State Industrial Development and Investment Corp.***

v. Diamond & Gem Development Corp. [(2013) 5 SCC 470].

16. In rejoinder, Mr. Harjot Singh, learned counsel appearing for the petitioner would submit that there is no estoppel against statute as the statutory provisions enjoins upon the promoter to convey the land and structure. He would further submit that necessary explanation for challenging the order of Competent Authority of 2019 is pleaded in the petition as to the entitlement of petitioner-society was to the land as well as to the building. He submits that in the year 2005, the buildings have been constructed and after a long time if the re-development is undertaken, the conveyance is required not only of the land but structure. He would further submit that although the agreement provides for the conveyance after the entire property is developed, rights of the petitioner-society cannot be prejudiced and it is the obligation of the promoter to convey the land as well as the building within the stipulated period.

REASONS AND ANALYSIS:

17. It appears that the Petitioner-Society is part of larger layout being developed by the Respondent No.10 through the Respondent No.15. On certain portion of the larger land, the development rights were entrusted to the Respondent No.3, who has constructed the

Petitioner-Society and have entered into the Flat Purchasers Agreements with the individual flat purchasers. The Petitioner-Society came to be duly registered in the year 2010 under the provisions of Maharashtra Co-operative Societies Act, 1960. Alleging non compliance by the promoters in conveying their right, title and interest in the land and building, the Competent Authority was approached under Section 11(3) of MOFA seeking conveyance of land admeasuring 1,490.89 square meters alongwith the building constructed on Final Plot No 412.

18. The statutory scheme of Section 11 of MOFA casts an obligation upon the Promoter to take all necessary steps to complete his title and convey to the organisation of person, who takes flats, which are registered either as cooperative society or company or association of apartments, his right, title and interest in the land and building by executing a document in that regard in accordance with the agreements executed under Section 4 of the MOFA. What is of significance is that the obligation is cast upon the Promoter under Section 11 of MOFA to convey "*his right, title and interest in the land and building*" in accordance with the agreement executed under Section 4.

19. In event of non compliance of the obligation by the Promoter to

convey his title to the Society, the provisions of sub section (3) of Section 11 permits the cooperative society to approach the Competent Authority seeking certificate that the Society is entitled to have the unilateral deemed conveyance executed in their favour and to have it registered.

20. Under Sub Section (4) of Section 11, the Competent Authority, upon receipt of an application through members of co-operative society under sub-section (3), is required to conduct an enquiry and after verifying the authenticity of the documents submitted, by giving the Promoter a reasonable opportunity of being heard, after arriving at a satisfaction as to the entitlement of the Society, shall issue a certificate conveying the right, title and interest of the promoter "*in the land and building*" in favour of the Applicant as deemed conveyance. Section 11 of MOFA reads thus :

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

(1) A promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid or to an association of flat takers [or apartment owners] , his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed under section 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.

(2) It shall be the duty of the promoter to file with the

Competent Authority, within the prescribed period, a copy of the conveyance executed by him under sub-section (1).

(3) If the promoter fails to execute the conveyance in favour of the Cooperative society formed under section 10 or, as the case may be, the Company or the association of apartment owners, as provided by sub-section (1), within the prescribed period, the members of such Co- operative society or, as the case may be, the Company or the association of apartment owners may, make an application, in writing, to the concerned Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the society or the Company or the association, who have purchased the flats and all other relevant documents (including the occupation certificate, if any), for issuing a certificate that such society, or as the case may be, Company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.

(4) The Competent Authority, on receiving such application, within reasonable time and in any case not later than six months, after making such enquiry as deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, shall issue a certificate to the Sub-Registrar or any other appropriate Registration Officer under the Registration Act, 1908, certifying that it is a fit case for enforcing unilateral execution, of conveyance deed conveying the right, title and interest of the promoter in the land and building in favour of the applicant, as deemed conveyance.

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

21. The Rules of 1964 have been framed and Rule 5 prescribes the

particulars to be contained in the agreement which is required to be in accordance with Form V. Clause 13 of the model Agreement provides for the covenant as to the conveyance which reads thus:

“13. Unless it is otherwise agreed to by and between the parties hereto the Promoter shall, within four months of registration of the Society or Limited Company, as aforesaid cause to be transferred to the Society or Limited Company all the right, title and the interest of the Vendor /Lessor/Original Owner/Promoter and/or the owners in the aliquot part of the said land together with the building/s by obtaining/ or executing the necessary conveyance/and or assignment of lease of the said land (or to the extent as may be permitted by the authorities) and the said building in favour of such Society or Limited Company, as the case may be such conveyance/assignment of lease shall be in keeping with the terms and provisions of this Agreement.”

