

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4408 OF 2025

Maki Homi Chibber Nee Maki Modi
Adult, Indian Inhabitant, aged 58 years
Through Constituted Attorney
Dilip S. Bendugade
Age 58 years
Partner of M/s Om Shri Sai
Constructions, Having its office at 108,
Param Tower, Survewadi, Thane (West)

..Petitioner

Versus

1. State of Maharashtra,
Through its Principal Secretary,
Housing Department,
Mantralaya, Mumbai – 400 032.

2. District Deputy Registrar,
Cooperative Societies, Thane,
Competent Authority,
appointed under the MOFA, 1963,
having its office at First Floor, Gaondevi
Vegetable Market Building,
Gokhale Road, Thane (West) – 400 602.

3. Model Colony Cooperative Housing Society
Limited, claiming to be a Cooperative Housing
Society registered under the Maharashtra
Cooperative Societies Act, 1966 claiming to have
its address at Survey No. 231, Ward No. 77,
Model Colony, Shastri Nagar, Village Majiwade,
Pokharan Road No.1,
Thane (West) 400 606.

~~4. Mangibai Govind Varatha~~

ARUN
RAMCHANDRA
SANKPAL

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by ARUN
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Date: 2025.11.03
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~~5. Raghunath Govind Varatha
Both Adults, Indian Inhabitants,
Both shown to have their address at
Survey No. 231, Ward No. 77,
Shastrinagar, Pokharan Road No.1,
Thane (West) — 400 606.~~

4A. Mina Randhya Dunde
4B. Pandurang Randhya Dunde
4C. Bhangubai Randhya Dunde
4D. Chima Randhya Dunde
4E. Gulab Vishawas Thakur
4F. Bhaskar Soma Konde
4G. Janu Soma Konde
4H. Raju Soma Konde

5A. Anandibai Raghunath Vartha
5B. Ashok Raghunath Vartha
5C. Santosh Raghunath Vartha
5D. Kamal Raju Kode

All residing at Kode Chawl, Shastri Nagar,
Phokran Road No.1, Post J.K. Gram,
Thane – 400 606.

6. M/s Shreeram Construction Company
Through Amrutlal Lalji Patel and
Mukesh Amrutlal Patel, shown to have their
office at 304, Doshiwadi,
Agra Road, Ghatkopar,
Mumbai 400 086.

7. Ramaadhar Munai Mourya,
Adult, Indian Inhabitant,
Shown to have his address at
Survey No. 231, Ward No. 77,
Shastrinagar, Pokharan Road No.1.
Thane (West) – 400 606.

...Respondents

Mr. Sandesh Patil, with Anish Karande, Tatsat Gor, Shyam Singh,
Chintan Shah and Satchit Gor, i/b Kapil N. Gor, for the
Petitioners.

Mr. A.I. Patel, Addl G.P, with Kavita N. Solunke, Addl GP, for
Respondent Nos. 1 and 2-State.

Mr. Vineet Naik, Senior Advocate, i/b S. Anchan, for Respondent No.3.

Mr. S.C. Mangle, i/b Yogesh Keny, for Respondent Nos. 4 and 5.

CORAM: N. J. JAMADAR, J.
RESERVED ON: 4th AUGUST 2025
PRONOUNCED ON: 3rd NOVEMBER 2025

JUDGMENT:

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. By this Petition under Article 227 of the Constitution of India, the Petitioner takes exception to an order dated 14th June 2022, passed by the District Deputy Registrar, Cooperative Societies, Thane and the Competent Authority, thereby granting Unilateral Deemed Conveyance Certificate in respect of the premises admeasuring 5436.80 sq mtrs (“the subject premises”) out of the total area of 2 Hectors 32 Ares and 71 Points (23,271.00 sq mtrs) (“the larger property”) situated at Shastri Nagar, Village Majiwade, Thane (West), under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (“the MOFA, 1963”).

3. Though the Petition arises out of an order passed by the Competent Authority in exercise of its limited jurisdiction under Section 11 of the MOFA, 1963, yet, the facts of the case are required to be noted

in a little detail as there are multiple facets to the litigation with various proceedings before the Civil Courts, Revenue Authorities and the Authorities under the Maharashtra Cooperative Societies Act, 1960 and the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (“the Slum Act”).

4. Late Manekji Modi, the father of the Petitioner, claimed to have acquired the larger property from one Mr. Gulvantram in the year 1948. His name was mutated to the Record of Rights of the larger property. After his demise the names of Mrs. Nargis Manekji Modi, the mother of the Petitioner, and Dina Manekji Modi, the Petitioner’s sister, and the Petitioner, were mutated to the Record of Rights of the larger property vide Mutation Entry No. 1205. The Petitioner now claims to be the sole surviving heir of late Manekji Modi.

