

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3188 OF 2023

Gayatri Construction,

A Partnership firm, registered under the Indian
Partnership Act, 1932 and having its Principal
Place of business at B502, Arch Centre,
Jay Commercial Plaza, Junction of M. G. Road &
S. L. Road, Mulund (West), Mumbai 400 080

.. Petitioner

Versus

1. The State of Maharashtra

Through the Ministry of Co-operation and
Textiles Mantralaya, Mumbai 400 032.

2. The District Deputy Registrar,

Co-operative Societies,

Mumbai (2),

being the Competent Authority for Eastern
Suburbs of Greater Bombay appointed undertaken
Sec. 5-A of the Maharashtra Ownership Flats
(Regulation of the Promotion of Construction,
Sale, Management and Transfer) Act, 1963
("MOFA") and having his address at Room
No. 201, KonkanBhavan, 2nd Floor, Navi Mumbai 400 614

3. Gayatri Krupa Co-operative Housing Society Ltd.

A society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 and having its estate and office at C.T.S. Nos. 866, 866/1 to 866/13 of Village Mulund, N.S. Road, Mulund (West), Mumbai 400 080.

4. Vijay Dattatray Ladewar,

of Dombivili, Indian inhabitant, having his address at A/9, Neelkanth Park No. 01, Near Gokul Bungalow, Cross M. Karve Road, Dombivli (West) 421 202.

5. Ratanali Vijay Mote

of Secunderabad, Indian inhabitant, having her address C/o. M. S. Vijay Kumar, 20-37/4, Gokul Nagar, West Venkatapuram, Secunderabad (A.P.) 500 015.

6. Meena Prakash J.

of Hyderabad, Indian inhabitant, having her address C/o. J. C. Prakash, 23-5-243, Inside Lal Darwaza, Hyderabad 500 065.

7. Malti Vikhrama,

of Hyderabad, Indian inhabitant, having her address C/o. A. Shivshankar, 9/C, APHB, Saidabad Colony, Asmangad, Hyderabad 400 059.

8. Prabha D. Ladewar,
of Dombivali, Indian inhabitant,
having her address C/o. Pradeep Kavitke, No.2,
Dhumravarna Building, Near Ganesh Nagar
Church, Rajeev Nagar, Dombivli 421 202.

9. Kiran Dattatray Ladewar
of Secunderabad, Indian inhabitant,
having his address at H. No. 121/B,
Doveton Road, Bollaram,
Secunderabad (A.P.) 500 015.

10. Dharma Builders,
A partnership firm, having is office at C.T.S.
No. 866, Gayatri Krupa, Netaji Subhash Road,
Village Mulund West, Mumbai 400 080.

11. The Joint Sub-Registrar, Kurla-3
MTNL Building, Second Floor, Group No.7,
Tagore Nagar, Vikhroli, Mumbai 400 083.

.. Respondents

...

Mr. Vikramjeet Garewal i/b Narayanan & Narayanan for the Petitioner.

Mr. Abhay L. Patki, Addl. GP for State, Respondent Nos. 1, 2 & 11.

Mr. Karl Tamboly i/b Mr. Maulik Tanna, for Respondent No. 3.

Mr. Kishor D. Shah, for Respondent No. 10.

...

CORAM : **SANDEEP V. MARNE J.**
RESERVED ON : **30 JANUARY 2024.**
PRONOUNCED ON : **5 FEBRUARY 2024.**

JUDGMENT:-

1) By this Petition, the Petitioner challenges Order dated 15 November 2022 as well as Corrigendum dated 20 December 2022 passed by District Deputy Registrar, Co-operative Societies, Mumbai (2) Eastern Suburbs, Mumbai and Competent Authority granting unilateral deemed conveyance of land admeasuring 1137.56 sq. mtrs. in favour of Respondent No.3-Society.

