

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13437 OF 2024

Surya Corporation and anr. ... Petitioners
V/s.
The Competent Authority
The District Deputy Registrar
of Co-operative Societies and ors. ... Respondents

Mr. Girish Rao i/by Lex Consultus, Advocate for the Petitioners.

Mr. Mandar Limaye, Advocate for the Respondent No.3.

CORAM : SANDEEP V. MARNE, J.

Dated : 20 February, 2025.

ORAL JUDGMENT:

1. **Rule.** Rule is made returnable forthwith. With the consent of the learned counsel appearing for parties, the petition is taken up for hearing and disposal.

2. The issue that arises for consideration in the present petition is whether the Competent Authority has jurisdiction to issue a Corrigendum for correction of area indicated in the certificate of unilateral deemed conveyance. The issue appears to be squarely answered by the judgment of Coordinate Bench of this Court in ***Kashish Park Reality Private Limited and anr. Vs. The State of Maharashtra and ors.***¹ The petition could have

1 Order dated 11 December 2020 in Writ Petition (St.) No.93044 of 2020 and other connected petitions.

accordingly been disposed of by following the ratio of that judgment. However, reliance is sought to be placed on Order passed by me in ***Jaywant Ramchandra Keni Vs. The Competent Authority***² in support of contention that this Court has recognized jurisdiction of the Competent Authority to correct the area in the certificate of unilateral deemed conveyance by issuing a Corrigendum. In that view of the matter, it is considered expedient to set right the position so as to avoid confusion regarding the issue and achieve better clarity.

3. The Petition arises out of challenge to the Corrigendum dated 15th March 2021 issued by the Competent Authority and District Deputy Registrar, Co-operative Societies, Thane correcting the area of land conveyed in favour of Respondent No.3-Society vide Certificate of unilateral deemed conveyance dated 22nd February, 2021. By Certificate dated 22nd February 2021, the Competent Authority had directed conveyance in favour of Respondent No.3-Society of land admeasuring 335.60 sq. meters (plinth area) and constructed portion admeasuring 4698.35 sq. meters and proportionate undivided share in the sanctioned layout corresponding to the built-up area of Society's building. By the Corrigendum dated 15th March 2021, the Competent Authority has now conveyed in favour of Respondent No.3-Society the land admeasuring 4584.00 sq. meters. Following comparative table would present the difference in area conveyed by the original Certificate dated 22nd February 2021 and Corrigendum dated 15th March 2021:

Certificate of deemed conveyance dated 22 February 2021	Corrigendum dated 15 March 2021
मौजे चितळसर मानपाडा व माजिवडे येथील सर्वे	वाचावे क्र. १ मधील प्रमाणपत्रात व निष्कर्ष क्र. ५

2 Writ Petition (L) No.8893 of 2023 decided on dated 19 January 2024

नं. ३६/१,२, ४०/१,२, ४१/१,२,३, १५७, १५८/१, १५८/२, १५९ (पै), १६०/२ (पै), १६१(पै) मधील एकूण क्षेत्रफळापैकी ३३५. चौ. मी. इतके क्षेत्रफळ (Plinth Area) व ४६९८.३५ चौ. मी. बांधकाम क्षेत्र देय आहे व मंजूर रेखांकनामधील जागेमध्ये संस्थेच्या इमारतीच्या बांधकाम क्षेत्राच्या प्रमाणात अविभाज्य हिस्सा राहील.	मध्ये मौजे चितलसर मानपाडा व माजिवडे येथील सर्वे नो. ३६/१,२, ४०/१,२, ४१/१,२,३, १५७, १५८/१, १५८/२, १५९(पै), १६०/२(पै), १६१(पै) मधील एकूण क्षेत्रफळापैकी ३३५.६० चौ. मी. इतके क्षेत्रफळ (Plinth Area) व ४६९८.३५ चौ. मी. बांधकाम क्षेत्र या एवजी मौजे चितलसर मानपाडा व माजिवडे येथील सर्वे न. ३६/१,२, ४०/१,२, ४१/१,२,३, १५७, १५८, १५९(पै), १६०/२(पै), १६१(पै) मधील एकूण क्षेत्रफळापैकी ४५८४.०० चौ मी (Proportionate Area) इतके क्षेत्र असे वाचण्यात यावे.
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4. Thus, what is done by the Competent Authority is that instead of plinth area of 335.60 sq. meters + built-up area 4698.35 sq. meters + proportionate share in the layout corresponding to built-up area, Respondent No.3-Society is now conveyed land admeasuring 4584.00 sq. meters by way of the impugned Corrigendum. The issue is whether the Competent Authority has jurisdiction to do so.

