

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

**WRIT PETITION NO.12575 OF 2022
WITH
INTERIM APPLICATION NO. 12273 OF 2024
IN
WRIT PETITION NO.12575 OF 2022**

Deshmukh Enterprises Through Promoter Dilip
Sudhakar Deshmukh .. Petitioner

Versus

Paramount Park D Tenant Co-Op Housing
Society Ltd. Partnership Co-operative Housing
Society Ltd. & Ors. .. Respondents

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- Dr. Uday Warunjikar a/w Ms. Preeti Walimbe, Advocates for Petitioner
 - Mr. Mayur Khandeparkar a/w Mr. Vikramjeet Garewal, Ms. Savani Vaze & Ms. Shreya Mathane, Advocates for Respondent Nos. 1 to 3 & 5 to 10
 - Mr. Prasad Keluskar a/w Mr. Drupad Patil, Advocates for Respondent No. 10
 - Mr. J.P. Patil, AGP for Respondent No. 12-State
 - Mr. Saurabh Butala i/by Mr. Harshad Sathe, Advocates for Intervenor

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CORAM	: MILIND N. JADHAV, J.
Reserved on	: AUGUST 05, 2025
Pronounced on	: OCTOBER 09, 2025.

Judgment:

1. Heard Dr. Warunjikar, learned Advocate for Petitioner, Mr. Khandeparkar, learned Advocate for Respondent Nos. 1 to 3 & 5 to 10, Mr. Keluskar, learned Advocate for Respondent No. 10, Mr. Butala, learned Advocate for Respondent No. 10 and Mr. Patil, learned AGP

for Respondent No.12– State.

2. This is a Writ Petition filed by Promoter / Developer of a Housing Society. His name is Deshmukh Enterprises (for short **“Promoter”**). It emanates from an application made by Paramount Park D Wing Tenant Cooperative Housing Society Ltd (for short **“Society”**) seeking registration. The timeline and dates are crucial as also certain incidents. Promoter sold flats to members of the Society as far back in 2011. In this regard, the registered Agreement executed with Members of Society, Promoter agreed to register the Society under Maharashtra Ownership of Flats Act, (for short **“MOFA”**) or (Maharashtra Apartments Ownership Act (for short **“MAO”**) as the case may be depending upon phase wise development undertaken by him. Without advertng to Promoter , Society applied for registration under MOFA on 27.07.2020 and was registered within two days by Deputy Registrar, Dombivli - Respondent No.12. Promoter filed Complaint with Divisional Joint Registrar alleging fraud by members of Society and informing that one year prior thereto i.e on 15.06.2019, Promoter executed Deed of Declaration for registration of Society under MAO as a Condominium. On Promoter’s complaint, Divisional Joint Registrar, Thane invoked *suo moto* inquiry into registration of Society and on the ground of execution of Deed of Declaration by Promoter in 2019, interalia, directed cancellation of registration of Society. Allegation of Society is that when this cancellation order was passed by Divisional

Joint Registrar Thane, Society was not heard. Allegation of Promoter is that when registration was allowed by Deputy Registrar, Dombivli within two days of application made by Society, the Promoter was not heard. Promoter alleged that his signature and presence while registration of Society was impersonated and forged by some member of the Society. In this background Society being aggrieved filed Appeal No. Appeal No. 21 of 2022 before Hon'ble Minister of Cooperation challenging the twin orders both dated 18.11.2021. First order dated 18.11.2021 was regarding cancellation of registration of Society. Second order dated 18.11.2021 was regarding allowing application of promoter under Section 21A seeking Society's de-registration. By virtue of impugned order dated 21.06.2022, Hon'ble Minister of Co-operation allowed appeal of Society and set aside both orders dated 18.11.2021, restoring registration of Society. Promoter being aggrieved has filed the present Petition.