2) Briefly stated, facts of the case are that one Dattatraya Khandrav Ladewar was the owner in respect of land bearing CTS Nos. 866, 866/1 to 866/13, village Mulund, District Mumbai Suburban. Said Dattatraya Khanderao Ladewar entered into an Agreement for Sale dated 21 August 1978 and agreed to assign his right, title and interest in the said land in favour of the Petitioner. It appears that Respondent No.10-Dharma Builders in whose favor the Indenture of Lease dated 16 May 1975 was executed by said Dattatraya Khanderao Ladewar also executed the Agreement dated 23 August 1978 in favor of the Petitioner to transfer the lease its favor. Petitioner got the building plans sanctioned from the Municipal Corporation of Greater Mumbai (MCGM) for the construction of a building consisting of ground and six upper floors (5 Shops and 18 Flats). An Intimation of Disapproval was issued by the Municipal Corporation on 12 February 1979. Petitioner entered into various Agreements for Sale with the purchasers of flats and shops. Respondent No.3-Society was formed by

such purchasers of flats and shop. The society filed an application dated 7 February 2022 before the Competent Authority under provisions of Section 11 (3) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**MOFA**) seeking a certificate of unilateral deemed conveyance of land admeasuring 1274.57 sq. mtrs including protected proportionate road set back area admeasuring 65.03 sq. mtrs. out of the total land. The application was opposed by Petitioner by filing a reply. Petitioner took a defence *inter-alia* that as per Agreements executed with flat purchasers, only a lease in respect of constructed structure (building) for a period 999 years could be granted in favour of the society and that Petitioner shall continue to remain owner in respect of the entire land.

3) It appears that during pendency of the proceedings, the Competent Authority called for a technical report of its empaneled Architect vide letter dated 23 September 2022. The Architect submitted the report vide Certificate dated 21 October 2022 concluding that the area of land to be conveyed to the society could only be 1137.56 sq. mtrs. Based on the Architect's Certificate, the Competent Authority passed an Order dated 15 November 2022 conveying land admeasuring 1137.56 sq. mtrs. in favor of the Society. The Corrigendum dated 20 December 2022 has been issued only for the purpose of recording the correct number of members of Respondent No.3-Society as 24 instead of 21. Petitioner is aggrieved by Order dated 15 November 2022 and Corrigendum dated 20 December 2022 and has filed the present Petition.

4) Mr. Garewal, the learned counsel appearing for Petitioner would submit that the Competent Authority has erred in granting the conveyance of land on an ownership basis in favour of the society. He would submit that

the Competent Authority does not have jurisdiction to convey something which is not provided for in the Agreements executed with the flat purchasers. He would invite my attention to clause 29 of one of the Agreements executed with the flat purchaser, under which the parties had agreed that only a lease in respect of the building for a term of 999 years would be executed in favour of the society. That clause 29 specifically provides that the entire land shall belong to Petitioner exclusively. He would submit that the agreements with the flat purchasers have been executed before the introduction of Form V under Rule 5 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction etc.) Rules, 1964 (**MOFA Rules**). That Form V came to be incorporated in the Rules on 10 April 1987 and that the agreements with the flat purchasers executed in the year 1981 would continue to govern the rights and entitlements for the conveyance of land in favour of the society. Relying on the judgment of Division Bench of this Court in *Grand Paradi Co-operative Housing Society Ltd. and Ors. Vs. Mont Blanc Properties & Industries Pvt. Ltd. & Anr.*¹, Mr. Garewal would submit that the agreement executed prior to the introduction of Form V would govern the entitlement of Society to seek conveyance of the land. He would rely upon the judgment of this Court in *Sukruti Apartment Co-op Hsg. Soc. Ltd. Vs. Tirumala Developers & Ors.*² **2022** in support of his contention that even if the covenant in the agreement provides for the conveyance of land disproportionate to the constructed area of the building, the conveyance must be granted in accordance with that covenant in the agreement. Mr. Garewal would therefore submit that no portion of land could have been conveyed by the Competent Authority in favour of the Society.

