

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1421 OF 2024

New Manoday Co-operative
Housing Society Limited

.. Petitioner

Versus

Uday Madhavrao Jagtap & Ors.

.. Respondents

AND
WRIT PETITION (L) NO. 4104 OF 2024

Bhupesh Gajanan Sankhe and Anr.

.. Petitioners

Versus

State Of Maharashtra Through
Department Of Co-Operation
Marketing And Textile and Ors.

.. Respondents

WITH
INTERIM APPLICATION (L) NO.11031 OF 2024
IN
WRIT PETITION (L) NO. 4104 OF 2024

Ujjwala Uday Kale nee

Ujjwala Madhavrao Jagtap & Anr.

.. Applicants/Intervenors

IN THE MATTER BETWEEN

Bhupesh Gajanan Sankhe and Anr.

.. Petitioners

VersusState Of Maharashtra Through
Department Of Co-Operation
Marketing And Textile and Ors.

.. Respondents

Mr. Mayur Khandeparkar a/w Mr. Amogh Singh, Mr. Santosh Pathak,
Mr. Chirag Thakkar & Anubha Singh i/b Law Origin, *for Petitioner in
both Petitions.*

Mr. Devdatta A. Sakhalkar, for Respondent Nos. 4 to 6 in
WP/1421/2024 and for Respondent Nos.2, 3 & 6 in WPL/4104/2024.

Ms. Sneha Phene a/w Mr. Yash Juwatkar, Respondent Nos. 2 & 3 in
WP/1421/2024 and for Applicant in IAL/11031/2024.

Ms. Nazia Shaikh, AGP a/w Himanshu B. Takke, AGP for State, for
Respondent No.7 in WP/1421/2024 and for Respondent Nos. 1, 4 & 5 in
WPL/4104/2024.

CORAM : SANDEEP V. MARNE J.**RESERVED ON : 22 APRIL 2024.****PRONOUNCED ON : 30 APRIL 2024.****JUDGMENT :-****A. THE CHALLENGE**

1) Petitioners-Society has filed these two Petitions challenging (i)
Order passed by Competent Authority rejecting its application for grant

of unilateral deemed conveyance of land and (ii) the Order passed by Minister-Cooperation directing the Divisional Joint Registrar of Co-operative Societies to initiate action for cancellation of registration of Petitioner-Society. Although the Impugned Orders are passed by two separate authorities in independent proceedings filed seeking different reliefs, as the reason for passing of both the Orders is common, both the Petitions are decided by this common judgment. In Writ Petition No.1421 of 2024, Petitioner-Society has challenged Order dated 18 October 2023 by which Society's Application filed under Section 11 of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA) for grant of unilateral deemed conveyance of land admeasuring 1583.46 sq.mtrs. has been rejected. In Writ Petition (L) No. 4104 of 2024, the Society has challenged Order dated 24 January 2024 passed by Minister, Co-operation directing Divisional Joint Registrar of Co-operative Societies to initiate action for de-registration of Petitioner-Society. The common reason cited for passing both the orders is pendency of Suit filed by persons claiming share/ownership in the larger portion of the land. Therefore, the issue that arises for consideration is whether pendency of a title suit by persons against promoters claiming ownership and/or share in the land can be a reason for i) deregistration of a Co-operative Society formed by flat purchasers in a building constructed on part of such land and ii) for denying unilateral deemed conveyance of such part of land.

B. FACTS

2) A brief factual narration would be necessary for better understanding the exact controversy involved in the Petitions. Late Madhavrao Jagtap was the original owner in respect of land bearing

Survey No. 55, Hissa No.1B and Final Plot CTS No. 229, 229/1 to 7 admeasuring 9438 sq. yards i.e. 7890.17 sq. mtrs. situated at village Kanheri at Dattapada Road, Borivali (East), Mumbai 400 066 (**larger land**). There is factual dispute about the marriage(s) performed by late Madhavrao Jagtap. Manoramabai claims marriage with Madhavrao and out of their claimed wedlock, three children named Uday Jagtap, Ujwala Jagtap and Mangala Jagtap are born. After the demise of late Madhavrao Jagtap, it is claimed that Manoramabai and Uday Jagtap came in occupation and possession of the said larger land. That Manoramabai's name came to be reflected in the revenue records pertaining to the larger land. It appears that Manoramabai and Uday Jagtap took smaller portion of land admeasuring 1583.46 sq. mtrs. for development and submitted plans for construction of a building. Intimation of Disapproval (IOD) for construction of the building was issued on 28 March 1973 and the Commencement Certificate was issued on 30 November 1977. They executed agreements with flat purchasers for sale of various flats constructed in the building named "Manoday". Under the said agreements executed from time to time during the years 1997, said Manoramabai and Uday Jagtap *inter alia* undertook to form a co-operative society of flat purchasers and to convey the land, which is the subject matter of the agreement in favour of such co-operative society. After construction of the building was complete, Occupancy Certificate was issued on 3 January 1978.

3) One Alice John Madhavrao also claim marriage with Madhavrao Jagtap and that out of their claimed wedlock, daughter named Nalini Ramakant Jadhav was born. Nalini is now no more and has Vibhawari Mohan Shinde, Sunita Ashok Shinde and Anjali Ashok Shinde as her daughters. During her lifetime, Nalini Jadhav filed initially a pauper application in this Court on 8 January 1975, which was

converted into Suit No. 246 of 1977. The Suit was against Manoramabai, Uday, Ujwala and Mangala. In the Suit, Nalini initially claimed undivided one-fifth share in the suit property and for partition and separate possession thereof. It appears that the suit has been later amended and the prayer for partition is substituted by prayer for declaration that Plaintiff-Nalini is the sole owner of the suit property and is entitled to occupy and possess the same.

4) During pendency of the suit, as observed above, Manoramabai and Uday continued construction of the building, sold flats and procured Occupancy Certificate on 3 January 1978. It is Petitioner's case that Plaintiffs in Suit No. 246 of 1977 failed to secure any injunction on account of which the construction of the building and occupation of the flats continued without any obstruction. After Nalini's death her heirs Vibhawari, Sunita and Anjali are prosecuting the same. The suit is still pending. Petitioner-Society attempted to intervene in the Suit, but its application was resisted by Plaintiffs therein and has been rejected observing that Petitioner-Society could pursue separate legal action in respect of its rights. Therefore Petitioner-society is not a party to the Suit.

5) The flat purchasers who purchased flats in the building, formed and registered 'New Manoday Co-operative Housing Society Limited' under Registration Certificate dated 18 November 1988. Suit No.246 of 1977 was transferred to City Civil Court and registered as Suit No. 9750 of 1977.