3. Dr. Warunjikar, learned Advocate for Petitioner, has made the following submissions:-

3.1. Respondent No. 1 - Society on its own accord filed application for registration without giving notice to Promoter nor addressed any correspondence seeking its registration on 27.07.2020 and on 29.07.2020 was issued registration certificate by Deputy Registrar, Dombivli. He would submit that application for registration

was filed before Deputy Registrar, Dombivli, who had no jurisdiction to decide such application, instead the appropriate Competent Authority having such jurisdiction to grant registration was the Deputy Registrar, Thane since project was situated within the territorial limits of Thane district. Hence, according to Dr. Warunjikar this fundamental jurisdictional defect rendered the entire registration proceeding void ab initio.

3.2. He would submit Section 10(2) of MOFA creates a statutory bar against formation of Co-operative Housing Society when Promoter has submitted the property to the provisions of MAO Act by executing and registering a Deed of Declaration. He would submit that Promoter's registered Deed of Declaration dated 15.6.2019, executed one year prior to Society's application for registration under MCS Act was not taken into cognizance neither Promoter was heard or given notice before granting such registration. Hence he would submit that registration of Co-operative Housing Society was in direct violation of this statutory prohibition and hence void ab initio.

3.3. He would submit that on the basis of Promoter's complaint, Respondent 12 himself issued communication dated 26.08.2020 to the Divisional Joint Registrar stating that formation of Society was obtained by members through fraud and he requested the Divisional Joint Registrar to de-register Society. He would submit that Divisional

Joint Registrar initiated *sou moto* enquiry and heard both Promoter and the Society regarding de-registration of Society and on 18.11.2021 passed order to de-register the Society. He would submit that Society filed Revision Petition before Hon'ble Minister for Cooperation which was allowed by impugned order dated 21.06.2022. He would submit that Promoter was not present at the hearing before the Minister and was not afforded an opportunity to be heard. He would submit that it is wrongly observed in the impugned order that submissions of Petitioner were heard while passing the impugned order, rather it is an *exparte* order in gross violation of the principles of natural justice.

3.4. He would submit that State in Revision proceedings did not consider registered Deed of Declaration executed by Promoter pursuant to clause no. 13.5 in the flat purchase agreement of the members and allowed the Revision.

3.5. He would submit that Respondent No. 2 fraudulently signed requisite statutory forms and documents seeking registration of Society by misrepresenting himself as Promoter of the project, when he was merely a flat purchaser thereby vitiating Society's registration. He would submit that no flat purchaser can assume role of Promoter and execute documents on his behalf without his lawful authority.

3.6. He would submit that Deputy Registrar, Dombivli violated provisions of law and principles of natural justice and within two days

of the application being filed, in the aftermath of COVID-19 pandemic granted registration to the Society. He would submit that no notice was issued to Promoter, no opportunity of hearing was given and no site inspection was conducted and the Society came to be registered under the name "Paramount Park 'D' Wing Tenant Co-partnership Society" for 'D' Wing constructed by Promoter in the layout.

3.7. He would submit that Society deliberately suppressed several material facts before Registrar, which, if disclosed, would have prevented its registration under the MCS Act. According to him these suppressed facts include:-

- (i) Existence of registered Deed of Declaration dated 15.6.2019 executed by Promoter one year prior to registration of Society;
- (ii) outstanding maintenance dues exceeding Rs. 70 lakhs due and payable to Promoter by Society and its members;
- (iii) that Society shared common facilities with other wings constructed in the project;
- (iv) existence of private nature of certain amenities like gymnasium and office space on the mezzanine floor, and
- (v) pendency of multiple civil and criminal proceedings against members of the Society for recovery of outstanding dues.

3.8. He would submit that Inspection Report dated 28.07.2020 was prepared by Deputy Registrar, Dombivli. In this report, units belonging to Promoter were incorrectly shown as "Guest Rooms" belonging to Society. Further, although Society did not have official

office, Promoter's shops/commercial units were incorrectly shown as "Society Office" in the Inspection Report. The letter also mentions that the said individuals misled and suppressed material facts at the time of formation of Paramount Park D-wing Co-operative Housing Society during the lockdown and containment zone period. The letter states that:

- (i) amount of ₹70 lakhs was spent by the builder towards building maintenance, which was to be proportionately reimbursed by the members, and despite repeated reminders from the Promoter, the amount remained unsettled;
- (ii) documents submitted to the Deputy Registrar were allegedly fraudulent, including:
 - (a) use of a promoter's NOC signed by Mr. Thingranjan instead of the Promoter on Form 'Z';
 - (b) Misrepresentation of builder's mezzanine private office as a common amenity and showing gymnasium (a pad amenity) built on mezzanine floor as common facility;
 - (c) Incorrectly showing four flats on the 7th floor as common amenities;
 - (d) Using names of several members without their signatures or consent on Society registration form and challan, and paying share certificate amounts without their authorization or consent.