5. I have heard Mr. Girish Rao, learned counsel appearing for Petitioner and Mr. Mandar Limaye, learned counsel appearing for Respondent No.3 - Society.

6. The issue of jurisdiction of the Competent Authority to either review its order or to issue a corrigendum has already been decided by the Coordinate Bench of this Court in ***Kashish Park Reality Private Limited*** (supra) in which it is held in paragraph Nos. 10 to 27 as under:

“10. The principal challenge in the Petitions is to the legality of Corrigenda, all dated 06/08/2020, issued by Respondent No.2-Competent Authority. Before advertng to the facts, it would be apposite to understand the meaning of the word ‘Corrigendum’. The word ‘Corrigendum’ is stated to have been derived from a Latin word *corrigerere* which means “to correct”. In Oxford Advance Learners

Dictionary (7th Edition) the word 'Corrigendum' is explained as "something to be corrected, specially a mistake in a printed book". In The Concise English Dictionary the meaning of 'Corrigendum' is stated to be "an error needing correction, specially in a book. The meaning of the word 'Corrigendum' as explained in Black's Law Dictionary (8th Edition) and B Ramnath Ayars's Advanced Law Lexicon is "an error in a printed work discovered after the work has gone to press.

11. In *Parvati Devi w/o. Sri. Braj Shyam v/s. State of U.P. 1972 Cr.LJ 1644*, the Allahabad High Court after considering the dictionary meaning of the word 'Corrigendum' and referring to the decision of the Apex Court in *Piara Singh v/s. State of Punjab and Ors. AIR 1969 SC 961* and the decision of the Rajasthan High Court in *Kandoi Kabliwala v/s. Assistant Commercial Taxes Officer, Pali, 75 STC 316* has held that a Corrigendum can be issued only to correct a typographical/arithmetical error or omission therein. It cannot have the effect of law. It can neither take away the vested right of a person nor can it have the effect of nullifying the rights of persons conferred by the law.

12. It is thus clear that Corrigendum is essentially issued to correct a typographical or arithmetical error. Such error arising due to accidental slip or omission can be rectified in exercise of incidental or ancillary powers which are inherent in every Judicial and Quasi-Judicial Authority. It is however to be noted that power to rectify such error cannot be equated with power of review, which is not an inherent power but is the creature of the statute. The power of review is not absolute. As it has been held by the Hon'ble Supreme Court in *Lily Thomas v/s. Union of India, AIR 2000 SC 1650*, the power of review can be exercised for correction of mistake and not to substitute a view. Such powers can be exercised only within the limits of the statute dealing with the exercise of power. The review cannot be treated as an Appeal in disguise.

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15. It is thus well settled that a judicial or *quasi-judicial* authority, which derives its powers from statutory provisions under which it is empowered to act, cannot exercise power not vested in it by the statute. The extent of power to be exercised by judicial or quasi-judicial Authority is circumscribed by the language of the statute and such Authority has no power of review unless expressly conferred by the statute. However, this general rule will not apply in case of fraud or procedural error, which goes to the root of the matter and vitiates/invalidates the proceedings itself. Such palpable errors can be rectified in exercise of the power of the procedural review, which is inherent and plenary in every case as distinct from the power of a substantive review, which can be exercised only when specifically conferred by the statute.

16. Keeping in mind the above principles, the question which falls for consideration is whether by the impugned Corrigenda, the Respondent No.2 has merely corrected a typographical error or whether it amounts to review of the orders dated 22/07/2020 and if so, whether such review is permissible.