6) Petitioner-Society filed application for grant of unilateral deemed conveyance before the Deputy Registrar of Cooperative Societies and Competent Authority. According to Petitioner, due to oversight

conveyance of larger plot of land was sought, though the agreements with flat purchasers were only in respect of land admeasuring 1583.46 sq. mtrs. Society's application was rejected by the Competent Authority on 31 December 2012 inter alia holding that Nalini Jadhav is the owner of the land, who did not execute agreements for sale of flats. Petitioner-Society filed Writ Petition No. 477 of 2014 challenging the Order dated 31 December 2012, which was disposed of by Order dated 12 January 2023 after recording submissions on behalf of Petitioner-Society that it was seeking conveyance of only of 1583.46 sq. mtrs. and sought liberty to file fresh application before the Competent Authority. The Writ Petition was accordingly disposed of granting liberty to Petitioner-Society to file fresh Application by Order dated 12 January 2023. Review of the Order dated 12 January 2023 was sought on behalf of heirs of Nalini and by consent, the Order dated 12 January 2023 was recalled and Writ Petition No.477 of 2014 was restored. On 16 March 2023, Writ Petition No.477 of 2014 was disposed of by setting aside Order dated 31 December 2012 and recording that Petitioner-Society has filed fresh application for deemed conveyance and directing decision thereon. By Order dated 18 October 2023, the Competent Authority proceeded to reject the application for deemed conveyance of land admeasuring 1583.46 sq. mtrs. on the ground of pendency of title suit filed by heirs of Nalini Jadhav. Order dated 18 October 2023 is subject matter of challenge in Writ Petition No.1421 of 2021.

7) During pendency of proceedings for grant of unilateral deemed conveyance in favour of Petitioner-Society, heirs of Nalini Jagtap filed Application No. 6 of 2023 before Divisional Joint Registrar of Co-operative Societies on 31 January 2023 under Section 21A of Maharashtra Co-operative Societies Act (**MCS Act**) seeking deregistration of Petitioner-Society on the ground of misrepresentation.

By Order dated 24 April 2023, Divisional Joint Registrar dismissed Application No.6 of 2023. The Order of the Divisional Joint Registrar was challenged by heirs of Nalini Jadhav by filing Appeal No. 380 of 2023 before Minister, Cooperation under Section 152 of the MCS Act. The Hon'ble Minister, Cooperation passed Order dated 31 December 2012 and set aside the Order passed by the Divisional Joint Registrar and directed initiation of proceedings for deregistration of Petitioner Society under provisions of Section 21A of the MCS Act. The learned Minister, Co-operation has cited the very same reason of pendency of title suit filed by heirs of Nalini Jadhav while directing initiation of proceedings for deregistration of Petitioner-Society. Petitioner-Society is aggrieved by the Order dated 24 January 2024 passed by the Minister, Co-operation and has filed Writ Petition (L) No.4101 of 2024.

8) This is how pendency of Suit No. 9750 of 1977 is cited as a reason both for rejection of Society's Application for grant of certificate of unilateral deemed conveyance as well as for ordering Society's deregistration.

9) Writ Petition (L) No. 4104 of 2024 was initially filed by two members of the society by impleading the rest of the members as proforma Respondents, under a presumption that the Minister's Order has already derecognized the society. However subsequently, the Petition has been amended and now the society is also impleaded as Petitioner No.3 in Writ Petition (L) No. 4104 of 2024. It must be noted here that while the proceedings were contested essentially between the branches of Manoramabai and Alice, who claim to be wives of Madhavrao Jagtap, a new twist is now added by daughters of Manoramabai, who are also claiming share in the larger plot and

contend that Manoramabai and Uday Jagtap did not have authority to either construct building or sale flats therein to their exclusion. Accordingly, Ujawala Jagtap and Mangala Jagtap have filed Interim Application (L) No.11031 of 2024 in Writ Petition (L) No. 4104 of 2024 seeking intervention. In Writ Petition No. 1424 of 2024 they are impleaded as Respondent Nos.2 and 3 and they have filed Affidavit-in-Reply claiming share in larger property.

C. SUBMISSIONS

10) Mr. Mayur Khandeparkar, the learned counsel appearing for Petitioner-Society in both the Petitions would submit that mere pendency of title suit filed by the branch of Nalini Jadhav could not have been the reason either for the Competent Authority to reject application for unilateral deemed conveyance or for the learned Minister to order deregistration of Petitioner-Society. So far as the Order passed by the learned Minister for deregistration of Petitioner-Society is concerned, Mr. Khandeparkar would submit that the society was registered on 18 November 1988 and proceedings filed seeking deregistration by the heirs of Nalini Jadhav were clearly time barred and were rightly rejected by the Divisional Joint Registrar. That heirs of Nalini Jadhav do not have *locus standi* to challenge registration of Petitioner-Society. The application for deregistration was filed by someone who are not members of the Society and who had absolutely no relationship with Society's affairs. That no injunction is granted in the pending suit and therefore mere pendency of the suit cannot have any effect on deregistration of Petitioner-Society. He would submit that Plaintiffs in the suit opposed impleadment of Petitioner in Suit No. 9750 of 1977 and now they are using pendency of the suit for the purpose of seeking deregistration of Petitioner-Society. That the building in

question has been constructed in the year 1977 and occupancy certificate has been issued in the year 1978. That therefore application filed under Section 21A of MCS Act after delay of 35 long years could not have entertained.

11) Mr. Khandeparkar would further submit that the learned Minister pendency of title dispute between the parties cannot be a reason for deregistration of the society. He would also rely upon judgment of Single Judge of this Court *Airoli Neha Apartment Co-op. Housing Society Ltd. Vs. State of Maharashtra & Ors.*¹ in support of his contention that once the building is fully occupied, no Order for deregistration of the society can be passed. He would therefore pray for setting aside the Order dated 24 January 2024 passed by the learned Minister, Co-operation.

12) So far as Writ Petition No.1421 of 2024 is concerned, Mr. Khandeparkar would contend that mere pendency of Suit No.9750 of 1977 filed by Nalini Jadhav/her heirs cannot have any effect on the obligation of the promoter to convey the land under Section 11 of MOFA. That MOFA agreements executed in favour of flat purchasers have not been challenged in any proceedings. That in absence of challenge to MOFA agreements, the statutory right of flat purchasers to form a society and to seek certificate of unilateral deemed conveyance cannot be kept in abeyance merely on account of pendency of suit filed by Nalini Jadhav/heirs before the City Civil Court. That the Society is entitled to have the land conveyed in its favour, which has not been conveyed for more than 40 long years. That Society's right to seek unilateral Deemed Conveyance cannot be made dependent on pendency of title suit. In support of his contention, he would rely upon

¹ 2023(3) Mh.L.J. 529.

Order of this Court in *Om Shakuntal Co-op. Housing Society Ltd. Vs. Patel Wood Works & Tiber Mart & Anr.*² That there is no injunction granted by City Civil Court and that therefore there is no impediment in conveying the land in favour of society

13) Mr. Khandeparkar would further submit that it is settled position of law that an order granting deemed conveyance does not conclude issue of right, title or interest in the land and that the same is always subject to decision of Civil Suit. That the scope of application under Section 11 of MOFA is extremely limited, where the Competent Authority has to merely verify the documents on record and convey the land in accordance with the agreement executed with the flat purchasers.