¹ 2010 SCC OnLine Bom 608

² 2022 (4) Mh.L.J 394

5) Mr. Garewal would further submit that the impugned order is passed in violation of principles of natural justice as the Competent Authority solicited Architect's Report behind the back of the parties and has based his Order solely on the said Certificate. That the hearing of the application was concluded on 11 July 2022, after which, the Competent Authority wrote to the Architect on 23 September 2022 seeking a technical report without any intimation to the parties. That after receipt of the Architect's Report on 21 October 2022, the Competent Authority did not hear parties on that report and proceeded to pass the impugned order of 15 November 2022. That thus the elementary principle of grant of opportunity of hearing to Petitioner on the Architect's Report was not followed by the Competent Authority rendering it *ab-intio void*. Mr. Garewal would rely on the judgment of the Apex Court in ***Shantidevi Kamleshkumar Yadav Vs. State of Maharashtra & Ors.***³.

6) Without prejudice to his contention that no land could be conveyed in favor of the society, Mr. Garewal would contend that the Competent Authority has committed a fundamental error in assuming the total area of the plot as 1361.20 sq. mtrs. when in fact the same is only 1200 sq. mtrs. as per the property card. That even if the computation made by the Architect and Competent Authority of land admeasuring 222.67 sq. mtrs. is to be kept aside for the existing seven structures, the society could be conveyed, at the highest, land admeasuring 977.33 sq. mtrs. after deducting the area of 222.67 sq. mtrs. from total plot area of 1200 sq. mtrs.

7) Lastly, Mr. Garewal would submit that the impugned order has been passed against a dead person. That Dattatraya Khanderao Ladewar

³ (2008) 9 SCC 718

expired before the filing of application by the Society and his legal heirs (Respondent Nos. 4 to 9) were not heard before passing the impugned order. That an order passed against a dead person is void. In support of his contention, he would rely upon the order of this Court **Motilal Sheetal Das Lalwani & Ors. Vs. Bhakti Plaza Commercial Premises Co-operative Housing Society Ltd & Ors.**⁴

8) *Per contra* Mr. Tamboly the learned counsel appearing for Respondent No.3-Society would oppose the Petition raising the issue of locus standi of Petitioner to challenge the conveyance effected in society's favour submitting that Petitioner is not even the owner of the land and no Sale Deed has been executed in its favour in pursuance of Agreement for Sale executed with it by the original owner. Having not acquired title in the land, Petitioner cannot question conveyance of land in Society's favour. That Petitioner cannot be permitted to raise the issue of correctness of area of land conveyed to the Society in the present Petition. He would submit that the Agreement entered into with flat purchasers did not provide for the conveyance of any portion of land and that therefore the contention of Petitioner that conveyance must be in accordance with the Agreement would lead to absurdity. So far as the contention of plot area being reflected as 1200 sq. mtrs. on Property Card, Mr. Tamboly would invite my attention to the Schedule appended to the Agreement in which Petitioner itself described the area of land taken up for development as 1361.17 sq. mtrs. He would also place reliance on the sanctioned plan, in which, again, the total area of land is shown as 1361.17 sq. mtrs. He would submit that having represented both to the flat purchasers as well as to the Municipal Corporation that the area of the entire plot is 1361.17 sq. mtrs., it cannot now lie in the mouth of the Petitioner that the plot's area is only 1200 sq. mtrs. Inviting my attention

⁴ 2018 SCC OnLine Bom 9416

to Section 11 of MOFA, Mr. Tamboly would submit that the Promoter is under an obligation to convey his right, title and interest both in land and building. That therefore no conveyance can take place in accordance with the Agreement which is contrary to the provisions of Section 11 of MOFA.

9) So far as the action on the part of the Competent Authority in seeking an Architect's Report is concerned, Mr. Tamboly would invite my attention to the Circular dated 22 June 2018, under which the Competent Authority is empowered to seek a report from the Architect on the panel for ascertaining the exact area to be conveyed in favor of the Society. In support of his contentions, Mr. Tamboly would rely upon judgments of this Court in *Mazda Construction Company & Ors. Vs. Sultanabad Darshan CHS Ltd. & Ors.*⁵ and *Ravindra Mutenja & Ors. Vs. Bhavan Corporation & Ors.*⁶ *2003 (5) Mh. L.J.*

10) I have also heard Mr. Patki learned Additional Government Pleader appearing for Respondent Nos.1, 2, and 11 as well as Mr. Shah the learned counsel appearing for Respondent No.10.

