

SA Pathan

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

WRIT PETITION NO.5121 OF 2022

**WITH
INTERIM APPLICATION NO.10411 OF 2022
IN
WRIT PETITION NO.5121 OF 2022**

Ajitsinh Shankarrao Bhonsle ... Petitioner
V/s.
The State of Maharashtra Through
Secretary Dept. of Revenue & Ors ... Respondents

Mr. Vishal Kanade i/by Mr. Sagar Amrut Rane, for
Petitioner.

Mr. P. G. Sawant, AGP, for Sate/Respondent Nos.1 to 4.

Mr. Jaydeep Deo, for Respondent No.5.

Ms. Mrinal Shelar, for Respondent Nos.6 and 7.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 16, 2024

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- 2.** The challenge in the writ petition is to the order passed by the District Deputy Registrar, Cooperative Societies, Pune City dated 13 April 2022 thereby issuing corrigendum to its earlier order dated 8 June 2015 to substitute area of 1537.80 in place of 1325.10 sq. mtrs. to be conferred in favour of respondent

No.5/society. On 8 June 2015, the Competent Authority in exercise of power under Section 11 of the Maharashtra Ownership of Flats (Regulation of the Promotion, Construction, Sale, Management and Transfer) Act, 1963 (for short 'MOFA') issued a deemed conveyance order restricting to area 1325.10 sq. mtrs. and constructed portion to the extent area 1481.67 sq. mtrs.

3. Respondent No.5/society challenged the order mainly on the ground that the calculation in the area conferred in favour of respondent No.5/society was incorrect.

4. During pendency of such writ petition, respondent No.5/society filed an application before the Competent Authority for correction of order to substitute area 1537.34 sq. mtrs. instead of area 1325.10 sq. mtrs. By the impugned order, the Competent Authority issued a corrigendum and replaced the area 1537.60 in place of area 1325.10 sq. mtrs.

5. Learned Advocate for petitioner relying on judgment in the case of **Kashish Park Reality Pvt. Ltd. & Anr Vs. State of Maharashtra**, reported in 2021 (3) Mh.L.J. 778 submitted that under the garb of corrigendum, the Competent Authority had reviewed its own order, which is impermissible in law as the authority has no power to review.

6. Per contra, learned Advocate for respondent No.5/society submitted that the substitution of area in the facts of the case will amount to correction of clerical error in the original order and, therefore, the Competent Authority within its power to pass impugned corrigendum.

7. Having considered the submissions and considering the order dated 8 June 2015, I am of the opinion that substitution of area 1537.80 instead of 1325.10 would amount to review of the order.

8. On perusal of clause (5) of the submission made on behalf of the respondent No.5, it appears that respondent No.5/society prayed for conferment of deemed conveyance to the extent of area 1573.60 sq. mtrs. The Competent Authority while considering the case on merits relied on sanctioned plan of the Municipal Corporation and it is held that as per said sanctioned plan, proportionate area 1325.10 is required to be conveyed in favour of respondent No.5/society. Whether conferment of area 1325.10 sq. mtrs. can be legally justified or not needs to be adjudicated in appropriate proceeding. However, substitution of area of 1537.80 in place of area 1325.10 cannot be termed as clerical or arithmetical error. Therefore, the issue involved is clearly elaborated in the case of **Kashish Park** (Supra).

9. Hence, following order:

i) The impugned corrigendum dated 13 April 2022 annexed to the writ petition at Exhibit – E and all consequential action including registration of conveyance are quashed and set aside.

ii) However, this will not preclude the *respondent No.5/society* for adopting appropriate proceedings permissible in law in relation to order dated 8 June 2015.

10. In so far as prayer clauses (a) and (b) are concerned.

Learned Advocate for the petitioner on instructions do not press the prayers at this stage. However, he seeks liberty to raise appropriate challenge or relief if occasion arises. Liberty, as prayed for, is granted.

11. Rule is made absolute in above terms.

12. The writ petition is disposed of in above terms. No costs.

13. In view of disposal of writ petition, the interim application stands disposed of being infructuous.

(AMIT BORKAR, J.)

Note:- This order is modified as per order dated 23 January 2024. The corrections in paragraph 9(ii) are shown italicize.