14) Alternatively, Mr. Khandeparkar would submit that even if any order is passed by the City Civil Court in pending suit, the land on which Society's building is constructed can always be allocated to the share of Manoramabai and Uday Jagtap and that therefore pendency of suit can never be a reason for rejection of application for conveyance of the land.

15) *Per contra*, Mr. Sakhalkar the learned counsel appearing for heirs of Nalini Jadhav (Respondent Nos. 2, 3 and 6 in Writ Petition (L) No.4104 of 2024) would oppose the Petition and support the Order passed by the learned Minister. He would submit that the Order passed by the learned Minister does not by itself deregister the Society as is erroneously portrayed by Petitioner. That he has merely directed Divisional Joint Registrar to initiate proceedings for deregistration. That the Petition is premature as the Divisional Joint Registrar is yet to pass

²Writ Petition No.2578 of 2020 decided on 18 March 2024.

an Order deregistering Petitioner-Society. Mr. Sakhalkar would therefore pray for dismissal of Writ Petition No.1421 of 2024.

16) Mr. Sakhalkar would submit that Manoramabai or Uday Jagtap have absolutely no right, title or interest in any portion of the larger property. That they illegally and unauthorisedly constructed building on land admeasuring 1583.46 sq. mtrs. That construction of the building on the land was undertaken and flats were sold with full knowledge of pendency of Suit No.9750 of 1977. That therefore no equities can be claimed either by Manoramabai and Uday Jagtap or by the flat purchasers through their society. That registration of the society is by misrepresentation and suppression of pendency of the suit.

17) Mr. Sakhalkar would further submit that Madhavrao Bhikaji Jagtap had married Alice John on 18 February 1932 and daughter named Nalini was born to the couple on 21 September 1936. That Alice died on 25 April 1943 and Madhavrao died in the year 1955. That Nalini got married and Vibhawari, Sunita and Anjali are her daughters. That after Madhavrao's death, Manoramabai illegally got her name mutated in revenue records in respect of the larger land as Manoramabai Bhikaji Jagtap and subsequently in the year 1966 she got her name changed as Manoramabai Madhavrao Jagtap. After Nalini got wind of attempts to sell larger portion of land by Manoramabai and Uday, Suit No.246 of 1977 was filed in this Court. The suit was initially filed for partition of larger land under the misbelief that Manoramabai was wife of Madhavrao. However, in their Written Statement, Manoramabai and Uday Jagtap denied marriage between Madhavrao with Alice and relationship with Nalini as daughter. That without Nalini's consent, Manoramabai and Uday got constructed building on part of the larger land. That flat purchasers unilaterally registered of the society on 18

November 1988 without disclosing the factum of pendency of suit filed by Nalini. Upon noticing that the society was trying to create further interest in the property by granting development of rights to a developer, heirs of Nalini filed Application before Divisional Joint Registrar under Section 21A of MCS Act seeking deregistration of the Society on the ground of misrepresentation. That the Application was erroneously rejected by Divisional Joint Registrar, which error has been corrected by the learned Minister, Co-operation by Order dated 24 January 2024.

18) So far as Writ Petition (L) No. 4104 of 2024 is concerned, Mr. Sakhalkar would submit that no portion of the land can be conveyed in favour of the Society in the light of specific declaration sought in Suit No.9750 of 1977 that Nalini/her heirs are absolute owners in respect of the entire larger land. That the suit continues to remain pending. That Society's demand for conveyance of land admeasuring 1583.46 sq. mtrs. is also not maintainable and has been rightly rejected. That conveyance of any portion of land would create complications in the matter. That therefore the Competent Authority has rightly rejected Society's Application for grant of unilateral deemed conveyance.

19) Ms. Sneha Phene, the learned counsel appearing for Respondent Nos. 2 and 3 in Writ Petition No. 1421/2024 and for Intervenor in Writ Petition (Lodg.) No.4104/2024, who are daughters of Madhavrao and Manorama and sisters of Uday Jagtap, also oppose both the petitions. She would submit that the agreements are executed by Manoramabai and Uday in favour of the flat purchasers behind the back of the sisters. That sisters have share in the property of Madhavrao Jagtap. That in para-1.2 of Writ Petition No. 1421 of 2024, Petitioner has accepted that Respondent Nos.1 to 3 therein are legal heirs of the original owners.

That since ownership of the two sisters is not disputed, purchase of flats by members of Petitioner-Society without owners being parties to the agreement, are void. That therefore no land can be conveyed in favour of the Society on the basis of agreements executed in favour of the society's members. That pendency of Suit No. 9750 of 1977 was in the knowledge of members of the Petitioner-Society. She would also submit that daughters of Nalini Jadhav have no locus in the present proceedings as they are not the heirs of Madhavrao Jagtap.

20) In the alternative, Ms. Phene would submit that in the event of this Court granting deemed conveyance on any portion of land in favour of the Society, such conveyance be made subject to the rights of her clients. Further, entitlement to conveyance be restricted to use of FSI only in respect of land admeasuring 1583.46 sq.mtrs and not in respect of the entire larger property.

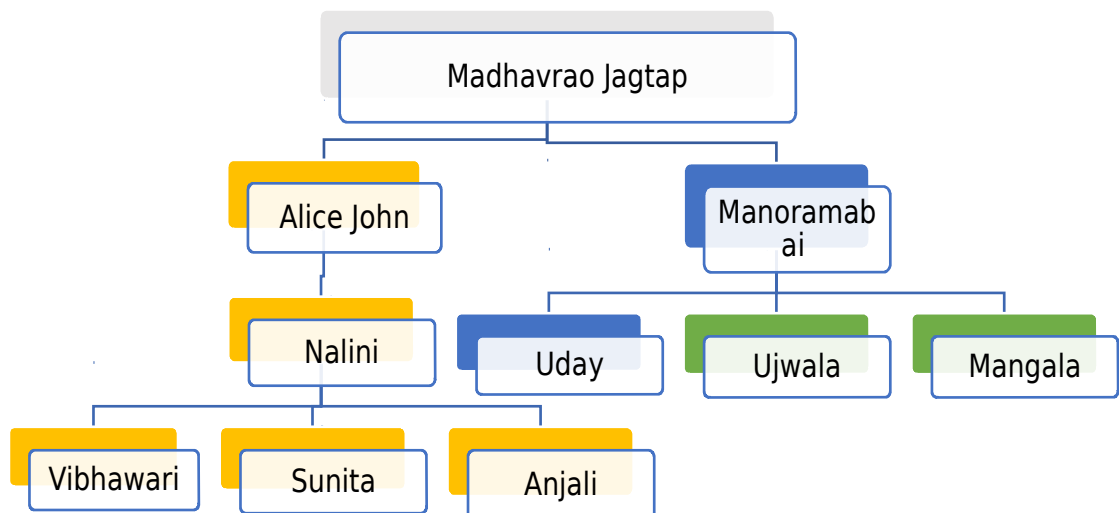
21) I have also heard Ms. Shaikh and Mr. Takke, the learned AGPs for the State.