3.9. He would submit that false affidavits were filed by members of Society claiming that Promoter opened bank accounts in the name of Respondent No. 1 - Society, collected amounts towards share capital, entrance fees, and preliminary expenses for Society registration, however no such amounts were ever collected by

Petitioner. He would submit that Members of Society filed false declarations pertaining to status of flats, unsold units, office spaces, and amenities such as gymnasium and common areas with an intention to usurp the same under the guise of Society registration.

3.10. He would submit that on 30.07.2004, State Government issued Circular prescribing criteria to be fulfilled for wing – wise registration of co-operative housing societies which were not followed by Respondent No. 12 before granting registration to Society to the detriment of Promoter namely that:-

- a) each society should have separate entrance for entering the building;
- b) each society should have separate electricity meter;
- c) each society should have separate water tank and water meter;
- d) each society should prepare separate tax assessment from Municipal Corporation; and
- e) before commencement of building, the builder/promoter has to get the layout approved from concerned Municipal Corporation by dividing electricity and water facilities.

3.11. He would submit that Society failed to satisfy any of the aforesaid mandatory criteria as its “D” Wing building which has been granted registration shares common entrance, common electricity connection, common water supply system and common facilities with all other wings constructed and functional in the project developed by Promoter; that entrance to all buildings in the layout, open space,

pump room, filtration plant, water tanks, fire tank, water meter, electric meters, and transformer are all common for all wings in the developed project.

3.12. He would submit that in haste and in total disregard for procedure established by law, Respondent No. 12 completely failed to verify compliances with mandatory requirements before granting registration within 2 days of Application being made and on diligent verification it would show that Respondent No. 1 - Society did not qualify for registration as independent Co-operative Housing Society even under the MCS Act otherwise without hearing the Promoter and overcoming the aforesaid requirements.

3.13. He would submit Respondent No. 12 failed to exercise due care and caution and blindly granted registration within two days without scrutinizing any documents, conducting mandatory site inspection, or verifying statutory compliances or hearing Promoter in complete disregard of mandatory provisions. He would submit that Respondent No. 12 himself realised his mistake and vide letter dated 26.08.2020 acknowledged the fraud played by Society and recommended its de-registration to the Divisional Joint Registrar. He would submit that conduct of Respondent No. 12 of registering Society amounts to gross negligence, abdication of duty, and complicity in facilitating fraud committed by Society and its Members.

4. In support of his above submissions, Dr. Warunjikar would rely on the following decisions of the Supreme Court to contend that the impugned order is illegal, suffers from infirmities and deserves to be set aside being *(1) Kiran Singh V/s Chaman Paswan¹ and (2) S.P Chengalvaraya Naidu V/s Jagannath²*

5. *PER CONTRA*, Mr. Khandeparkar, learned Advocate for Respondent Nos. 1 – 3 and 10 would submit that the statutory obligation laid down in Section 3(2)(h) and Section 4(1A)(a)(v) of MOFA mandates promoter to state in writing, the precise nature of the organization of flat owners to be constituted and to which title is to be passed however Clauses 2(O) and 13 of the MOFA Agreement executed by Petitioner are not in compliance with the aforesaid provisions as they do not disclose the precise nature of organization to be formed. He would submit that Petitioner cannot take benefit of his own non compliance to challenge registration of Respondent No.1 - Society.