11) After having considered the submission canvased by the learned counsel appearing for the parties, it is seen that the Competent Authority has issued a certificate of unilateral deemed conveyance of land admeasuring 1137.56 sq. mtrs. along with reserved road setback area and of the building constructed on the land in favor of the society. Petitioner contends that conveyance ought to have been granted strictly in accordance with clause 29 of the agreement executed with the flat purchasers. It would be therefore necessary to reproduce clause 29 of the agreement, which reads thus:

⁵ 2012 SCC OnLine Bom 1266

⁶ 2003 (5) Mh.L.J. 23

*"29. On the date of execution of this agreement there are 8 (eight) structures marked as A. B. C. D. E. F. & G. and Toi. Blocks on the Plan hereto annexed as Exhibit 'A'. The structures marked 'A' used as Commercial premises and structures marked, B. C. D. E. F. & G. are residential premises and. This agreement is subject to the absolute right of the builders in respect of the entire plot more particularly described in the schedule hereunder written and said 8 structures referred to above and shown on the plan hereto annexed also as referred to above. It is agreed that when the building is ready in all respects and occupied by the flat buyers and the shop premises buyers the builders and/or other necessary parties **shall execute a lease in respect of the building under construction as shown on the plan hereto annexed, in green colour boundary line and marked on the plan hereto annexed with the words "NEW BUILDING" for a term of 999 years at an early rent of Rs. 1,001/- to be paid by the said building Occupiers.** The Co-operative Housing Society or the premises Co-operative society or the limited company or the association of apartment owners as the case may be shall be given right to use underground tank water, mains, electricity cables, telephone, wires etc. under and above the said land more particularly described in the schedule hereunder written but without any right of ownership thereof. **It is distinctly understood that the entire land including all structures thereon shall belong to the builders above named absolutely and that a lease of 999 years of the said new building shall be given by the builders** and or other necessary parties to the body of the flat or premises buyers in the said new building when the said flat or premises buyers form and register themselves into a co-operative society, a limited company or an association or apartment owners."*

12) Thus, under clause 9, Petitioner agreed to execute a lease in respect of a building for a term of 999 years on early rent of Rs.1,001/- to be paid by the building occupiers. The society was to be granted the right to use underground water tank, mains, electricity cables, telephone, wires, etc. under and above the land described in the schedule, but without any right of ownership thereof. The clause further provides that the entire land including structures thereon shall continue to belong to Petitioner and only a lease of the building for tenure of 999 years was to be granted in Society's favor. It is relying upon clause 29 of the Agreement that Petitioner contends that the conveyance of land could not have been granted by a Competent Authority in favor of the society.

13) Section 11 of MOFA imposes an obligation on the promoter to convey his right, title and interest in the land and building in favor of the society. In the exercise of powers under Section 15, MOFA Rules, 1964 have been made and Rule 5 provides for execution of agreement in Form V containing the particulars specified in clause (a) of sub-section 1 (A) of Section 4. Form V prescribes the model form of agreement to be entered between the promoter and flat purchasers in which the promoter is required to agree to transfer to the society within four months of its registration, all the right title and interest of the vendors/lessors/original owner/promoter in the land together with the building by executing necessary conveyance. It is contended by the Petitioner that Form V came to be introduced on 10 April 1987, whereas the agreements in question in the present case have been executed in the year 1981. Admittedly, the agreement executed with flat purchasers is not in accordance with Form V as it does not provide for conveyance of land. Therefore, Petitioner contends that the conveyance cannot be executed contrary to the agreement.