22. Thus, under the statutory scheme of MOFA, the Promoter is required to convey his right, title and interest in the land and building to the association of the flat purchasers within a period of four months from the registration of the Society unless otherwise agreed to between the parties and in event of non compliance by the Promoter, the duty is cast upon the Competent Authority to fulfill the obligation of the Promoter by issuing the certificate of unilateral deemed conveyance.

23. The covenants in the Flat Purchasers Agreements governing the conveyance of the right, title and interest of the Promoter is

contained in Clauses 41 and 44 which reads thus:

- "41. After the building is complete and ready and fit for occupation and after the Society or any other incorporated body of the Purchasers of the premises in the said building have been formed and registered and after the Developers have received all dues payable to them on the terms of the agreement with various purchasers and after the full and total developers shall of the said property no.1 is complete in all respects the Developers shall arrange for execution of a Conveyance in respects of the said property no.1, together with the building in favor of the proposed society or incorporated body within a reasonable period. Such conveyance shall be in such form and contain such Terms and conditions as the Developers legal advisors/ advocates may in their absolute discretion determine. The costs, charges and expenses including the cost of stamps and registration of such conveyance/s, shall be borne, incurred and contributed by all the purchasers proportionately sans recourse to the Developers."
- "44. It is specifically agreed that the Developers shall be entitled at their option, to form one single Co-operative Society / Corporate body of all the premises to be constructed on the said property no.1 and to execute and/or cause to be executed the Lease/Conveyance in respect of the said property no.1 and the structures thereon in favor of such Co-operative Society/ Corporate body. The Developers shall also be entitled at their option, to form separate Co-operative Society/Corporate bodies for different structure to be constructed on the said property no.1 and to execute and or cause to be executed separate leases/conveyances in favor of such Co-operative Society / Corporate bodies as the case may be such lease / Conveyance and/or leases/ Conveyance shall, however be executed only after the entire property

described in the schedule 'I' hereunder written is fully developed (i.e. all the structure/s as may be permitted by the concerned authorities shall have been fully constructed on the side property no. I and the Developers shall have sold all the premises in all the structures on the said property no. II and received fully the considerations amounts from the various purchasers of all the premises in the said building/units on the said property no.II. The purchaser shall not raise any objection and/ or claim any compensation, if the area permitted to be leased/conveyed is less than the area shown in the schedule I hereunder witness."

24. Clauses 41 and 44 of the Agreement records the obligation of the Developer i.e. the Respondent No.3 to execute conveyance in favour of the registered Society of the flat purchasers after the entire property i.e. 10685.10 square meters is fully developed.

25. Reading of above clauses will indicate that the obligation on developers was to convey not only the constructed area but also the land and rightly so, as the same is in consonance with the statutory provisions.

26. What is sought to be canvassed by the Petitioner is that as the Society has been registered in the year 2010, the Promoter was bound to execute conveyance in respect of land and building within a period of four months whereas the Respondent Nos.3 and 10 present for consideration Clauses 41 and 44 of the Agreement to contend that

the conveyance of the land and building is agreed upon only after the entire development of the layout. The factual scenario emerging is that in the year 2005 the agreements have been executed with the flat purchasers and yet in the year 2024 the layout is not fully developed and it is expected that the Petitioner-Society should wait till the last building is constructed.

27. Now, coming back to the impugned order of Competent authority, the issue which arises is whether it was permissible for the Competent Authority to convey only the constructed area to the Petitioner Society. At the cost of repetition, the Competent Authority has arrived at a finding that the Promoter has failed to comply with its obligation under Rule 9 of the Rules of 1964 which reads thus:

“9. Period for conveyance of title of promoter to organisation of flat purchasers.

If no period for conveying the title of the promoter to the organisation of the flat purchasers is agreed upon, the promoter shall subject to his right to dispose of the remaining flats, if any execute the conveyance within four months from the date on which the Co-operative society or the company is registered or, as the case may be, the association of the flat takers is duly constituted.

When a promoter has submitted his property to the provisions of the Maharashtra Apartment Ownership Act, 1970 by executing and registering a Declaration as required by section 2 of the Act, and no period for conveying the title of the promoter in respect of an apartment to each apartment taker is agreed upon, the promoter shall execute the conveyance or deed of

apartment in favour of each apartment taker within four months from the date, the apartment taker has entered into possession of his apartment.