5.1. He would submit that Section 10(2) of MOFA bars registration of Society if a declaration has been executed and registered and intimation of such registration has been communicated to the Registrar. He would submit that in light of this provision, no intimation was given to Registrar by Developer and intimation was

¹ (1954) SCR 448

² (1994) 1 SCC 1

given to Registrar only post registration of Respondent No. 1 – Society, though the Deed of Declaration was executed much prior thereto. He would submit that Petitioner as Promoter cannot unilaterally execute Deed of Declaration since all flat purchasers are required to execute it alongwith Petitioner.

5.2. He would submit that Section 10 of MOFA creates a statutory obligation upon Promoter / Developer to form association of Flat takers within the prescribed period from when the minimum number of persons required to form a CHS or company have taken their flats and Rule 8 of MOFA Rules prescribes a period of 4 months for submitting application for registration of Cooperative Housing Society or Company from the date on which the minimum number of members to form such Society / Company have taken possession of their flats. He would submit that in the present case, the four-month period commenced in 2011 i.e. when the minimum number of members required to form the Society / Company got possession of their flats. He would submit that Deed of Declaration was executed by Petitioner – Promoter / Developer on 15.06.2019 i.e. 8 years after the aforesaid period of four months expired, hence Petitioner failed in his statutory obligation miserably and therefore he cannot now object to registration of Respondent No. 1 as Co-operative Housing Society.

5.3. He would submit that Petitioner's submission that Deputy

Registrar, Dombivili had no jurisdiction to register Respondent No. 1 - Society is incorrect. He would submit that Section 10 of MOFA grants Competent Authority power to direct Deputy District Registrar, Deputy Registrar or Assistant Registrar, to register a society, thus, power to register the Society vests *in toto* with either Deputy District Registrar, the Deputy Registrar or Assistant Registrar.

5.4. He would submit that Court is not bound to interfere when question of jurisdiction is raised in the lower forum by a higher forum which had jurisdiction to hear the same. He would submit that procedural aspects ought not to be an impediment to any decision passed by any higher and competent forum and that this Court is not obligated to set aside the order of registration if substantial justice is done. He would submit that when question of jurisdiction is raised, Court need not interfere when there is no failure of justice. He would submit that the learned Minister for Cooperation passed order dated 21.06.2022 directing registration of Respondent No. 1 – Society, hence remanding the same once again to the lower authority for de-registration would not serve ends of justice.

5.5. He would submit that if any forum fails to hear a party or decide a matter without jurisdiction, the same cannot be a ground to invoke this Court's supervisory jurisdiction under Article 227 of the Constitution of India.

5.6. He would submit that the Deed of Declaration in the present case is executed behind the back of flat purchasers / members of Society and such unilateral execution of Deed of Declaration without impleading flat purchasers as parties thereto is illegal and has no standing in law. He would submit that Petitioner's failure to comply with provisions of Section 10 of MOFA forced the flat purchasers of the Society to file application for registration of Society all by themselves. He would submit that flat purchasers are seeking enforcement of their statutory rights under MOFA, hence order passed by the learned Minister for Co-operation is just and deserves to be sustained. He would submit that the learned Minister for Co-operation being the higher forum directed registration of Respondent No. 1 - Society, hence this Court need not exercise its discretion regarding the decision of the original forum.

5.7. In support of his submissions, Mr. Khandeparkar has referred to and relied upon the following decisions of the Supreme Court and this Court to contend that the impugned judgment deserves to be upheld:-

(1) Paul Parambi, Chief Promoters, Springs CHS Ltd and Another V/s Bombay Dyeing and Manufacturing Co. Ltd. and Another³ ;

(2) Cipla Limited V/s Competent Authority and the District Deputy Registrar, Co-operative Society and Others⁴ ;