14) However, on careful perusal of clause 29 of the agreement, it is seen that the said clause does not provide for the conveyance of any portion of land in favor of the society. It provides for a grant of only a lease for tenure of 999 years, that too of the building alone in favour of the society. The right to use land for underground water tank, mains, electricity cables, telephone, wires, etc. is without right of ownership therein. Thus, if the conveyance was to be granted strictly in accordance with the agreement, the society would get only a lease for a term of 999 years in respect of the superstructure (building) and not a title in any portion of the land. This is something which is not contemplated under Section 11 of MOFA, under which the promoter has an obligation to transfer his right, title and interest not only of the building but also of land in favour of the society.

15) Mr. Garewal's has placed reliance on the judgment of the Division bench of this Court in ***Grand Paradi Co-operative Housing Society Ltd.*** (supra) in support of his contention that the conveyance must be effected strictly in accordance with the Agreement prior to introduction of Form V. In ***Grand Paradi***, the dispute was about the area of land to be conveyed as well as the exact nature of transfer i.e. lease or ownership. In that case, the promoter entered into agreements with members of the society by which he agreed to grant a mere lease of flats in the building and row houses for a term of 999 years as well as the land on which the building is constructed. The society contended that it was entitled to seek transfer of ownership of the entire plot in its favour under provisions of Section 11 of MOFA. The agreement however provided for a grant of lease for a term of 999 years in respect of only the portion of the land on which the building was to be constructed as well as conveyance of the buildings. The Single Judge of this Court rejected society's contention by dismissing its Notice of Motion. The society filed an Appeal before the Division Bench which held in para 7, 8, and 9 as under:

"7. So far as the first contention is concerned, it is the provisions of section of the Act which are relevant Provision of section 4 as it stood in 1971 when the agreement between the parties was entered into it require the builder to enter into an agreement with the flat purchasers in a form. But in 1971, the format in which the agreement is to be entered into was not prescribed. It was prescribed for the first time in the year 1986. This position has been considered by the learned single in his judgment in the case of Jamuna Darshan Co-operative Housing Society Ltd., to which we have made a reference above. The observations made by him in paragraph 37 are relevant. They read as under:

"37. It is not possible to agree with Shri Anturkar that the Supreme Court was dealing with a case of the nature before me. The Supreme Court was in fact dealing with a situation where the Agreements were admittedly entered into after the amendments to the Ownership Flats Act. None disputed before the Supreme Court that the amendment would apply. Such is not the case before me. Before me, the question is as to whether the agreement in the prescribed form which is to be entered into by the promoter in terms of the amended rule would be applicable to the agreements executed prior to the amendment. The format itself came into force in 1986 whereas the

agreements in the case before me are admittedly executed prior to that date. To that extent, Shri Samdani appears to be prima facie right in his contention that the requirement that every agreement between the promoter and the flat purchasers should comply with the prescribed form (V) is something which is not applicable to the instant case and more particularly the suit agreement. Once these agreements are not to comply with the amended provisions, men, it cannot be contended by the plaintiff that they govern the field."

8. Thus as in 1971 there was no form prescribed under section 4 in which the builder had to enter into an agreement, in law, the agreement entered between the builders and the flat purchasers for execution of lease of the flats of the building and the land underneath of the building in favour of the flat purchasers or the society, would be valid and binding between the parties. In our opinion, prima facie, therefore, there is no substance in the contention raised on behalf of the plaintiffs that they are entitled to have conveyance in their favour in terms of amended section 4 and form of the agreement prescribed thereunder and not in accordance with the agreement entered into between them and the defendant No. 1. Clause 14 of the Agreement between the parties contemplates execution of lease deed of the property. Clause 14 reads as under:

"14. The Vendors shall execute in favour of the Society or the Limited Company to be formed by the Purchasers of the Flats in the said buildings as also of the Purchasers of houses in the row of houses a lease for a term of 999 years in respect of the portion of the said property on which the building is to be constructed by the Vendors. The lease will also include the Conveyance of the buildings to be constructed as aforesaid. If for any reason it is decided to have separate co-operative Societies or Limited Companies of the purchasers of flats in the buildings and also of the Purchasers of row of house separate leases may be executed in favour of the different bodies. Such lease and/or leases shall be in such form as shall be prepared by Messrs, Bhaishankier Kanga and Girdharlal. The lease rent shall be calculated at the rate of Rs. 1/- per month per flat and the row of houses."