The promoter shall file with the Competent Authority a copy of the conveyance executed by him under sub-section (1) of section 11 within a period of two months from the date of its execution.”

28. The Competent Authority has on the finding of non compliance of the obligation by the Promoter under Rule 9 of Rules of 1964 arrived at a satisfaction as to the entitlement of the Petitioner Society to the conveyance. Thereafter without any discussion upon the covenants in the Agreement of Flat Purchasers, the Competent Authority has observed that as the layout is to be completed the conveyance of the land can be done subsequent to the completion of the entire layout. The Competent Authority was exercising powers under sub-section (4) of section 11 of MOFA and no power is conferred by the said sub-section upon the Competent Authority to issue certificate conveying the right, title and interest of promoter in the constructed structure only. Sub-section (4) of section 11 is clear and specific and confers power upon the Competent Authority to convey the right, title and interest of the promoter in the land **and** building as deemed conveyance. Either the conveyance of land and building is to be granted or the application is to be rejected after arriving at a finding that it is not a fit case for issuing the certificate. In my view,

after arriving at a finding of non compliance by the promoter of Rule 9 of 1964 Rules, it was impermissible for the Competent Authority to adopt a midway and convey only the constructed structure to the Petitioner Society. The duty cast upon the Competent Authority under Section 11(4) of MOFA is to issue a certificate conveying right, title and interest of the promoter *"in the land and building."* What the Competent Authority is required to do in exercise of its power under Section 11 is to complete the obligation of the Promoter upon failure of the Promoter to convey his right, title and interest in the land and building.

29. Reading of Sub-Section (4) of Section 11 of MOFA does not indicate that the said provision vests any power in the Competent Authority to convey only the constructed structure once it has arrived at a satisfaction of non compliance of the obligations by the Promoter. Conjoint reading of Section 11 of MOFA, Rule 9 of Rules of 1964 read with Clause 13 of the Model Agreement makes it clear that what is required to be conveyed by the competent Authority is the right, title and interest of the Promoter in the land and building.

30. The impugned order of the Competent Authority does not demonstrate that the Competent Authority has accepted the covenants in the Agreement to hold that the Petitioner Society is not

entitled to the conveyance of the land and building at this stage. There is no discussion on the various clauses of the Agreement to conclude that the agreement conveys an agreement contrary to Clause 13 of the Model Agreement.

31. Having arrived at a conclusion of non compliance of Rule 9 of Rules of 1964, the only power vested in the Competent Authority by virtue of Sub Section (4) of Section 11 of MOFA was to issue a certificate conveying the right, title and interest of the Promoter in the land and building in favour of the Petitioner Society as deemed conveyance. The impugned order of the Competent Authority conveying only the constructed structure is therefore legally unsustainable.

32. The issuance of certificate of deemed conveyance of the constructed structure has not been challenged by the Respondent no.3 or Respondent no.10. The Respondent Nos.3 and 10 have thus accepted the position that the Petitioners are entitled to Conveyance. Once that position has been accepted it is now not open for respondent no. 3 and respondent no.10 to canvas that the agreement between the parties was to the contrary. It cannot be accepted that the conveyance of constructed structure is granted despite the agreement, and the conveyance of land only is refused by putting

forth the defence of the terms of the agreement.

33. To simplify the procedure in respect of grant of deemed conveyance and certificate, the Government of Maharashtra has issued a government resolution dated 22nd June 2018. Sub-clauses (1), (3) and (4) of Clause 2(B) of the said Resolution reads thus :

“1) If there are many buildings on one plot and have a separate co-operative society of each building and if construction of some of them is incomplete then while making Deemed Conveyance of completed building, undivided share of occupancy right in the proportion of construction on the proportionate area of the construction of the building of such society or ground coverage or plinth area, similarly open space, common services and facilities, roads should be given.”

“3) If there is more than one society in one layout and out of them only one society has made such application, similarly other societies are not co-operating for conducting measurement of the land of the applicant society then the District Dy. Registrar, Co-operative Societies, and Competent Authority shall suggest the applicant society to conduct the measurement according to the approved plan from the Architect on the panel of the Competent Authority who approved the construction plans of the concerned society and submit the report regarding area of the society.