³ 2016 SCC Online Bom 16054

⁴ 2021 SCC OnLine Bom 622

- (3) *Sarita Nagari Phase – 2 Cooperative Housing Society Ltd and Another V/s State of Maharashtra, through the Minister for Cooperation and Others*⁵;
- (4) *Kekoo J. Manekji V/s Union of India*⁶;
- (5) *Central Council for Research in Ayurvedic Sciences an Another V/s. Bikartan Das and Others*⁷;
- (6) *Ritesh Trikamdas Patel and Others V/s Apex Grievance Redressal Committee and Others*⁸;
- (7) *M/s. Sushanku Builders Ltd. V/s Apex Grievance Redressal Committee and Others*⁹;
- (8) *State of Uttar Pradesh V/s Sudhir Kumar Singh and Others*¹⁰;
- (9) *Dharampal Satyapal Limited V/s Deputy Commissioner of Central Excise, Gauhati and Others*¹¹;
- (10) *Om Prakash alias Israel alias Raju alias Raju Das V/s Union of India and Another*¹²;
- (11) *Shri Balwantraai Chimanlal Trivedi V/s M.N. Nagrashna and Others*¹³.

6. Mr. Keluskar, learned Advocate for Respondent No. 10 would draw my attention to Affidavit in Reply filed by Respondent No. 10. He would submit that he is a flat purchaser in respect of Flat No. 202 in the Society and regularly is paying maintenance to the Petitioner – Promoter / Developer as also all other members for the past several years. He would submit that a dispute arose between Petitioner – Promoter / Developer and Respondent No. 1 – Society

5 2018 SCC OnLine Bom 591

6 1979 SCC OnLine Bom 257

7 (2023) 16 SCC 462

8 Writ Petition 7630 of 2025 decided on 27.06.2025

9 Writ Petition No. 8931 of 2024 decided on 27.03.2025

10 (2021) 19 SCC 706

11 (2015) 8 SCC 519

12 2025 SCC OnLine SC 47

13 1960 SCC OnLine SC 305

Members due to demand of outstanding maintenance dues after which some members of Respondent No. 1 instigated other purchasers against the Promoter by posting messages on the Society WhatsApp group thereby convincing other flat purchasers to stop paying maintenance and other dues to him. He would submit that Promoter urged the flat purchasers to pay maintenance or else basic amenities such as water supply etc. would be stopped.

6.1. He would submit that on 04.06.2020, Petitioner held an online meeting to discuss the arrears of outstanding maintenance dues and invited members to fill the post of office bearers however some members of Respondent No. 1 demanded formation of a Cooperative Housing Society only. He would submit that the Promoter provided audited statements of accounts to the flat purchasers to show the details of expenditure incurred by him, however flat purchasers of Respondent No. 1 – Society did not respond neither resumed paying maintenance. He would submit that Respondent No. 10 stopped prosecuting claims against Petitioner and did not give his consent to add his name to the array of parties in the Revision Application neither did he authorize any advocate to espouse his cause before the Hon'ble Minister. He would persuade the Court to consider his submissions approximately.

7. I have heard Dr, Warunjikar, learned Advocate for Petitioner, Mr. Khandeparkar, learned Advocate for Respondent Nos. 1 to 3 and

10; and Mr. Keluskar Advocate for Respondent No. 10 and with their able assistance perused the record of the case. Submissions made by the learned Advocates at the bar have received due consideration of the Court.

8. In the present case, controversy is very narrow. Challenge is to the registration of Respondent No.1 - Society as “Co-operative Housing Society”. There is no dispute about the basic facts. Petitioner is the Promoter / Developer. He developed the buildings in the entire layout where Respondent No. 1 Paramount Park ‘D’ Wing Society is situated. I am informed that this development is still on - going and incomplete in the layout. It is seen that most of the flat purchasers of Respondent No.1 Society purchased their flats from Petitioner - Promoter / Developer in the year 2011. It is seen that from 2011 to 2019 Petitioner - Promoter / Developer took care of the maintenance of all buildings constructed by him. What is significant is that in the registered sale agreement executed with all flat purchasers the Petitioner – Promoter / Developer in clause 13.5 promised as under:-

“13.5 The Owner / Builder / Promoter hereby agrees that they shall, before handing over Possession of the Residential Flat / Shop to the Purchaser and in any event before execution of a deed of conveyance in favour of the Ultimate Organization, as Contemplated herein, make full final and true disclosure of the nature of the title to the said Property as well as encumbrances and / or claims, if any in / over the said Property. The Owner / Builder / Promoter shall, as far as practicable, ensure, that upon such Conveyance in favour of the Ultimate Organization the Building and