(emphasis supplied)

9. In our opinion, therefore, the plaintiffs are not right in contending, prima facie, that the agreement between them is to be disregarded and they are to be given conveyance of the entire plot, though the agreement between them does not contemplate that."

16) Thus in ***Grand Paradi***, the issue was about Society's entitlement to get conveyance in accordance with Model Agreement in Form V even though the actual agreement was executed before introduction of that Form. This Court, by relying on Division Bench judgment in ***Jamuna Darshan Co-op. Hsg. Society Ltd. v. J.M.C. & Meghani Builders*** Appeal

No. 253/2009, decided on 22nd June, 2009 held that the Society was not entitled to have conveyance in its favour in terms of amended section 4 and form of the agreement prescribed thereunder and that the conveyance would be in accordance with the agreement entered into between them and the defendant No. 1 therein. In *Grand Paradi*, the society desired transfer of ownership of a larger portion of land than the one agreed in the agreement as well as a transfer of 'ownership' instead of the grant of 'lease'. It is in the light of these peculiar facts that the division bench of this Court held that the agreement could not be disregarded and the society cannot be granted conveyance of the entire plot though the agreement does not contemplate so. In the present case, the agreement does not provide for a transfer of ownership or even a lease in respect of any portion of the land. The agreement provides for lease only in respect of building and not of even an inch of land. If the Petitioner's contention is accepted the provisions of Section 11 of MOFA would be thrown to the winds and the promoter will not convey any portion of land in the name of society and continue to retain ownership of the land by executing only a lease in respect of the constructed building. The entire objective behind MOFA would be completely frustrated if the interpretation of Mr. Garewal is to be accepted. Therefore, Petitioner's contentions that conveyance must be executed strictly in accordance with clause 29 of the agreements executed with flat purchasers is required to be rejected.

17) The next issue is about the correctness of the area which is conveyed in favour of the society. Petitioner has contended that the area of the plot as per the property card is only 1200 sq. mtrs. whereas, the Competent Authority erroneously presumed the same to be 1361.20 sq. mtrs. It appears that the figure of 1361.20 sq. mtrs. is picked up by the Competent Authority both on the basis of pleadings in Society's application as well as

the Architect's Certificate dated 21 October 2022. The Architect has also taken into consideration the area of the plot as reflected in the Property Card as 1200 sq. mtrs. However, the Petitioner itself declared the area of the plot as 1361.17 sq. mtrs. in the schedule to the agreement executed by the flat purchasers. The schedule of the agreement reads thus:

*"All the piece or parcel of land with structures standing thereon lying being and situated at Netaji Subhash Road, Mulund, containing by Admeasuring 1361.17 sq. mtrs. or thereabouts and bearing Plot No. 826 (Part) and 827 (Part) of survey No. 1000 of Mulund together with structures standing thereon and bounded as follows:
that is to say:"*

18) Furthermore, perusal of the sanctioned plan by MCGM would indicate that the FSI calculation is made by taking into consideration the declaration made by the Petitioner that the plot area is 1361.20 sq.mtrs. Since Petitioner itself represented both to the flat purchasers as well as the planning authority that the actual area of the plot is 1361.20 sq. mtrs., it cannot now turn around and contend that the area reflected in the property card must be taken into consideration and not the one in respect of which representation was made by it to flat purchaser and the one on which basis FSI was consumed. I therefore do not find any serious error in Competent Authority taking into consideration the actual plot area as 1361.20 sq.mtrs. while determining Society's entitlement for deemed conveyance. On the contrary, I find the defence taken by the Petitioner to be dishonest and contrary to the representation made by it both to the flat purchasers as well as to the planning authority.