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21. The applications filed by Respondent -Society in other Petitions proceed on the same basis with variation in the area covered by the building and the survey numbers of the land. **By the impugned Corrigenda, the Competent Authority has rectified the certificates and granted deemed conveyance not only in respect of the buildings but also in respect of the subject land and had thereby materially and substantively varied the order dated 22/07/2020. By no stretch of imagination this substantive and material change can be considered as a rectification of a clerical or typographical error, which could be rectified by issuing a Corrigendum.**

22. It is also pertinent to note that with disposal of the Applications under Sub section 3 of Section 11, Respondent No.2 – Competent Authority had become functus officio and not being in seisin of the matter, had no jurisdiction to review the orders, unless vested with powers of review under the law. Learned counsel for the parties do not dispute that the statute does not vest the Competent Authority with powers of review. In the absence of such statutory powers, Respondent No.2 – Authority had no jurisdiction to exercise the power of substantive review. Despite which Respondent No.2 - Competent Authority entertained and allowed the applications without notice to the Petitioners and without providing an opportunity of hearing, which is one of the fundamental principles of natural justice.

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24. In the instant case, as noted above the Petitioners were not given an opportunity of hearing. The impugned Corrigenda, which prejudicially affect the rights of the Petitioners, have been issued without adhering to the rules of natural justice. This is nothing but arbitrary, unfair and unjust exercise of power, which is violative of Article 14 of the Constitution of India.

25. Furthermore, Respondent No.2 has reviewed the orders dated 22/7/2020 without assigning any reasons whatsoever. It need not be emphasized that order which tends to affect rights of the parties should be supported with reasons, which are nothing but expressions of thoughts. It is only when thoughts get transcribed into words that the order gets transformed into a 'speaking order'. A speaking or a reasoned order demonstrates application of mind, minimizes arbitrariness and introduces fairness in arriving at conclusions. Hence, the Authority exercising judicial or quasi judicial powers is required to pass a speaking order, which need not be a lengthy or verbose but should contain cogent, clear and succinct reasons in support of the decision.

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27. In the present case, the impugned Corrigenda do not meet the mandate and legal requirement set out in the aforesaid summarization. **The impugned Corrigenda, which are bereft of reasons have resulted in miscarriage of justice and are not sustainable. Furthermore, the impugned Corrigenda are totally at variance with and diametrically contrary to the findings recorded in the orders dated**

22/7/2020. **The impugned Corrigenda do not rectify a procedural error or an error apparent on the face of record but reverses the natural sequitur and consequences of the findings recorded in orders dated 22/7/2020, which is not permissible even in exercise of powers of review.** Issuance of such Corrigenda is clearly an arbitrary exercise of authority without jurisdiction.”

7. Thus, in ***Kashish Park Reality***, this Court has dealt with three issues of power of the Competent Authority to alter its Order by issuance of corrigendum, permissibility to issue corrigendum without issuance of notices to affected parties and failure to record reasons for correcting the original order of deemed conveyance. In ***Kashish Park Realty*** the Competent Authority had earlier conveyed only the building in favour of the society and by way of issuance of corrigendum, even the land was sought to be conveyed. This Court therefore held that the Corrigendum was not issued for clerical or typographical error, but brought about substantial and material change in the original certificate of deemed conveyance. This is held to be impermissible by this Court. this Court further held that the Competent Authority becomes *functus officio* and no longer remains *in seisin* of the matter after passing of order of unilateral deemed conveyance and has no jurisdiction to review its order even by way of issuance of a corrigendum. This Court further held in that an opportunity of hearing was not granted to the affected party while issuing the corrigendum. It is further observed that no reasons were recorded for issuance of corrigendum by the Competent Authority. This Court held that *“the corrigendum was totally at variance with and diametrically contrary to the findings recorded in the original order and that the same did not rectify a procedural error or an error apparent on the face of record but reverses the natural sequitur and consequences of findings recorded in the original order.”*

8. The principles deducible from judgment of this Court in ***Kashish Park Realty*** is that the order cannot be reviewed by the Competent Authority by way of issuance of a corrigendum, unless the authority wants to correct a typographical or clerical error.