4) If the developer did not completed the project in expectation of getting additional FSI or TDR in urban area, then in such cases, deemed conveyance of the number of flats proposed as per approved construction plan and that much flats are constructed then their deemed conveyance should be made.”

34. The guidelines specifically deal with the situation where there are many buildings on one plot and have separate cooperative societies and when the construction of some of them is incomplete.

The purport is to grant conveyance of the land required to sustain the constructed structure along with the proportionate area in common amenities is required to be conveyed. Apart from the Petitioner Society, the layout consists of other independent societies. The guidelines prescribe that in event there are more than one society and other societies are not co-operating for conducting the measurement of land of applicant society, then the Competent Authority can get the measurements carried out from an architect on the panel of Competent Authority and can get the report submitted regarding the area of the applicant society. The Competent Authority is bound by the guidelines issued by the G.R of 22nd June, 2018, which guidelines have not been followed in the present case.

35. The Competent Authority has considered the Architects' Certificate annexed at Page 77 of the Petition and issued the certificate conveying constructed structure of 3461.43 square metres. The architect's certificate which is at page 77 of petition gives an area of 1132.78 square metres as the total plot area as per the survey carried out in possession of society and the same is stated to be total built up area as per the OC. The Plot Area statement in the Architect's Certificate denotes the total plot area at 1132.78 in possession of the Society based on survey carried out. There is no clarity as regards the

land which is required to be conveyed to sustain the constructed area of Petitioner Society. The Competent Authority was bound under the guidelines of 22nd June, 2018 to carry out the exercise to ascertain the land required to sustain the constructed structure and thereafter to convey the land and the building.

36. Although it was sought to be canvassed that the statutory provisions of RERA indicates the permissibility of conveyance of constructed structure, the fact remains that the agreements are governed by MOFA and the provisions of section 11 of MOFA will be applicable.

37. One of the submissions canvassed by Mr. Cama is that the Petitioner Society is estopped from challenging the order of Competent Authority as the Petitioner had accepted the order, executed the Unilateral Deed of Conveyance and thereafter executed the Deed of Rectification.

38. The Unilateral Deed of Conveyance was registered conveying land admeasuring 3461.43 square meters. Thereafter subsequent to the objection raised by Respondent No.10, the communication dated 10th June, 2021 was addressed to the Petitioner-Society directing it to register the Deed of Rectification which was done on 4th August, 2021.

As discussed above, the statutory provisions entitle the Petitioner to the Promoter's right, title and interest in the land and building and by the impugned order the Competent Authority has conveyed only the constructed structure which was in clear violation of the mandate of MOFA. The submission on principles of estoppel and approbation and reprobation is premised on the reasoning that the Petitioner-Society has obtained a benefit under the impugned order and having obtained benefit and acted upon the order, cannot now turn back and assail the said order. The submission overlooks the position that under the statutory provisions, the Petitioner-Society was entitled to the conveyance of the land as well as the building. It is settled position in law that there cannot be any estoppel against statute. In view of the provisions of MOFA it cannot be said that the Petitioner Society has received any benefit under the impugned order which but for the impugned order the Petitioner was not entitled to and thus having accepted the benefit now cannot turn back and challenge the order. The Petitioner in the present case has been denied what is rightfully due to them under MOFA, i.e. conveyance of the land and the building. It cannot be said that the Petitioner-Society with full knowledge of its legal rights had accepted the impugned order. In my view, interest of justice demands that the Petition is not thrown out on procedural law of principle of estoppel or acquiescence. Weighed against the

substantial justice, in my opinion, the submission on the aspect of estoppel and approbation and reprobation is liable to be rejected.

39. As regards the contention that by way of writ petition the Petitioner-Society cannot seek to quash and set aside the unilateral deed of conveyance as well as the deed of rectification, the execution of the deeds is an act consequential to the order of deemed conveyance dated 18th December, 2019 and in event the order is quashed and set aside, necessary corollary will be setting aside of deeds. The issue as regards the setting aside of registered document under section 31 of the Specific Reliefs Act will have no applicability in the present case where pursuant to the order of deemed conveyance, the deed of unilateral deemed conveyance and Deed of Rectification are executed.