D. REASONS AND ANALYSIS

22) After having heard the learned counsel appearing for the parties and after having gone through the orders impugned in the present petitions, it is seen that pendency of Suit No. 9750 of 1977 before the City Civil Court is the common ground used by both, the learned Minister as well as the Competent Authority for ordering de-registration of Petitioner-Society and for denying deemed conveyance to it respectively. Since the reason for passing impugned orders is common, both the petitions are being decided by this common judgment.

D. 1 CONTESTING PARTIES

23) As observed above, there are three sets of parties, who claim right to succeed to the estate of Madhavrao Jagtap. The first set of comprises of Manoramabai Jagtap (wife) and Uday Jagtap (son). The second set comprises of Ujwala Jagtap and Mangala Jagtap, who are the daughters of Madhavrao and Manoramabai. The third set comprises of daughters of Nalini Jadhav viz. Vibhawari, Sunita and Anjali who claim right to succeed to Madhavrao's estate through their grandmother, Alice John, who is also claimed to be Madhavrao's wife. The competing claims amongst alleged heirs of Madhavrao Jagtap arises on account of possible two marriages performed by him. Both Manoramabai as well as Alice claim marriage with Madhavrao and therefore their children and grandchildren claim right to succeed to Madhavrao's estate. The surviving parties today are Vibhawari, Sunita and Anjali, who claim right through their grandmother, Alice John, whereas Uday, Ujwala and Mangala claim to be the children born out of wedlock between Madhavrao and Manoramabai. Here again, there are disputes, *inter-se*, between children of Madhavrao and Manoramabai. Son, Uday is on one side and daughters, Ujwala and Mangala are on the other. The following family tree, with indication of warring groups in different colours, would better explain the position of contesting parties:



D. 2 SUIT FILED BY NALINI

24) Though it is not necessary for this Court to go into the issue of rights of various persons claiming to be the heirs of Madhavrao Jagtap, their competing claims are discussed only for the purpose of understanding as to why they are opposing registration of Petitioner-Society and grant of deemed conveyance. Though there are three sets of claimants, one set of claimant is not opposing either registration of society or grant of deemed conveyance. This is because Uday and his mother, Manoramabai have caused construction of the building and have sold flats to the members of the Petitioner-Society. The main opposition is by Vibhawari, Sunita and Anjali who claim to be the granddaughters of Madhavrao and Alice and believe that they alone are exclusive owners of the entire larger portion of the land. Their mother, Nalini Jadhav initially filed Pauper Petition before the City Civil Court in the year 1977, which was subsequently numbered as Suit No. 246 of 1977. The said suit has been renumbered as Suit No.9750 of 1977 after its transfer to the City Civil Court. A copy of the latest amended plaint is placed on record by Mr. Sakhalkar. The amended plaint reveals that the suit was instituted by Nalini Jadhav claiming to be the daughter born out of the wedlock between Madhavrao and Alice John. Since Nalini Jadhav has died on 25 March 2015, her daughters, Vibhawari Shinde, Sunita Shinde and Anita Shinde are now prosecuting the suit. Defendants to the suit are, Uday Jagtap, Ujwala Jagtap and Mangala Jagtap. Initially, Plaintiff sought prayer for partition and one-fifth share in the suit property. However, subsequently prayer clauses (b) to (e) are apparently deleted and instead Plaintiffs now seek a prayer that they be the exclusive owners of the suit property and are entitled to occupy and possess the same. The amended claim towards exclusive ownership in the suit property is premised on an assertion that Manoramabai is not

the legally wedded wife of Madhavrao Jagtap and that Madhavrao married only Alice John, i.e. the Plaintiff's grandmother. The suit filed in the year 1977 is apparently still pending before the City Civil Court.

D. 3 CONSTRUCTION OF BUILDING AND SALE OF FLATS

25) As observed above, out of the larger portion of the land admeasuring 7890.17 sq.mtrs, Manoramabai and Uday decided to develop smaller portion of the land admeasuring 1583.46 sq.mtrs. IOD for construction of the building was issued on 28 March 1973 i.e. before filing of the suit. Issuance of the Commencement Certificate dated 30 November 1977 appears to be contemporaneous with filing of the suit. Perusal of the plaint shows that prayer clause '(i)' contains prayer for interim injunction from causing any construction or from selling flats in the proposed building to be constructed in the suit property. It is common ground that no injunction was granted in the suit restraining Manoramabai or Uday from causing construction or from selling flats in the building, with the result, construction of the building progressed and was completed with issuance of Occupancy Certificate on 3 January 1978. Manoramabai and Uday executed agreements with the flat purchasers. Copy of one such agreement dated 28 October 1977 is placed on record. The Agreement shows that land admeasuring 1583.46 sq.mtrs out of the larger portion of land admeasuring 7890.17 sq.mtrs was taken up for development and for construction of the building named 'Manoday'. In this regard, recital-(b) to the agreement is relevant and reads thus:

(b) The party of the First Part has evolved a scheme for construction of a building to be named as "MANODAY" (herein after referred to as "The said building") on a piece of land admeasuring 1583.46 Sq. Mtrs. and being plot No. A comprised in the bigger piece or parcel of the land more particularly described at FIRSTLY in Schedule I (The said

smaller piece of land bearing Plot A is herein after for the sake of brevity referred to as the 'said Piece of land'), consisting of self contained flats for residential purposes and use/shops/offices/garages on the ___ floor and/or in the open compound, in accordance with plans elevations and sections sanctioned and approved by the Bombay Municipality and for giving and /or selling such flats, shops and offices on what is known as "Ownership basis", with a view that the Party of First Part shall, ultimately, in co-operation with the owners of such flats etc. in the said building, form a co-operative Housing Society or a Limited Company in whose favour a conveyance of the said piece of land together with the said building constructed thereon would be executed (and for sake of brevity the said piece of land together with the said building constructed thereon are herein after referred to as "The Said Property"),

26) Under Clause-38, it was agreed that the purchasers of the flats were to form a Co-operative Society and under Clause-40, the same was to be known as '*Manoday Co-operative Housing Society*'. Under Clause-41, Manoramabai and Uday agreed to execute conveyance of the land in favour of such Co-operative Society. Clauses-38, 40 and 41 of the Agreement read thus:

38. The flats/shop/offices/garage Purchasers-Owners-Occupiers by the party of the First Part form a Co-operative Housing Society or Limited Company with the usual rules and regulations and bye-laws with such additions and modifications as may be required to suit in this particular case. The party of the Second Part agrees to join with the other flats/shop/offices/garage Purchasers-Owners-Occupiers in the said building in forming the Society Limited Company as provided herein above and shall become a member of the said Society/Limited Company with such rights as allowed to persons holding flats/shop/offices/garage and agrees to receive and accept the shares the shares of the said Society or Limited Company and at no time hereafter he/she/it shall have right to repudiate the allotment of the said shares. This agreement shall be treated as an application by the Purchasers-Owners-Occupiers for allotment of shares or membership of the Society or Limited Company. The Society or Limited Company will execute in favour of said flats/shop/offices/garage Purchasers-Owners-Occupiers Co-ownership or Co-partnership tenancy agreement in respect of flats/shop/offices/garage held by him/her/them containing usual covenants and conditions.