9. However, Mr. Limaye would rely upon Order passed by me in ***Jaywant Ramchandra Keni*** (supra) in which this Court held in paragraph No. 7 as under:

“7 True it is that in *Kashish Park Realty Pvt. Ltd* (supra), Single Judge of this Court has taken a view that the Competent Authority is not vested with jurisdiction to entertain the application for review. In that case, this Court arrived at the conclusion that corrigendum issued by the Competent Authority materially and substantially varied the earlier order. It also appears that while issuing the corrigendum, the affected parties were not heard by the Competent Authority. It is in the light of these peculiar facts that this Court held that issuance of corrigendum was arbitrary exercise of power without jurisdiction. In the present case exercise of power to issue corrigendum far from being arbitrary exercise of power, actually subserves the objective behind the Government Resolution dated 22 June 2018. It is also required to be borne in my mind that the Petitioner is divested of title and possession of the entire plot of land in respect of which the layout is sanctioned. The development in the layout is complete wherein 7 buildings are constructed and 7 Co-operative Housing Societies are formed. There is no dispute interse between the 7 Co-operative Societies. In fact it appears that the other Co-operative Societies have also filed applications claiming proportionate share in the internal road and recreational ground. In that view of the matter it is difficult to comprehend as to how the rights of the Petitioner are affected if all 7 Societies share the internal road and recreational ground in proportionate to the areas of their respective plots. I am therefore of the view that the action of the Competent Authority in issuing the corrigendum, far from being arbitrary, actually brings the original order dated 2 July 2014 in tune with the GR dated 22 June 2018.”

10. In my view, the order in ***Jaywant Ramchandra Keni*** is passed in the light of peculiar facts of that case where the entire land in the layout was consumed by the promoter by construction of seven buildings in respect of which seven cooperative housing societies were formed. There were no

dispute *inter-se* between the seven co-operative societies and no land was left for further development. It is in the light of the peculiar facts of that case that this Court thought it appropriate not to interfere in the Corrigendum as the same was found to be in tune with the Government Resolution dated 22nd June, 2018. The order in ***Jaywant Ramchandra Keni*** in my view has been passed in the peculiar facts and circumstances of that case and cannot be cited in support of an absolute proposition of law that in every case, the Competent Authority shall have jurisdiction to issue a corrigendum for correcting the area of land conveyed in favour of the cooperative society.

11. In ***Prem Villa CHL Vs. Uma Deep CHL***³, another coordinate bench of this Court had an occasion to deal with both the judgment in ***Kashish Park Realty*** and ***Jaywant Ramchandra Keni***. This Court culled out the following principles in ***Prem Villa CHL*** after considering the ratio of judgment in ***Kashish Park Realty***:

8. Thus, after analysis of the above decision, the following principles can be culled out regarding difference between the procedural review and substantive review.

- (i) The expression 'review' is used in two distinct senses, namely (1) a procedural review and (2) a review on merits i.e. substantive review.
- (ii) **A procedural review is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it.**
- (iii) A review on merits when the error sought to be corrected is one of law or facts and is apparent on the face of the record.
- (iv) A court or quasi-judicial authority can review its judgment or order on merits only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. A judicial or quasi-judicial authority, which derives its powers from statutory provisions under which it is empowered to act, cannot exercise power not vested in it by the statute. The extent of power to be exer-

3 2024 SCC Online Bom 2987

cised by judicial or quasi-judicial Authority is circumscribed by the language of the statute and such Authority has no power of review unless expressly conferred by the statute.