AUTHORITIES RELIED UPON BY THE RESPONDENTS:

40. Drawing support from the decision in *Union of India vs N. Murugesan (supra)*, it was contended by Mr. Cama that the Petitioner is guilty of unexplained delay and laches and therefore in exercise of writ jurisdiction, this Court should not interfere with the impugned order. It is true that delay and laches is one the factors which would weigh with the Court while exercising the Writ jurisdiction, however, while doing so what is required to be considered is whether the

Petitioners are guilty of such negligence or omission to assert its right that the lapse has resulted in prejudice to the other party. Before this Court no submissions have been advanced as to the prejudice caused by reason of the delay in challenging the impugned order. It also needs to be noted that the Petitioner is a co-operative housing Society and usually acts after obtaining the legal advice and with the approval of managing committee. As the impugned order results in affecting the substantial rights of Petitioner-Society, in my view, delay cannot be a factor to be considered in the facts of present case.

41. The next decision relied upon by Mr. Cama is decision of the Apex Court in case of ***State of Punjab vs Dhanjit Singh Sandhu (supra)***. In that case, the respondent allottee had accepted the terms and conditions of allotment letter and possession was taken but they did not raise any construction as required. Upon demand being raised for payment of non construction fee to avoid resumption, the same was paid and after availing benefit of extension sought refund of extension fee. The Apex Court held that once an order has been passed, complied with and accepted and derived benefit out of it, the same cannot be challenged on any ground. There is no quarrel with the proposition of law laid down by the Apex Court. What needs to be noted is while applying procedural law like principle of estoppel or

acquiescence, the Court would be concerned with conduct of party for determination as to whether he can be permitted to take different stand in a subsequent proceeding unless there exists statutory interdict. **(See *Jai Narain Parasrampuriah v. Pushpa Devi Saraf* [(2006) 7 SCC 756].** In the instant case, it cannot be said that by accepting the impugned order, the Petitioner-Society has acquired a benefit which it could not have otherwise acquired. The statutory provisions of MOFA entitle the Petitioner to obtain conveyance of the land and building and conveyance of constructed structure is to the detriment of the Petitioner.

42. As regards the decision in ***Rajasthan State Industrial Development and Investment Corporation v. Diamond & Gem Development Corporation (supra)*** and ***Sunil Subhash Ekhane vs State of Maharashtra (supra)***, the same were relied upon by Mr. Cama to support his contention that the Petitioner cannot be permitted to approbate and reprobate. The decision of Apex Court lays down that the rule is applied to ensure equity, however it must not be applied in such a manner as to violate the principles of what is right and of good conscience. Considering the facts of the present case, where the Petitioner is a co-operative housing society acting on legal advice, and has been deprived of the benefit conferred by the

statute, the rule of equity demands that the entitlement of the Petitioner is decided on merits.

CONCLUSION:

43. In light of the discussion above, in my view, the Competent Authority having held that the Promoter has failed to comply with its obligations under Rule 9 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1964, in exercise of powers under Sub Section (4) of Section 11 of MOFA, the Competent Authority could not have restricted the issuance of certificate of deemed conveyance only to the constructed structure. It was incumbent upon the Competent Authority upon arriving at a satisfaction that there is non compliance of the obligation of the Promoter, to step in and enforce the unilateral execution of conveyance deed conveying the right, title and interest of the Promoter in the land and the building. Resultantly, the impugned order of Competent Authority dated 18th December, 2019 and the consequent execution of the Deed of Unilateral Deemed Conveyance dated 13th October, 2020 and Deed of Rectification dated 4th August, 2021 are required to be quashed and set aside. As it is necessary to determine the entitlement of the Petitioner-Society to the land and building, the matter is remanded to the Competent Authority to decide the application filed under Section 11(3) of MOFA

afresh as to issuance of certificate of deemed conveyance in respect of the land and the building.

ORDER:

44. The Petition succeeds and the following order is passed.

- (I) Order dated 18th December, 2019 as well as the Certificate of Deemed Conveyance dated 18th December, 2019 issued by the Competent Authority is quashed and set aside.
- (II) The consequent Deed of Unilateral Deemed Conveyance dated 13th October, 2020 and Deed of Rectification dated 4th August, 2021 are accordingly quashed and set aside.
- (III) The application No.120 of 2019 is remanded to the Competent Authority to be decided afresh in light of the observations above. Parties are at liberty to raise necessary submissions for determining the entitlement of the Petitioner-Society to conveyance of the land and building.

45. Writ Petition stands allowed in the above terms. Rule is made absolute.

46. In view of the above civil application, if any, does not survive for consideration and stands disposed of.

47. At this stage request is made for stay of this order for a period of four weeks. The order is stayed for a period of four weeks from today.

[Sharmila U. Deshmukh, J.]