40. The said building shall always be known as 'MANODAY' and the name of the Co-operative Society or Limited Company to be formed shall bear the name "MANODAY" Co-operative Housing Society" or "MANODAY Company Limited" and this name shall not be changed without the written permission of the party of the First Part.

41. After the building is complete and ready and fit for occupation and after the Co-operative Housing Society or a Limited Company is formed or incorporated and registered only after all the flat/shops/offices/garages in the said building have been sold and disposed off by the party of the First Part and after the party of the First Part has received all dues payable to them under terms of the agreements with various flats/shop/offices/garage Purchasers-Owners-Occupiers, the party of First Part shall execute an assignment in favour of the said Co-operative Society or Limited Company.

27) Petitioner-Society came to be registered on 18 November 1988. All these events occurred during pendency of the suit. Plaintiffs in the suit did not stop construction of the building, sale of flats or registration of Society.

D. 4 DECISION REJECTING DEEMED CONVEYANCE

28) The Society filed application on 7 January 2012 for issuance of certificate of unilateral deemed conveyance under Section 11 of the MOFA before the Competent Authority. In that application, Manorama and Uday were impleaded as Respondent Nos. 1 and 2, who failed to remain present in the proceedings before the Competent Authority. Nalini Jadhav was impleaded as Respondent No.3, who appeared through her advocate and pressed her claim to be the owner of the land. She brought to the notice of the Competent Authority the factum of pendency of suit. She claimed that despite being the owner, she did not execute any agreement under Section 4 of MOFA with members of the Society and therefore opposed the application for grant of certificate of unilateral deemed conveyance. The Competent Authority passed Order dated 31 December 2012 rejecting Society's application for Deemed

Conveyance. Perusal of the order passed by the Competent Authority indicates that it conducted a sort of title enquiry while deciding application under Section 11 of MOFA, which is clearly impermissible. The Competent Authority while passing Order dated 31 December 2012 held that Nalini Jadhav is the owner in respect of the land in question and therefore rejected Society's application for deemed conveyance.

29) As observed above, the Writ Petition challenging Order dated 31 December 2012 (Writ Petition No. 477 of 2014) was withdrawn with leave to file a fresh application seeking conveyance of smaller portion of land admeasuring 1583.46 sq.mtrs.

30) In the fresh application filed by the Society, conveyance of smaller portion of land admeasuring 1583.46 sq.mtrs was sought. The Competent Authority has proceeded to reject Society's application referring to the pendency of suit filed by Nalini Jadhav/her heirs. The Competent Authority has held that, allowing Society's application would tantamount to interference in or pre-deciding or frustrating the issue pending in Suit No. 9750 of 1977. Therefore, without going into the merits, the Competent Authority has proceeded to dismiss the application.

31) In my view, the Competent Authority has erred in going into the title disputes raised by Nalini Jadhav/her heirs while deciding application under Section 11 of MOFA. Under Section 11, jurisdiction of Competent Authority is in extremely narrow compass. The limited remit of enquiry before the Competent Authority is only to convey what the promoter fails to convey as per the agreements executed under Section 4 of MOFA. Under Section 11, an obligation is imposed on the

Promoter to take necessary steps to complete his title and to convey to the Society, his right, title and interest in the land in accordance with the agreement executed under Section 4. Sub-section (3) of Section 11 is a special provision empowering the Competent Authority to do something which the promoter fails to do despite the mandate of Section 11(1). Thus, the role of Competent Authority under Section 11(3) is limited to conveying what is agreed upon in agreement executed under Section 4. While doing so, the Competent Authority is not supposed to entertain, go into or consider title disputes between the original owners/promoters. If there is an agreement of flat purchase under Section 4 of MOFA and the agreement contains obligation on the part of the Promoter to convey his right, title and interest in the land in favour of the Society, the Competent Authority has no option but to issue a certificate of deemed conveyance as per Section 4 Agreement.

32) In the present case, the Competent Authority has overstepped its jurisdiction by unnecessarily going into title disputes between various persons claiming to be the heirs of Madhavrao Jagtap. The Civil Court will determine rights of persons to succeed to the estate of Madhavrao Jagtap. The Competent Authority neither has jurisdiction nor is supposed to go into such title disputes between the parties. All that the Competent Authority was required to do in the present case was to simply read covenants of agreement executed with the flat purchasers by the promoter under Section 4 of MOFA. Failure to perform obligation by the promoter in the present case under Section 11(1) is writ large. Once this position was obtaining before the Competent Authority, there was no scope for the authority to reject Society's application for issuance of certificate of unilateral deemed conveyance. It ought to have ignored pendency of title dispute between various persons claiming to be the heirs of Madhavrao Jagtap.

33) Perusal of covenants of the agreement dated 28 October 1977 executed by Manorama and Uday in their capacity as 'promoters' with flat purchasers clearly show obligation on the part of the promoters to convey land admeasuring 1583.46 sq.mtrs in favour of the society formed by the flat purchasers. The promoters ought to have fulfilled the said obligation by executing conveyance under Section 11(1) in favour of the Society. Since there is admitted failure on the part of the promoters to discharge their obligation under Section 11(1), the Competent Authority ought to have done what the promoter has failed to do under Section 11(1). The statutory scheme of MOFA is such that the Competent Authority exercising jurisdiction under Section 11 thereof is not supposed to institute an enquiry into disputes relating to title. If there is a promoter who has constructed a building and sold flats therein, there is an obligation imposed on the promoter to convey the land, on which the building is constructed in favour of the society. The dispute relating to promoter's title in the land is something which is outside the scope of enquiry under Section 11 of MOFA. If any person claims that promoter is not the owner or not the exclusive owner in respect of the land on which building is constructed and if such person claims ownership in such land, it is for that person to institute civil suit and establish his rights to the land in question. Pendency of such title disputes cannot be a ground for not conveying land under Section 11 by the Competent Authority. This is especially true when there is no fetter on grant such conveyance in the form of any injunction granted by the Civil Court. In the present case, there was no reason for the Competent Authority to injunct itself from performing its statutory functions under Section 11 of MOFA in absence of any injunction granted to that effect by the Civil Court. In my view, therefore the Competent Authority has failed to perform its statutory obligations under Sections 3, 4 and 5 of MOFA and has committed palpable error in entertaining and

considering title disputes between the parties while rejecting Society's application for Deemed Conveyance. In 2012, the Competent Authority had infact conducted enquiry into title disputes and had held Nalini Jadhav to be the owner in respect of the land in question. That order has already been set aside by this Court. In the fresh application filed by the Society, though merits of title dispute this time are skirted by the Competent Authority, pendency of title dispute is used as a ruse for not performing statutory functions under Section 11 of the MOFA. The entire approach of the Competent Authority, to my mind, appears to be faulty.

