

Shabnoor

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

WRIT PETITION NO.6167 OF 2022

Parmanand Builders LLP Mumbai ... Petitioner

V/s.

Competent Authority & District Deputy
Registrar Cooperative Society Mumbai
& Ors ... Respondents

WITH

WRIT PETITION NO.9648 OF 2023

Ratan Cooperative Housing Society Ltd. ... Petitioner

V/s.

Competent Authority & District Deputy
Registrar Cooperative Society Mumbai
& Ors ... Respondents

Mr. Girish S. Godbole, Sr. Advocate a/w Mr. Ankit Lohia a/w Ms. Aditi Bhatt and Ms. Jyoti Ghag and Mr. Jash Gandhi i/by Dua Associates, for Petitioner in WP/6167/2022.

Mr. Piyush Raheja a/w Mr. Bhavar Singh and Mr. Rahul Vyas, for Petitioner in WP/9648/2023.

Mr. V. S. Nimbalkar, AGP for State/Respondent No.1 in both Writ Petitions.

Mr. Rubin Vakil a/w Mr. Ankur Kalal i/by Markand Gandhi & Co., Respondent No.2 in both Writ Petitions.

Mr. Ankit Lohia a/w Ms. Aditi Bhatt and Jyoti Ghag, Mr. Josh Gandhi i/by Dua Associates, for Respondent Nos.6, 7 in WP/9648/2023.

Mr. Prabhakar M. Jadhav, for Respondent No.5 in WP/9648/2023.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 28, 2024

P.C.:

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1. By this writ petition under Article 227 of the Constitution of India, the petitioner is challenging order dated 15 July 2021 passed by respondent No.1, issuing corrigendum or order of deemed conveyance passed in exercise of power under Section 11 (3) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale Management and Transfer) Act, 1963 (for short “MOFA”).

2. According to the petitioner, respondent No.1 had no power to issue corrigendum which has effect for modification of order of deemed conveyance. The original order of deemed conveyance was for execution of unilateral assignment of leaseholds. However, by the impugned order *vide* corrigendum, respondent No.1 substituted expression of unilateral deemed conveyance in place of unilateral deed of assignment, which according to the petitioner, amounts of substantial modification and review of earlier order passed by respondent No.1.

3. Respondent No.2-society defended the order on the ground that respondent No.1 had all incidental powers necessary for passing an order under Section 11 (3) of the MOFA. According to respondent No.2-society, the appropriate course, instead of challenging the order of assignment of leaseholds rights, was to approach the same Authority who has to exercise such power to

correct the arithmetical, clerical errors. According to respondent No.2-society, therefore, exercise of such power would not amount to review or substantial modification on merits.

4. Having heard both the sides. In my opinion, the point involved is no longer *res integra* in view of the judgment passed by this Court in Writ Petition (ST) No.93044 of 2020, in the case of **Kashish Park Reality Private Limited & Anr. Vs. The State of Maharashtra & Ors.**, the single Judge of this Court, in the similar facts held that the Authority in exercise of power under Section 11(3) of the MOFA cannot issue corrigendum which had effected of modification of the order under Section 11 (3). It is held that the order passed would not amount to procedural error.

5. By the order of deemed conveyance under Section 11(3) of the MOFA, respondent No.1 had directed issuance of same corrigendum unilateral deemed conveyance assignment for balance period. The said expression is substituted by the expression of unilateral deemed conveyance. Therefore, in my opinion, order of issuance of corrigendum would amount to modification of quasi judicial order on merits which in absence of conferment of power of review, could not have been passed by respondent No.1. Hence, the impugned order dated 15 July 2021 passed by respondent No.1 in Application No.198 of 2018 is quashed and set aside.

6. Consequential deemed conveyances are quashed and set aside; however, respondent No.2 will be at liberty to adopt appropriate legal proceedings as available in law.

7. Contentions of both the sides in relation to ventilation their legal rights, are kept open.

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8. For the reasons stated in the order passed in Writ Petition No.6167 of 2022, the present writ petition is allowed.

9. The impugned order stands quashed and set aside.

10. The writ petitions stand disposed of in above terms. No costs.

(AMIT BORKAR, J.)