5. Mangibai Govind Varatha and Raghunath Govind Varatha, the deceased Respondent Nos. 4 and 5, claimed to be the tenants of a plot of land admeasuring 6500 sq yards out of the land bearing Survey No. 231, the larger property.

6. The deceased Respondent Nos. 4 and 5 had purportedly executed a registered Lease Deed dated 17th December, 1981 of the subject premises for a term of 98 years, commencing from 1st January 1982, in favour of M/s Shreeram Construction Company through late Amrutlal Lalji Patel. On the strength of the said Lease Deed the name of M/s

Shreeram Construction Company came to be recorded in the other rights column of the larger property vide Mutation Entry No. 1889.

7. A series of the proceedings before the Revenue Authorities ensued. In an Application preferred by the Petitioner, the Sub Divisional Officer (“SDO”), Thane by an order dated 25th August 2007 cancelled the Mutation Entry No. 1889 and ordered the deletion of the name of Respondent No. 6 from the Record of Rights.

8. In the Second Appeal, the Additional Collector, Thane, by an order dated 3rd January 2017, set aside the order passed by the SDO and restored the name of the Respondent No.6 to the Record of Rights.

9. A Revision Application was preferred before the Additional Commissioner, Konkan Division. By an order dated 20th August 2019, the Additional Commissioner, Konkan Division, allowed the Revision Application and set aside the Additional Collector’s order and, resultantly, the name of Respondent No. 6 came to be deleted from the other rights column.

10. A further Revision before the State Government is sub judice.

11. In the meanwhile the Respondent No. 6 constructed building Nos. A to K, consisting of more than 150 tenements over the subject premises. The Respondent No. 6 had allegedly sold the tenements by executing Agreements in favour of the purchasers. Those Agreements were purportedly executed in accordance with the provisions contained

in the MOFA, 1963. Some of the first purchasers, in turn, have further transferred the tenements in favour of the successive purchasers. Evidently, the Respondent No. 6 did not discharge the obligations under the MOFA, 1963.

12. A majority of the flat purchasers initially instituted a Suit for declaration and injunction before the Civil Court at Thane on the premise that the flat purchasers along with the flat purchasers in “K” building, (who had formed a cooperative housing society) had acquired title over the respective flats and the subject premises by way of adverse possession. It was the claim of the 108 flat purchasers-Plaintiffs in SCS No. 450 of 2018 that Mr. Amrutlal Patel, the Proprietor of M/s Shreeram Construction Company, (R6), was in actual open, peaceful and hostile possession of the subject premises and since acquisition of the respective flats, the Plaintiffs were also in adverse possession of the respective flats and the subject premises to the knowledge of the owners of the subject premises.

13. In the intervening period, the occupants of the flats in building “A” to “J” formed and registered Model Colony Cooperative Housing Society, the Respondent No.3. The said society was registered on 20th March 2019. After registration, the Respondent No.3 addressed a notice to the Petitioner, Nargis Modi and Dina Modi; the owners, Mangibai Varatha and Raghunath Varatha, the deceased Respondent Nos. 4 and 5;

the lessors, and M/s Shreeram Construction Company, the Respondent No. 6; the Promoter, to execute a conveyance of the subject premises in favour of the society.

14. Vide Reply dated 2nd September 2020, the Petitioner and the Co-owners contested the claim of the Respondent No.3 on multiple grounds including that the deceased Respondent Nos. 4 and 5 had no right, title and interest in the subject premises and, therefore, were not entitled in law to execute a lease in favour of the Respondent No.6. Reference was made to the various proceedings between the parties. It was, *inter alia*, contended that the Chief Executive Officer, SRA, has already issued a Notification under Section 3C(1) of the Slum Act, 1971, on 26th March 2019, declaring an area admeasuring 16408.79 sq mtrs out of the total area of 23,880.00 sq mtrs of Survey No. 231 as “Slum Rehabilitation Area”. The Petitioner had entered into a Development Agreement with M/s Om Shri Sai Construction for the redevelopment of the larger property.

15. In the backdrop of the aforesaid litigative history, the Respondent No.3 filed an Application before the Competent Authority under Section 11 of the MOFA, 1963 for issue of a certificate for Unilateral Deemed Conveyance. The Respondent No.3 sought a certificate to the effect that the Deed of Assignment of leasehold rights in respect of the subject

premises admeasuring 5436.80 sq mtrs be executed in favour of the Respondent No.3.