34) It needs no reiteration that issuance of Certificate of unilateral Deemed Conveyance by Competent Authority under Section 11 of MOFA, is not determinative of rights and contentions of the parties to the land in question. It has been repeatedly held by this Court that such conveyance is always subject to the orders that would be passed by Civil Court. Reference in this regard can be made to the judgments of this Court in *Mazda Construction Company and others V/s. Sultanabaad Darshan Co-operative Housing Society*³, *ACME Enterprises Another V/s. Deputy Registrar, Co-operative Societies and others*⁴ and *Tirupati Shopping Centre Premises Co-operative Society Ltd. V/s. Shabayesha Construction Company Pvt. Ltd.*⁵

35) The issue effect of competing claims between promoters and other persons to the title of the land on jurisdiction of competent authority under Section 11 of MOFA has been considered by this Court in *Vasundhara Dhananjay Dongre Vs. State of Maharashtra*⁶, wherein this Court held as under:

³ 2012 SCC OnLine 1266.

⁴ 2023 4 AIR Bom.R 817.

⁵ (2021) 6 Mh.L.J. 557.

⁶ WP(L) 23095 of 2021 decided on 12 March 2024

24 Even if the claim of the Petitioner is to be considered on merits, by ignoring the objection of delay and laches, I am of the view that no case is made out by the Petitioner for interference in the order dated 16 March 2012 and communication dated 19 October 2013. Petitioner cannot seek establish her title by filing a Petition under Article 227 of the Constitution of India under the guise of challenging a certificate of unilateral deemed conveyance issued by the Competent Authority under section 11 of the MOFA. Perusal of pleadings raised by Petitioner(s) in the Petition, in great details, would indicate that the Petition is in the nature of a suit for title. Respondents rely upon relinquishment deed dated 16 November 1979 by which Petitioner allegedly relinquished her rights in respect of various properties including land bearing CTS No.143. On the contrary, it is the case of Petitioner that the said document is forged and fabricated. This is something which only a civil court can decide and these issues cannot be raised in a Petition filed for challenging the certificate of unilateral deemed conveyance.

25 The contentions of the Petitioner that the scope of enquiry under provisions of sub-sections 3 and 4 of section 11 of the MOFA includes verification of the documents of title cannot be accepted. Use of the words "after verifying the authenticity of the documents submitted" would not mean an enquiry into title of the promoter. **The scope of enquiry by the Competent Authority under section 11 of the MOFA is restricted to conveyance of promoter's right, title and interest in the land and building. Whether promoter has validly acquired title in respect of land is something which would be outside the scope of enquiry under section 11 of the MOFA. That issue can only be decided in a civil suit.** Useful reference in this regard can be made to the observations of this Court in paragraph 20 of its judgment in *Mazda Construction Company & Ors.* (supra) in which it is held as under:

"20. To my mind, reading of Sections 10 and 11 together with Section 5A would make it amply clear that what is to be performed by the Competent Authority is a duty and obligation which the promoter is to perform in law. That is to convey the title and execute the documents according to the agreement. If that is the duty which is to be performed by the promoter, but which he fails to perform, then, the Competent Authority steps in to fulfil it. That is a duty towards the flat purchasers and which duty cannot be avoided except at the cost and pains of legal proceedings including a criminal prosecution. In these circumstances and when sections 10 and 11 are read together and harmoniously with the preceding sections including those which contain the particulars of the agreement, then, it becomes absolutely clear that what has to be conveyed even by a purchasers to acquire the Promoter's right, title and interest in the land and the building. Therefore, it cannot be said that an unilateral deemed conveyance conveys something more than what belongs to the Promoter. Section 11(1) provides for conveyance of Promoter's right, title and interest in the land and building as is clear from the words

"his right, title and interest...." appearing therein. I am not in agreement with Mr. Samdani that there are no guidelines guiding and enabling the Competent Authority to grant a deemed conveyance and therefore, the powers are likely to be abused or exercised arbitrarily in every such case. There are inbuilt checks and safeguards inasmuch as what is to be issued is a certificate entitling a unilateral deemed conveyance. It is not a document which stands alone or is a distinct transaction. It is a grant or conveyance in terms of what the agreement between parties stipulates and provides for being conveyed to the flat purchasers. Therefore, the Applicant is permitted to apply to the Competent Authority u/s 11(3) and such application is to be accompanied by true copies of the registered agreements for sale, executed by the Promoter with each individual member/flat purchaser and other relevant documents. It is to further that and to insist on the promoters fulfilling their obligations within the prescribed period, but noticing that their failure has resulted in hardship to flat purchasers, that the Legislature has stepped in. To my mind, this is not a power which can be exercised by the Competent Authority in ignorance of or by brushing aside the earlier provisions and contents of the agreement with the flat purchasers. Equally, the Competent Authority has to take into consideration the contents of other relevant documents."

(emphasis supplied)

36) Similarly, in *Om Shakuntal CHS Ltd.* (supra), a Single Judge of this Court has held that mere pendency of suit relating to title dispute cannot be a ground for rejection of application for unilateral deemed conveyance. This Court has held in paras- 1 and 2 as under :

1. The society registered under the Maharashtra Cooperative Societies Act, 1960 is challenging an order passed by the competent authority 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 (hereafter, "MOFA Act", for short) refusing to pass an order of deemed conveyance mainly on two grounds: (i) owner of the property has filed a suit against the promoter in relation to ownership rights; and (ii) the details of balance FSI has not been placed on record by way of certificate issued by Architect.
2. Purpose of introducing section 11(3) of the MOFA Act was to expedite the process of deemed conveyance in favour of the purchasers. Refusal to exercise power under section 11(3) of the MOFA Act on the flimsy ground defeats the purpose. The authorities under section 11(3) of the MOFA Act must be alive to the purpose for which section 11(3) of the MOFA Act has been introduced by legislature. It is well settled by the judgment of this Court in **Mazda**

Construction Co. v. Sultanabad Darshan CHS Ltd. reported in 2012 SCC OnLine Bom 1266 of confirmation of deemed conveyance and it is not for effect of conferring substantive rights on the society and the person aggrieved can get his right adjudicated before the Civil Court. Despite such position of law being settled almost 12 years back, still the authorities under section 11(3) of the MOFA Act are refusing to exercise their power under section 11(3) of the MOFA Act. **Mere pendency of suit in absence of restraint orders from the Civil Court, would not take away the power competent authority to issue deemed conveyance under section 11(3) of the MOFA Act. Broad compliance with section 4 of the MOFA Act is necessary. Therefore, once the ingredients of section 4 read with relevant provisions of the Act are prima facie complied with by the society, the authority under section 11(3) of the MOFA Act is under obligation to issue order of deemed conveyance subject to rights of aggrieved party to institute civil suit. Hence, the impugned order passed by the competent authority cannot be sustained.**

(emphasis supplied)

37) Thus mere pendency of title suit between promoter and other persons claiming a right or share in the land sought to be conveyed cannot be a ground for avoiding performance of statutory duty by the Competent Authority under Section 11(3) of MOFA.