- (v) **However, this general rule will not apply in case of fraud or procedural error, which goes to the root of the matter and vitiates/invalidates the proceedings itself. Such palpable errors can be rectified in exercise of the power of the procedural review, which is inherent and plenary in every case as distinct from the power of a substantive review, which can be exercised only when specifically conferred by the statute.**
- (vi) **Thus, only palpable errors can be rectified in exercise of the power of the procedural review, which is inherent and plenary in every case as distinct from the power of a substantive review, which can be exercised only when specifically conferred by the statute**

(emphasis added)

12. Thus, in ***Prem Villa CHL*** this Court has recognised the jurisdiction of the Competent Authority to correct palpable errors in exercise of power of procedural review, holding that such power of procedural review is inherent in every authority clothed with quasi-judicial powers. However, power of substantive review cannot be exercised by the Competent Authority in absence of review jurisdiction being conferred on it. This Court further held in ***Prem Villa CHL*** as under:

12. Thus, while passing the impugned Order of the Common Corrigendum dated 14.01.2020, the Competent Authority has exceeded the jurisdiction and order passed is without jurisdiction and without any power of statutory review. The said Order, by no stretch of imagination, can fall under the category of procedural review. The Competent Authority has no jurisdiction to exercise the power of review, which is in the nature of substantive review. The said power cannot be exercised when there are no specific provisions conferred by the statute.

14. Mr. Khandeparkar, learned Counsel also relied on the Judgment of a learned Single Judge in the case of **Jaywant Ramesh Keni** (supra) **However, the said decision is rendered in the particular facts and circumstances of that case**, as set out in paragraph 7, the relevant portion of the same reads as under:

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Thus, it is clear that the said decision is rendered in the peculiar facts and circumstances of that case and will have no application to the present case.

(emphasis added)

13. Mr. Limaye had relied on my judgment in **Gayatri Construction Ltd. Vs. The State of Maharashtra**⁴, in which apparently a corrigendum was issued for the limited purpose of recording correct number of members of the society, as is clear from narration of facts in para 3 of the judgment as under:

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.**

14. Though factually a Corrigendum was issued in **Gayatri Constructions**, the judgment ultimately deals with different issues relating to obligation to convey title and not grant lease, effect of failure to record reasons and order being passed against a dead person. This Court did not interfere in the Corrigendum possibly because the same was only for correction of number of members in the society, without affecting the rights of the parties. Therefore the judgment in **Gayatri Constructions** does not provide for any assistance for deciding the issue at hand.

15. Turning to the facts of the present case, the original certificate of unilateral deemed conveyance dated 22nd February 2021 conveyed in favour of Respondent No. 3 Society the following:

4 Writ Petition No. 3188 of 2023 decided on 5 February 2024

- (i) plinth area of land of 335.60 sq. meters
- (ii) built up area 4698.35 sq.meters
- (iii) undivided share in the layout corresponding to the built up area, with specifying the exact area of undivided share.

16. By way of impugned Corrigendum dated 15th March 2021, the Competent Authority has now conveyed total land admeasuring 4584.00 sq. meters by branding it as proportionate area in the layout. Thus, now neither plinth area is conveyed nor built-up area admeasuring 4698.35 sq. meters is conveyed but land admeasuring 4584 sq. meters is conveyed in favour of Respondent No.3-Society. The Corrigendum is thus at total variance with the original Certificate dated 22nd February 2021.

17. Curiously before issuance of Corrigendum dated 15th March 2021, notices were not issued to the Petitioners, and the Corrigendum is issued behind their back. Furthermore, no reasons are recorded for changing the area of land to be conveyed in favour of Respondent No.3-Society in the Corrigendum dated 15th March 2021. In my view therefore, issuance of Corrigendum dated 15th March 2021 by the Competent Authority clearly an exercise of overstepping the jurisdiction. The Corrigendum does not seek to correct a clerical error but is issued effecting wholesale change in the original Certificate of deemed conveyance.