16. The Competent Authority issued notice 19th April 2022 to the Opponents; posting the Application for hearing on 5th May 2022. On that date, noting that the Respondents, including the Petitioner (Respondent No.3 therein), were absent, the Competent Authority directed issue of public notices returnable on 24th May 2022. Public notices were published in the newspapers on 6th May 2022. As none appeared before the Competent Authority on 24th May 2022, the Competent Authority was persuaded to close the Application for orders *ex parte*. By the impugned order, the Competent Authority granted a Certificate of Unilateral Deemed Conveyance in respect of the subject premises.

17. The Petitioner claims that he was not served with the notice of hearing of the Application before the Competent Authority. The Petitioner became aware of the passing of the order in the month of March 2025 and after gathering the documents and information approached the Registrar of Assurance requesting him not to register the Deed of Unilateral Deemed Conveyance. Yet, the Registrar registered the Deed of Unilateral Deemed Conveyance post-haste despite an intimation that the Petition was sub-judice before this Court.

18. The Petitioner assails the impugned order and the instrument executed pursuant thereto principally on the ground that the impugned order came to be passed in flagrant violation of the fundamental principles of natural justice. The Competent Authority (R2) has passed the impugned order in a mechanical manner without satisfying itself that the prerequisite for the grant of certificate of the Unilateral Deemed Conveyance have been fulfilled. In fact, the Competent Authority (R2) did not verify that there was no registered Agreement for Sale executed by the purported Promoter (R6) in favour of any of the flat purchasers. The deceased Respondent Nos. 4 and 5, the alleged lessors, had no right and authority to execute the Lease Deed in favour of the Respondent No. 6. The Agreements in question relied upon by the Respondent No.3-society were not the Agreements covered by the MOFA, 1963. The Respondent No.3-society had, in fact, played a fraud on the Competent Authority as a false declaration was made that no litigation was pending in respect of the subject land, though 108 members of the Respondent No. 3-society had already instituted a Suit for declaration of title by adverse possession.

19. The Respondent No.3-society has controverted the averments in the Petition by filing an Affidavit in Reply. The challenges sought to be raised by the Petitioner were stated to be untenable on facts and in law. The Petitioner had never challenged the registered Lease Deed executed

by the deceased Respondent Nos. 4 and 5 in favour of the Respondent No. 6.

20. The Respondent No.3 has also assailed the legality and validity of the declaration made by the CEO, SRA under Section 3C(1) of the Slum Act. A reference is made to various proceedings initiated by the flat purchasers to protect their legitimate rights, which were sought to be deprived by unlawful declaration of the subject premises as the slum. In any event, the impugned order having been passed in exercise of the statutory power, there was no scope for interference in exercise of the writ jurisdiction.

21. I have heard Mr. Sandesh Patil, the learned Counsel for the Petitioner, Mr Vineet Naik, the learned Senior Advocate, for the Respondent No.-3-society, Mr. S.C. Mangle, the learned Counsel for the Respondent Nos. 4 and 5, and Mr. A.I. Patel, the learned Addl GP, for the Respondent Nos. 1 and 2. With the assistance of the learned Counsel for the parties, I have also perused the material on record, including the documents annexed to the Application filed by the Respondent No.3 before the Competent Authority, and the pleadings and the documents tendered before this Court.

22. Mr. Sandesh Patil, the learned Counsel for the Petitioner, submitted that the impugned order and the instruments registered pursuant thereto are required to be quashed and set aside for not

adhering to the basic rules of natural justice. Amplifying the submission Mr. Patil would urge, the Competent Authority (R2) was discharging quasi-judicial function and it was incumbent upon the Competent Authority to give an effective opportunity of hearing to the Petitioner, who is undoubtedly the owner of the subject premises. The Competent Authority proceeded to grant certificate of Unilateral Deemed Conveyance without satisfying itself that the notice of the Application was duly served upon the Petitioner.

23. Inviting attention of the Court to the roznama of the proceeding before the Competent Authority, Mr. Patil would submit that, on the very first date of hearing, the Competent Authority directed issue of notice by paper publication, without recording that the notice was duly served. Moreover, the notices were published in the newspapers which had no circulation in the area where the Petitioner resides. On the next date, the Competent Authority closed the proceeding for orders *ex parte*. On this count alone, the impugned order of grant of certificate deserves to be interfered with.