*Portion of the Property beneath it, as far as practicable
is free from Encumbrances.”*

9. Thus from the above as Promoter and Developer of the project, Petitioner made his intention clear that before execution of Deed of Conveyance in favour of the ultimate organization make a full disclosure. In 2019, Petitioner – Promoter / Developer executed the Deed of Declaration for registration of the Society in respect of the developed buildings as a Condominium. In 2020 however the impugned action of registration of Respondent No. 1 - Society took place. There are several objections raised by Petitioner – Promoter / Developer namely that consent of the Promoter / Developer is not obtained before registration, that he is kept in the dark, that registration authority namely Deputy Registrar Dombivli did not have the power and jurisdiction to register the Society, that registration of Society was effected within two days without notice to Petitioner - Promoter / Developer , that registration of Society is done *exparte* in a surreptitious manner, that when Revision Application of Respondent No. 1 - Society was heard by Hon’ble Minister no notice was issued to Petitioner - Promoter / Developer, that the order of the Hon’ble Minister records an incorrect and false finding that Petitioner – Promoter / Developer was heard and there was complete non adherence to principles of natural justice, that one Mr. Thingranjan Ayyar fraudulently misrepresented himself as the promoter by

executing his signature on the 'Z' Form despite being only a flat purchaser in D Wing, that members and flat purchasers of the 'D' Wing building did not support the malicious agenda of a few flat purchasers who orchestrated the registration of Society on the basis of fraudulent documents and suppression of material facts. These objections are raised by Petitioner - Promoter / Developer including the jurisdictional error of registering the Society by the Deputy Registrar, Dombivli.

10. The Respondent No. 1 Society in its reply to the Court has fairly and clearly admitted the fact that the Deputy Registrar, Dombivli did not have the power and jurisdiction to register the Society and the power to register Society lay with the Deputy Joint Registrar, Thane. Hoowever Mr. Khandeparkar has argued since the issue was thereafter seized before the Revisional Authority i.e. the State and since the said Revisional Authority has upheld the registration of Respondent No.1 – Society, the aforesaid jurisdictional error be dispensed with in the interest of justice. Another argument advanced by Respondent No.1 - Society in defense of its registration is that for 9 long years Petitioner – Promoter / Developer did not comply with the statutory requirement of registration of society as Co-operative Housing Society or Condominium, therefore members and flat purchasers of Respondent No. 1 - Society were forced and compelled to seek registration which it did and that cannot be held against the Society. These are the two principal defenses vehemently argued on behalf of the Society in

support of its registration and Court is urged to uphold this registration.

11. In the facts and circumstances of the present case, I am afraid that the defenses raised by the Society in support of its registration are not tenable in law. When the Society itself accepts the fact that the Deputy Registrar, Dombivli in the first instance did not have jurisdiction to register the Society then such jurisdiction cannot be conferred on the said authority and accepted. What is seen is that during the first wave of the COVID period or possibly immediately after the peak period, the act of registration of Society took place. It is seen that application for registration was filed on behalf of Respondent No.1 - Society to the Deputy Registrar Dombivli and within two days registration was granted. It is seen that application is filed on 27.07.2020 and registration is granted on 29.07.2020. However, thereafter it is seen that the same registering authority who granted registration namely Deputy Registrar, Dombivli himself addressed a detailed complaint / letter dated 26.08.2020 to Divisional Joint Registrar, Thane stating that registration of the Society was obtained by some members of the Society fraudulently and therefore the said registration of the Society deserved to be cancelled.

12. It is seen that on the basis of this complaint and Application by Petitioner seeking de-registration, *suo moto* enquiry was conducted

by the Divisional Joint Registrar. The Divisional Joint Registrar heard both the Respondent No.1 - Society and Petitioner – Promoter / Developer and only thereafter passed a detailed speaking order dated 18.11.2021 which is appended at Exhibit 'K' page 225 of the Petition. In fact, this was the only instance when the Statutory Authority had heard both sides. Resultantly, the registration was cancelled. Society being aggrieved filed Revision before Hon'ble Minister / State.

