

Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6981 OF 2022

Vishwanath Karbhari Bhor & Ors ... Petitioners
V/s.
The State Of Maharashtra & Ors ... Respondents

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Mr. Nitin Gaware Patil i/by Mr. Sachin Thorat, for
Petitioners.

Mr. Prashant P. Kulkarni, for Respondent No.2.

Mr. J. P. Patil, AGP for State/Respondent Nos.1, 3 & 4.

CORAM : AMIT BORKAR, J.

DATED : APRIL 2, 2024

PC.:

1. **Rule.** Rule made returnable forthwith.
2. By the present writ petition, the petitioners are challenging an order passed by the Competent Authority in exercise of power under Section 11(3) of the Maharashtra Ownership of Flats Act, 1963 (**"MOFA Act"**) issuing corrigendum to replace total area of 9600.00 sq. mtrs. of the land and 5711.66 sq. mtrs. of construction to be substituted by area as per sanctioned map of 6798.338 sq. mtrs. land and 8318.937 sq. mtrs. as constructed area.
3. The petitioners relying on the judgment in the case of **Kashish Park Reality Pvt. Ltd. & Anr. Vs. State of Maharashtra and**

Ors., reported in (2021) 3 Mah LJ 778, submitted that such modification of the order cannot be treated as arithmetical or clerical error which permits the Authority to make calculation in its order. The result of substitution of measurement of area has effected of material of modification of the order and, therefore, the Competent Authority under Section 11(3) of MOFA Act has no power of review.

4. Per contra learned Advocate for the respondent / Developer relying on the same judgment in the case of **Kashish Park** (Supra), submitted that the Competent Authority under the said Act has done the things which in law he was supposed to do having effect of substitution of area which is in consonance of sanctioned map and, therefore, the act of bringing original order in tune of the provisions of the Act is permissible. He, therefore, submits that such exercise of power needs to be termed as arithmetical and clerical error.

5. Having heard Advocate for the respective parties, it appears that the Competent Authority while issuing original order had taken into consideration total area of construction of 9600.00 sq. mts. out of it, he recorded a finding that the total constructed area of 5711.66 sq. mtrs. The area of 5711.66 sq. mtrs. conveyed in favour of the society. However, by the impugned order, the Competent Authority has directed total area of 9600.00 sq. mtrs. of the land and 5711.66 sq. mtrs. of construction to be substituted by area as per sanctioned map of 6798.338 sq. mtrs. land and 8318.937 sq. mtrs. as constructed area. In my opinion, amount of

material modification in the order passed. Therefore, the Authority while exercising power under Section 11(3) of MOFA Act could not have reviewed its order under the the garb of corrigendum. Hence, following order:

(a) Rule is made absolute in terms of prayer clauses (b) and (c).

6. However, it is made clear that it will be open for the Developer, if permissible in law, to challenge the original order, if so advised.

(AMIT BORKAR, J.)