18. Mr. Limaye would attempt to salvage the situation by inviting my attention to the Architect Certificate dated 26th October 2020. He would submit that the said certificate of the Architect dated 26th October 2020 was placed before the Competent Authority when it passed the original order

dated 22nd February, 2021. He would submit that instead of conveying the land as suggested by the Architect, the Competent Authority had erroneously conveyed only plinth area, built-up area of the building and unspecified proportionate undivided share in the layout by way of original Certificate dated 22nd February, 2021. He would submit that by way of Corrigendum, the Competent Authority has only brought the Certificate in tune with the Architect's certificate dated 26th October 2020. He would submit that by that certificate, the Architect had recommended conveyance of proportionate land of 4584.00 sq. meters to the Respondent No. 3-Society. On the contrary, Mr. Rao would submit that the development rights in favour of the Respondent No.4-promoter were confined only to land admeasuring 1901.555 sq. meters and therefore, it was beyond the jurisdiction of the Competent Authority to direct conveyance of any portion of land in excess of 1901.555 sq. meters. He would submit that Petitioner is willing to convey land admeasuring 1901.555 sq. meters in favour of the Respondent No.3-Society. Thus, there appears to be a clear dispute between the parties about the exact land to be conveyed in favour of the Respondent No.3-Society. In that view of the matter, it cannot be contended that what is done by the Competent Authority by issuing corrigendum dated 15th March 2021 is mere correction of any obvious error. As opposed to conveyance of land admeasuring 335.60 sq. meters (plinth area) and unspecified proportionate undivided share in the layout land, the Competent Authority has now offered on a platter to Respondent No.3-society huge land admeasuring 4584.00 sq. meters. This is done by issuance of a Corrigendum behind the back of the Petitioners and without recording any reasons.

19. It may be that in a given case this Court would not interfere in a Corrigendum where same merely seeks to correct an obvious error in the

certificate of unilateral deemed conveyance with a view to avoid any further litigation. The objective behind enacting the provision for unilateral deemed conveyance is after all to ensure that the collective bodies of flat purchasers ultimately becomes owner of the land and building. While issuing the certificate of deemed conveyance, if the Competent Authority commits either a clerical error in mentioning the description of the land or commits any other obvious error, and correction of such obvious error does not adversely affect any party, this Court may refuse to exercise jurisdiction under Article 227 of the Constitution of India considering peculiar facts of a case, as is done by this Court in *Jaywant Ramchandra Keni*. Where this Court finds that the technical ground of impermissibility to issue a Corrigendum is sought to be raised by a promoter just for the sake of disturbing the conveyance of due portion of land to the society, despite absence of any dispute relating to area entitlement, this Court can refuse to exercise extraordinary jurisdiction for setting aside a Corrigendum. However, where Corrigendum results in wholesale change in the original certificate of deemed conveyance, this Court would be justified in setting aside such corrigendum.

20. However, in the present case, the impugned Corrigendum travels far beyond the scope of an obvious error. There is a vast difference of land originally directed to be conveyed vide an order dated 22nd February 2021 and the land that is directed to be conveyed vide Corrigendum dated 15th March 2021. This, in my view, cannot be done by way of issuance of a Corrigendum. If Respondent No.3-Society was aggrieved by failure on the part of the Competent Authority to convey correct area of land in its favour, it ought to have challenged the order dated 22nd February 2021 in this

Court instead of applying for issuance of Corrigendum to the Competent Authority.

21. Considering the overall conspectus of the case, I am of the view that the impugned Corrigendum dated 15th March 2021 is indefensible and liable to be set aside. It appears that on the basis of the said Corrigendum, Conveyance Deed dated 9th August 2021 has been executed and registered in favour of Respondent No.3-Society which also is required to be consequently set aside. The Respondent No. 3 society is however not be left remediless and can challenge the original order of deemed conveyance before this Court and seek conveyance of due area in its favour.

22. The petition accordingly succeeds and I proceed to pass the following order :-

(i) Corrigendum dated 15th March 2021 issued by Competent Authority is set aside.

(ii) Consequently, Deed of Conveyance dated 9th August 2021 executed in favour of Respondent No.3-Society and registered with Sub-Registrar of Assurances, Thane-II at Serial No.TT-2-15349/2023 is also set aside.

(iii) The Respondent No.3 would be at liberty to challenge order dated 22nd February 2021 and seek conveyance of remaining portion of land and building in its favour. Such Petition shall be decided on its own merits, without being influenced by any of the observations made in the present judgment.

23. With the above directions, writ petition is allowed. Rule is made absolute. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)