13. It is seen that the Hon'ble Minister only heard the Respondent No. 1 - Society and did not hear the Petitioner – Promoter / Developer but incorporated an incorrect fact in the impugned order that Petitioner – Promoter / Developer was heard while passing the impugned order. The impugned order is passed *ex parte* and has been obtained behind the back of the Petitioner – Promoter / Developer. It is seen that apart from the issue of jurisdiction of the registering authority who registered the Society in the first instance the misrepresentation and fraud committed by the Respondent no. 1 – Society is writ large on the face of record. Court cannot turn a blind eye to such misrepresentation and fraud when it is *prima facie* evident from the record of the case itself. In Form 'Z' copy of which is appended to page No.255 of the Petition, it is seen that one Thingranjan Ayyar has claimed to be the chief promoter of the Respondent No.1 – Society. This is shocking and absurd when the said person is one of the flat purchaser. Most of the averments which are

required to be made in the said Form Z are kept blank. The said Mr. Thingranjan Ayyar is a resident of Flat No. 304 in the said building. How he becomes the chief promoter of the said building is unexplained. The Rs.100 stamp paper on which Form 'Z' is typed is bought on 06.03.2020. What is equally shocking is that registration is sought for by only a few residents of the Respondent No. 1 Society. This is evident from the fact that on 21.06.2020, 11 members of Respondent No. 1 Society made an application to the Deputy Registrar, Dombivli along with copy of MOFA Agreement and other necessary documents. On 15.07.2020 the Deputy Registrar, Dombivli permitted Respondent No. 1 Society, on the basis of the above, to open a bank account of the Society. There is further substantial material placed on record which *prima facie* show that there were several disputes between the said Mr. Thingranjan Ayyar and the Petitioner – Promoter / Developer which pertained to arrears of outstanding maintenance dues of flat purchasers of the said building. Apart from all this, intention of the Petitioner - Promoter / Developer to comply with his MOFA obligation is *prima facie* clear. He has executed the Deed of Declaration in 2019 itself. This aspect has not been considered either by the Deputy Registrar, Dombivli before registering the Society or by the Hon'ble Minister before upholding the registration. In the present case, it is seen that when the registering authority itself endorses the fact that the act of registration is a fraudulent act due to suppression

and misrepresentation by Society, the Revisional Authority cannot uphold the same. The Appellate Authority in the present case while setting aside the registration has heard both the parties at length and only thereafter delivered its reasoned verdict. Such an exercise has not been conducted either by the registering authority nor by Revisional Authority. Both orders passed by these two authorities are behind the back of the Petitioner – Promoter / Developer. First order of registration is passed within 2 days of the application being made without even issuing notice to Petitioner – Promoter / Developer on the false premise that one of the applicant Mr. Thingranjan Ayyar is the shown as Chief Promoter and second order is passed by the Revision Authority which wrongly and mischievously states that submissions of the Petitioner – Promoter / Developer were heard while passing the said order when that is not the case. Thus fraud committed by the so called members and office bearers of the Respondent No.1 Society is writ large on the face of record. The so-called flat purchasers / members of Respondent No. 1 Society who applied for registration cannot take law into their own hands and in the manner in which it has been done by them. The entire exercise carried out by the Appellate Authority after conducting the suo moto enquiry therefore deserves to be upheld. It is seen that the Deed of Declaration dated 15.06.2019 is a registered document bearing registration number 6378 of 2019. The said Deed of Declaration is appended at page No. 102 of