38) In the present case as well, Certificate of unilateral Deemed Conveyance would obviously be subject to the decree that would be passed in Suit No. 9750 of 1977. Issuance of such Certificate would not impinge upon rights and contentions of any of the parties in the said suit. Mr. Khandeparkar has submitted that Society had attempted to intervene in the suit but its intervention application was opposed by Plaintiffs therein and the Society is not permitted to participate in the decision of the suit. He would therefore submit that decree passed in the suit would not be binding on the Society. This is something which the Plaintiffs need to take into consideration. So far as Writ Petition No. 1421 of 2024 is concerned, it would be sufficient to clarify that issuance

of certificate of unilateral deemed conveyance would be subject to the decree passed by the City Civil Court in Suit No. 9750 of 1977.

D. 5 ORDER OF DEREGISTRATION OF SOCIETY

39) Coming to Writ Petition (Lodg.) No. 4104 of 2024, the learned Minister has directed de-registration of Petitioner-Society by initiating action by Divisional Joint Registrar under Section 21A of the M.C.S. Act. As observed above, Petitioner-Society has been registered on 18 November 1988, the application seeking de-registration of Petitioner-Society was filed by the heirs of Nalini Jadhav for the first time on 31 January 2023 i.e. after 36 long years from the date of registration of the Society. Society's de-registration is sought under the provisions of Section 21A of the M.C.S. Act on the ground that the registration was obtained by misrepresentation without obtaining consent of Nalini Jadhav who is the owner of the land in question. Section 21A of M.C.S. Act reads thus:

21A. De-registration of societies.

(1) If the Registrar is satisfied that any society is registered on misrepresentation made by applicants, or where the work of the society is completed or exhausted or the purposes for which the society has been registered are not served, or any primary agricultural co-operative credit society using the word 'Bank', 'Banking', 'Banker' or any other derivative of the word 'Bank' in its name, he may, after giving an opportunity of being heard to the Chief Promoter, the committee and the members of the society, de-register the society :

Provided that, where the number of members of the society is so large and it is not possible to ascertain the correct addresses of all such members from the records in the office of the Registrar and, in the opinion of the Registrar it is not practicable to serve a notice of hearing on each such individual member, a public notice of the proceedings of the de-registration shall be given in the prescribed manner and such notice shall be deemed to be notice to all the members of the society including the Chief Promoter and the members of the Committee of the Society, and no proceeding in respect of the de-registration of the society shall be called in question in any Court merely on the ground that individual notice is not served on any such member.

(2) When a society is de-registered under the provisions of sub-section (1), the Registrar may, notwithstanding anything contained in this Act

or any other law for the time being in force, make such incidental and consequential orders including appointment of Official Assignee as the circumstances may require.

(3) Subject to the rules made under this Act, the Official Assignee shall realise the assets and liquidate the liabilities within a period of one year from the date he takes over the charge of property, assets, books, records and other documents, which period may, at the discretion of the Registrar, be extended from time to time, so however, that the total period does not exceed three years in the aggregate.

(4) The Official Assignee shall be paid such remuneration and allowances as may be prescribed; and he shall not be entitled to any remuneration whatever beyond the prescribed remuneration or allowances.

(5) The powers of the Registrar under sub-sections (1) and (2) shall not be exercised by any officer below the rank of a Joint Registrar of Co-operative Societies.

40) Thus, under Section 21A, misrepresentation made by the applicants is recognised as one of the grounds for de-registration of the Society. However, the issue in the present case is whether failure to obtain consent of Nalini Jadhav can be treated as misrepresentation by the applicants who sought registration of the Society? As observed above, members of Petitioner-Society have purchased flats in accordance with agreements executed in their favour by promoters-Manoramabai and Uday Jadhav. The agreement specifically contains a covenant for formation of the Society. Under Section 10 of MOFA, the promoters were under obligation to form and register a collective body of flat purchasers.

10. Promoter to take steps for formation of cooperative society or company

(1) As soon as a minimum number of persons required to form a Co-operative society or a company have taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organization of persons who take the flats as a co-operative society or, as the case may be, as a company; and the promoter shall join, in respect of the flats which have not been taken, in such application for membership of a co-operative society or as the case may be, of a company. Nothing in this section shall affect the right of the promoter to dispose of the remaining flats in accordance with the provisions of this Act.

Provided that, if the promoter fail within the prescribed period to submit an application to the Registrar for registration of society in the manner provided in the Maharashtra Co-operative Societies Act, 1960, the Competent Authority may, upon receiving an application from the persons who have taken flats from the said promoter, direct the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar concerned, to register the society:

Provided further that, no such direction to register any society under the preceding proviso shall be given to the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar, by the Competent Authority without first verifying authenticity of the applicants' request and giving the concerned promoter a reasonable opportunity of being heard.

(2) If any property consisting of building or buildings is constructed or to be constructed and the promoter submits such property to the provisions of the Maharashtra Apartment Ownership Act, 1970, by executing and registering a Declaration as provided by that Act then the promoter shall inform the Registrar as defined in the Maharashtra Co-operative Societies Act, 1960, accordingly; and in such cases, it shall not be lawful to form any co-operative society or company.

41) Thus MOFA mandates formation of Co-operative Society or a company immediately after minimum number of flats in a building are sold. It imposes an obligation on promoter to make an application to the Registrar for registration of society. Thus what is done in the present case is fulfilment of statutory obligation by the promoters. In absence of any prohibitory orders being passed in the Suit, there was no fetter on formation and registration of society. Therefore, failure to obtain Nalini Jadhav's consent cannot be treated at the time of registration of the society as misrepresentation. Nalini Jadhav/her heirs are yet to establish her right, title and interest in the land in question. Therefore, necessity of consent of Nalini Jadhav for registration of the society is something which is yet to be decided. In these circumstances, failure to obtain Nalini Jadhav's consent cannot be treated as misrepresentation

within the meaning of Section 21A of the MCS Act. The Divisional Joint Registrar had rightly rejected the application filed by heirs of Nalini Jadhav by Order dated 24 April 2023. The learned Minister has erred in reversing the order of the Divisional Joint Registrar.

42) The learned Minister has failed to appreciate that ordering deregistration of cooperative housing society at this distant point of point would result in a complete chaotic situation so far as management of affairs of the building are concerned. The society has managed the affairs of the building for the last 36 long years. It must have promoted transfer of flats and effected transfer of memberships in its records during all these years. The Order passed by the learned Minister, if implemented, would result in suspending the collective body of flat purchasers till heirs of Nalini Jadhav establish their rights in the pending suit. Interestingly, the Society is not even a party to the suit. If what Mr. Khandeparkar has stated is to be believed, Society's application for intervention in the Suit was opposed by the Plaintiffs therein. Thus, as of now, the Society has absolutely no connection with the Suit pending before the City Civil Court, however pendency of that Suit is used as a ruse to annihilate a collective body of flat purchasers formed 36 years ago.