19) The Competent Authority has conveyed an area admeasuring 1137.56 sq. mtrs. in favor of the society by taking into consideration the following calculations in the architect's certificate:

Sr. No.	Description	Area in Sq. Mt.	Area in Sq. ft.
1	Area of Plot	1361.20	14652.00
2	Less Road Set back area	65.03	700.00
3	Less Proposed Road	0.00	0.00
4	Less Recreation ground	0.00	0.00
5	Balance Area of plot (1-2-3-4)	1296.17	13952.00
6	Addition for set back area	65.03	700.00
7	Total Area (6+7)	1361.20	14652.00
8	F.S.I. Permissible on plot	1.00	
9	Total Permissible Built Up Area	1361.20	14652.00
10	Built Up Area of Existing building Gayatri Krupa	1137.56	12244.72
11	Built Up Area of Existing Structures	222.67	2396.88
12	Total Existing Build Up Area (13+14)	1360.23	14641.60
13	Balance F.S.I. of plot	0.97	10.40

After conveying area ad-measuring 1137.56 sq. mtrs., land admeasuring 222.67 sq. mtrs. would still be available to sustain the existing structures on that land. I therefore do not find any error in the order of Competent Authority in conveying an area admeasuring 1137.56 sq. mtrs. in favour of the society.

20) The next issue is about the order of the Competent Authority being passed in violation of the principles of natural justice. No doubt the Architect's Certificate was requisitioned by the Competent Authority after closure of arguments of parties on 11 July 2022. In the ordinary course, the Competent Authority ought to have avoided taking any document on record after the conclusion of the hearing. Though Competent Authority is justified in seeking a report of the Architect for area calculation in accordance with the Circular dated 22 June 2018, the Architect's Certificate ought to have been brought to the notice of the contesting parties

by granting them an opportunity for a hearing. In fact, this Court was tempted to remand the proceedings before Competent Authority on the ground of procurement of Architect's Certificate after closure of arguments. However since Petitioner stretched its case to the extreme level of denial of conveyance in respect of any portion of the land, this Court felt it necessary to decide that issue. While doing so, this Court has also gone into the issue of the correctness of the area conveyed in favour of the Society. After having considered the entire conspectus of the case, this Court has arrived at a conclusion that the Competent Authority has rightly conveyed an admeasuring 1137.56 sq. mtrs. in favor of the society thereby leaving an admeasuring 222.37 sq. mtrs. for sustenance of the 8 structures on the plot. The issue of the Petitioner's entitlement for the extra area by deducting some area from society's entitlement cannot be decided in the present Petition, for which the Petitioner will have to ultimately file a Civil Suit. Therefore though there is a technical violation on the part of the Competent Authority in not bringing the Architect's Report to the notice of the Petitioner, I am of the view that remanding the proceedings to the Competent Authority would be a useless formality. It is well-settled law that the principle of *audi alteram partem* cannot be overstretched to make a mockery of proceedings. If the Court is satisfied that no practical purpose would be served in remanding the proceedings, order of remand is not warranted even if a technical violation of principles of natural justice is noticed in a given case. A useful reference in this regard can be made to the judgment of the Apex Court in ***Aligarh Muslim University and Ors. Vs. Mansoor Ali Khan***⁷ in which the Apex Court has discussed "useless formality theory" and as held in para 20 to 26 as under:

⁷ 2000 (7) SCC 529

"20. This is the crucial point in this case. As already stated under point 4, in the case of Mr. Mansoor Ali Khan, notice calling for an explanation had not been issued under Rule 5(8)(i) of the 1969 Rules. Question is whether interference is not called for in the special circumstances of the case.

21. As pointed recently in M.C. Mehta Vs. Union of India there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in Gadde Venkateswara Rao vs. Government of Andhra Pradesh, it is not necessary to quash the order merely because of violation of principles of natural justice.

22. In M.C.Mehta it was pointed out that at one time, it was held in Ridge vs. Baldwin that breach of principles of natural justice was in itself treated as prejudice and that no other 'de facto' prejudice needed to be proved. But, since then the rigour of the rule has been relaxed not only in England but also in our country. In S. L. Kapoor Vs. Jagmohan Chinnappa Reddy, J. followed Ridge vs. Baldwin and set aside the order of supersession of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were laid down to which we shall presently refer.