the Petition. If such Deed of Declaration was indeed registered then another fraud has been played by the flat purchasers / members of the Respondent No. 1 Society. If page No. 260 to the Petition is seen, a search report issued by an Advocate called S.V Tharte is appended to Society's application Form Z seeking registration. At page 259 is the title certificate issued by the same Advocate. This certificate is dated 2011 (precise month and date is not legible). Such certificate of 2011 is used to seek registration of the Society in 2020 by the Respondent No. 1 Society. This is the level of fraud played by Respondent No. 1 Society and its members who applied for registration and the Deputy Registrar has accepted the said documents but has realized later that he has also been misled. This is so because if a title certificate of 2020 was indeed procured by the Respondent No. 1 Society for seeking its registration, they would have known in the search report about the registered Deed of Declaration dated 15.06.2019 which is alluded to hereinabove which was already executed and registered by the Petitioner - Promoter / Developer to register the Condominium. Thus members of the Respondent No. 1 Society have not acted cleanly. Though it is true that there is delay on the Petitioner / Promoter – Developer's part to form the Society either under the MCS Act or the MAO Act, but that does not give any right to the members of Respondent No. 1 building to form a Co-operative Society and register it in the manner in which it has been done. If the Developer does not

act undoubtedly the members / flat purchasers can come together and approach the concerned Competent Authority and seek registration / redressal. Such is not the case here. Members of the Society has not approached the Petitioner – Promoter / Developer. Neither they take any steps for 9 years after been put into possession by the Petitioner Promoter / Developer. The effect of registration of Deed of Declaration under MAO Act and further steps to be taken can be subsequent to its adjudication and compliances but that does not entitle members of Respondent No. 1 Society to circumvent the law. In the present case if allegation of Society about delay and laches on the part of Petitioner - Promoter Developer is to be accepted then equally the members of 'D' Wing building also kept quiet for more than 9 years without coming together to form the Society. Hence the argument on forming the Soccity / Company within the prescribed time limit cannot be argued from the Respondent No.1 – Society. From a reading of the record it is seen that the Petitioner Promoter / Developer is also a resident of the same Society. It is seen that Promoter has been managing the affairs of the Society Building since 2011. It is seen that the Petitioner - Promoter / Developer has made a substantial outstanding arrears claim to the tune of Rs 70 lakhs from the members of 'D' Wing building. This dispute essentially seems to be the major bone of contention between the parties which promoted some members of the respondent No. 1 – Society to have taken the step for regoistering themselves under the

MOFA as a Co-operative Housing Society. Therefore in the present case there appears to be a dispute which is more than what meets the eyes which has led to the present situation. It is seen that some members of the 'D' Wing building are staunchly opposing registration of the Society as a Condominium under the MAO Act. It is also seen that prior to the registration of 'D' Wing Society as a Co-operative Housing Society there is substantial correspondence between the members of 'D' Wing building through their Advocate one H.H. Nagi and Associates opposing the steps taken by the Petitioner - Promoter / Developer. It is also seen that Respondent No. 1 Society is formed for 'D' Wing only which is part of building complex / layout comprising of 6 buildings being Building Nos. 'A' to 'F' in the entire layout on Survey No. 223, having common amenities including overhead water tank, underground water tank, entrance for entering into the Wing, electricity meter, tax assessment, common layout, common open spaces, common swimming pool, etc. All these things are completely ignored by the Registering Authority when it grants the Certificate of Registration within 48 hours without applying its mind to the annexures appended to the registration form, the scheme submitted and without scrutinizing the documents. When such a thing has happened the Registering Authority has owned its mistake. The most shocking thing is that the share capital which has been paid by Respondent No. 1 Society is shown to be Rs. 19,000 divided into 384

shares which in itself shows the sinister motive of the Chief Promoter of Respondent No. 1 Society when he shows the description of the property as Survey No. 233 which is the entire layout area developed by the Petitioner for the six buildings.

14. In view of the above the observations and findings, the impugned order dated 21.06.2022 passed by the Hon'ble Minister is not tenable and deserves to be quashed and set aside. Order dated 21.06.2022 is quashed and set aside. The twin orders dated 18.11.2022 orders of the appellate authority after hearing both the parties are declared to have been correctly passed and both the orders passed by the appellate authority dated 18.11.2022 are upheld and confirmed.

15. Resultantly, Writ Petition succeeds. Writ Petition is allowed and disposed of. In view of disposal of Writ Petition, pending Interim Application is also disposed of. No costs.

[MILIND N. JADHAV, J.]

HARSHADA
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