43) Yet another reason for outright rejection of application filed by the heirs of Nalini Jadhav under Section 21A was gross and inordinate delay in filing the same. The application for de-registration was filed on 31 January 2023 i.e. after the lapse of period of 36 long years. The said application ought to have been rejected on the ground of delay as no plausible explanation was given for such long and inordinate delay. Nalini Jadhav and her heirs were aware about construction of building, sale of flats and formation of Society. Their application filed in the year

2023 seeking de-registration of the Society registered on 18 November 1988 was hopelessly barred by principles of delay and laches. Mere absence of prescription of period of limitation for initiation of proceedings under Section 21A does not mean that the proceedings seeking de-registration of a cooperative society can be initiated at any point of time. It is well settled law that in absence of prescription of period of limitation, the proceedings must be filed within 'reasonable time'. In *State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd.*⁷, the Apex Court has held as under:

18. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

44) More recently, in *North Eastern Chemicals Industries (P) Ltd. and Anr. Vs. Ashok Paper Mill (Assam) Ltd. and Anr*⁸, the Apex Court has held as under:

54. When a statute, either general or specific in application, provides for a limitation within which to file an appeal, the parties interested in doing so are put to notice of the requirement to act with expedition. However, opposite thereto, in cases such as the present one where neither statute provides for an explicit limitation, such urgency may be absent. While it is still true that, as held in *Ajaib* (supra), this does not entitle parties to litigate issues decades later, however shorter delays, in such circumstances, would not attract delay and laches.

59. In the absence of any particular period of time being prescribed to file an appeal, the same would be governed by the principle of 'reasonable time', for which, by virtue of its very nature, no straitjacket formula can be laid down and it is to be determined as per the facts and circumstances of each case. In the present lis, having regard to the sequence of events, as taken note of above-the Claimant - Appellants

⁷ (2007) 11 SCC 363

⁸ 2023 SCC OnLine SC 1649

cannot be said to have transgressed the boundaries of reasonable time in filing their appeal before the District Judge.

45) In my view, period of 36 years for seeking de-registraion of a cooperative housing society cannot be considered to be 'reasonable' in any sense. In *North Eastern Chemicals Industries.*, the Apex Court has referred to its decision in *Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd*⁹ wherein while considering the provisions of the Industrial Disputes Act 1947, the Court has held that it is not the function of Courts to prescribe period of limitation, when the Legislature thought it fit not to prescribe any period. At the same time, the case where no period of limitation applies, the defence of delay can still be employed if a demonstrable case is made out that loss or prejudice would be suffered on condonation of delay. The Apex Court has held:

51. We further refer to observations made in *Ajaib Singh v. Sirhind Coop. Marketing-cum-Processing Service Society Ltd* to the effect that Courts should be wary of prescribing specific period of limitation in cases where the legislature has refrained from doing so. It was further observed that where the defence of delay is employed in a situation where no limitation is prescribed vide statute, the exact prejudice or loss suffered by the party if such a delay is condoned, must be shown on facts. In other words, in the absence of a specific limitation it would be improper for courts to dismiss a plea is solely on the ground of delay without having examined the nature of laws order prejudice caused to the other party in the facts and circumstances of the case at hand. **The holding in *Ajaib Singh* (supra) was affirmed by a three-Judge Bench of this court in *Purohit & Co. v. Khatoonbee*.**

46) Applying the principle of *Ajaib Singh*, in the present case the loss and prejudice that would be caused to the members of society on account of entertainment of proceedings for de-registration under Section 21A after 36 years long years is writ large. In my view therefore,

⁹ (1999) 6 SCC 82

initiation of proceedings under Section 21A after 36 years of registration of the Society itself was a sufficient ground for rejecting application of heirs of Nalini.

47) The learned Minister, Co-operation has committed palpable error in setting aside the order passed by the Divisional Joint Registrar. Here again, what is done by the learned Minister is exercise of determination of title dispute between the parties, which is not the scope of enquiry under Section 21A of M.C.S. Act. Pendency of suit filed by Nalini Jadhav/her heirs and rejection of Society's application for Deemed Conveyance are the only two reasons cited by the learned Minister for passing impugned order dated 24 January 2024. The learned Minister had no reason to consider pendency of title disputes for the purpose of ordering de-registration of the Society. Rejection of Society's application for deemed conveyance has absolutely no relation for deciding the application under Section 21A of MCS Act.

48) In *Airoli Neha Apartments CHS Ltd.* (supra), the Single Judge of this Court has held that once building is completed and fully occupied, application for de-registration of the society cannot be entertained on the ground of illegality or irregularity in construction. This Court held in paras-10, and 11 as under:

10. Learned counsel for the respondents are not in a position to point out any provision under the MCS Act which would confer jurisdiction on the Registrar, who would be authorized to register or de-registrar co-operative Society or the higher authorities exercising the appellate and revisionary powers, **that merely because there is some illegality or any irregularity in the construction of the building of the Society, the Society could be de-registered.** If the reasons as set out in the impugned order are accepted to be the correct position in law it would not only run contrary to the provisions of Section 8 to 10 providing for registration of the co-operative Society but also create a chaotic situation. Such position also becomes clear from the provisions of

Section 21A of the Maharashtra Cooperative Societies Act, 1960, which provides for de-registration of Society. It would be appropriate to note the said provisions, which reads thus:

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11. Thus, it is clear that an issue and/or a subject matter which is completely alien to the MCS Act and not relevant to the registration and de-registration of a Society cannot be a subject matter of consideration to de-register the petitioner Society. This is exactly what Section 21A would also depict. There is no manner of doubt that the impugned order passed by the Hon'ble Minister is based on reasons which are extraneous to the provisions of Maharashtra Cooperative Societies Act as discussed above.

(emphasis supplied)

49) In my view, therefore the order passed by the learned Minister directing initiation of process for de-registration of the Society is unsustainable and is liable to be set aside.

50) Though Mr. Sakhalkar has attempted to canvass that the order of the learned Minister does not effect de-registration of the Society and merely directs initiation of procedure under Section 21A for de-registration, I am unable to agree with the said submission. Order dated 24 January 2024 passed by the learned Minister while exercising appellate powers under Section 152 of the M.C.S. Act over the order passed by the Divisional Joint Registrar leaves no room of discretion for the Divisional Joint Registrar, who is now under obligation to pass formal order of de-registration of the Petitioner-Society. Therefore, it is necessary to set aside the order passed by the learned Minister on 24 January 2024.

E. ORDER

51) Consequently, both the Writ Petitions succeed, and I proceed to pass the following order:

(I) The Order dated 24 January 2024 passed by the learned Minister, Co-operation directing de-registration of the Petitioner-Society under Section 21A of the M.C.S. Act is set aside.

(II) Order dated 18 October 2023 passed by the District Deputy Registrar and Competent Authority is set aside and Application No.23 filed by the Society shall stand restored before on the file of District Deputy Registrar and Competent Authority, who shall proceed to issue certificate of unilateral deemed conveyance of land admeasuring 1538.46 sq.mtrs in favour of the Society. Such conveyance shall however be subject to the Decree that would be passed in L.C. Suit No. 9750 of 1977.

52) With the above directions, Writ Petition (L) 4104 of 2024 and Writ Petition No. 1421 of 2024 are **allowed**. There shall be no order as to costs.

53) With the disposal of Writ Petition (L) No. 4101 of 2024, nothing survives in Interim Application (L) No. 11031 of 2024, the same also stands disposed of.

SANDEEP V. MARNE, J.