23. Chinnappa Reddy, J. in S. L. Kapoor's case, laid two exceptions (at SCC p. 395) namely, if upon admitted or indisputable facts only one conclusion was possible, then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In K. L. Tripathi Vs. State Bank of India, Sabyasachi Mukherji, J. (as he then was) also laid down the principle that not mere violation of natural justice but de facto prejudice (other than non-issue of notice) had to be proved. It was observed: quoting Wade Administrative Law, (5th Edn., pp. 472-475) as follows: (SCC p. 58, para 31)

"....it is not possible to lay down rigid rules as to when principles of natural justice are to apply, nor as their scope and extentThere must have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject matter to be dealt with and so forth".

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in State Bank of Patiala Vs. S.K. Sharma. In that case, the principle of 'prejudice' has been further elaborated. The same principle has been reiterated again in Rajendra Singh Vs. State of M.P..

25. The 'useless formality' theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one

conclusion" referred to above, - there has been considerable debate of the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Staughton L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, De. Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the Court will be prejudging the issue. Some others have said, that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via-media rules. We do not think it necessary, in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

26. It will be sufficient, for the purpose of the case of Mr. Mansoor Ali Khan to show that his case will fall within the exceptions stated by Chinnappa Reddy, J. in S. L. Kapoor Vs. Jagmohan, namely, that on the admitted or indisputable facts - only one view is possible. In that event no prejudice can be said to have been caused to Mr. Mansoor Ali Khan though notice has not been issued."

(emphasis supplied)

21) In my view therefore, though there is a technical violation of principles of natural justice on the part of Competent Authority, no useful purpose would be served in remanding the proceedings. I am therefore not inclined to make an order of remand in the peculiar facts and circumstances of the case.

22) The last issue is about an Order being passed against a dead person. In my view legal heirs (Respondent Nos. 4 to 9) of Dattatraya Khanderao Ladewar, who was apparently dead at the time of filing/decision of the application, are not aggrieved by the Order of the Competent Authority. Petitioner cannot shoot off the shoulders of Respondent Nos. 4 to 9 who are not aggrieved by the Impugned Order. In fact, Petitioner claims right, title and interest in the land conveyed in favor of the society and he is fortunate not to face contest from original owner/his heirs who are/were yet to execute conveyance in Petitioner's favour. Therefore Petitioner cannot be permitted to raise the grievance of non-service of

notices on legal heirs of Dattatraya Khanderao Ladewar for the purpose of upsetting validly passed Order by Competent Authority.

23) After considering the overall conspectus of the case, I am of the view that no serious error can be traced in the order of unilateral deemed conveyance passed by the Competent Authority. Apart from the grievance of non-entitlement of society to seek conveyance in respect of any portion of land, Petitioner appears to be mainly aggrieved by conveyance of area of 1137.56 sq. mtrs. and contends that lesser area ought to have been conveyed to the society. By now is well settled law that the certificate of unilateral deemed conveyance is not determinative of rights and entitlements of parties in the land and the aggrieved party is entitled to file a civil suit challenging conveyance of area of land by such certificate. Reference in this regard can be made to the judgments of this Court in *Mazda Construction Company and Others Vs. Sultanabad Darshan Co-operative Housing Society*⁸, *ACME Enterprises and Another Vs. Deputy Registrar, Co-operative Societies and Others*⁹ and *Tirupati Shopping Centre Premises Co-operative Society Ltd. Vs. Shabayesha Construction Company Pvt. Ltd.*¹⁰ Petitioner would thus be at liberty to file a Civil Suit to agitate its grievance in respect of area of land conveyed in Society's favor.

24) I am therefore of the view that, the order of unilateral deemed conveyance passed by the Competent Authority is unexceptionable. The Petition must fail and is accordingly dismissed without any orders as to costs.

SANDEEP V. MARNE J.

⁸ 2012 SCC OnLine Bom 1266

⁹ 2023 4 AIR Bom.R 817.

¹⁰ (2021) 6 Mh.L.J. 557.