24. Mr. Patil would urge that there was gross suppression of facts on the part of the Respondent No.3-society. Nay a positive false statement was made that no litigation in respect of the subject premises was pending before any Court, apart from the proceeding before the Revenue Authorities. The Respondent No.3-society was fully cognizant

that its 108 members had instituted a civil suit seeking a declaration of title by adverse possession. This constitutes a clear fraud on the part of the Respondent No.3.

25. On the merits of the matter, Mr. Patil would urge even a copy of the Agreement for Sale executed by the Promoter in favour of the flat purchasers under Section 4 of the MOFA, 1963, which is a primary document, was not placed before the Competent Authority. Inviting attention of the Court to the copy of the purported model Agreement annexed to the Application, Mr. Patil would urge the said document appeared to a Sale Deed to which the Promoter was not even a party. Nor the fact that a declaration under Section 3C(1) of the Slum Act was made by the CEO, SRA, was brought to the notice of the Competent Authority. On the contrary, after the grant of certificate of Unilateral Deemed Conveyance, the 108 members of the Respondent No.3-society unconditionally withdrew the Suit.

26. In the backdrop of these glaring facts, impugned order, whereby the Competent Authority has granted a certificate of Unilateral Deemed Conveyance in a mechanical manner, without posing unto itself the questions which are germane for the determination of such Application, deserves to be quashed and set aside, submitted Mr. Patil.

27. To buttress these submissions, Mr. Patil placed reliance on judgments in the cases of **Kashish Park Reality Pvt Ltd Vs State of**

Maharashtra,¹ K.G. Associates Vs Registrar, Coop Societies,² Jagshi Jethabhai Chheda Vs District Deputy Registrar of Coop Societies,³ Mazda Construction Co Vs Sultanabad Darshan CHS Ltd,⁴ Arunkumar H. Shah HUF Vs Avon Arcade Premises Coop Society Ltd,⁵ Zainul Abedin Yusufali Massawawala Vs Competent Authority District,⁶ Swastik Promoters & Developers Vs District Deputy Registrar of Coop Societies,⁷ Indradas Kacharu Gaikar Vs Kalyan Dombivali Municipal Corpn⁸ and Umadevi Nambiar Vs Thamarasseri Roman Catholic Diocese.⁹

28. Per contra, Mr. Naik, the learned Senior Advocate for the Respondent Nos. 3-society, submitted that the challenge to the impugned order is devoid of substance. The contention that the Petitioner did not get an effective opportunity of hearing is a subterfuge. The Petitioner deliberately chose not to appear despite service of notice. The Competent Authority had published the notice in the newspapers, yet, the Petitioner did not appear. The falsity of the claim of Petitioner that notice was not served on the Petitioner is borne out by the fact that the notice issued by the Respondent No.3-society, prior to filing of the

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- 1 2020 SCC OnLine Bom 11644.
 - 2 2023 SCC OnLine Bom 2132.
 - 3 2024 SCC OnLine Bom 3758.
 - 4 2012 SCC OnLine Bom 1266.
 - 5 2025 SCC OnLine SC 828.
 - 6 2016 SCC OnLine Bom 6028.
 - 7 2025 SCC OnLine Bom 256.
 - 8 2025 SCC OnLine Bom 219.
 - 9 (2022) 7 SCC 90.

Application under Section 11, was served on the Petitioner on the very same address. Thus, the Petitioner cannot be heard to urge that the notice was not served on the Petitioner.

29. In any event, having regard to the nature of the proceedings before the Competent Authority and the limited enquiry envisaged by the provisions of the MOFA, 1963, the bogie of breach of principles of natural justice cannot be countenanced to interfere with a legitimate order passed by the Competent Authority. To this end, Mr. Naik placed reliance on a judgment of the Supreme Court in the case of **State of Uttar Pradesh Vs Sudhir Kumar Singh & Ors**,¹⁰ wherein it was *inter alia* enunciated the breach of the *audi alteram partem* rule cannot, by itself, without more, lead to the conclusion that prejudice is thereby caused.

30. Mr. Naik submitted that, even otherwise, the essential challenge of the Petitioner is premised on the professed title of the Petitioner over the subject premises. Mr. Naik would submit, with a degree of vehemence that, by a catena of decisions, it is well-settled that the question of title cannot be gone into by the Competent Authority exercising the power under Section 11 of the MOFA, 1963. A party aggrieved by the the order passed by the Competent Authority has to workout his remedies before the Civil Court.

31. Mr. Naik placed a very strong reliance on the judgment of the Supreme Court in the case of **Arunkumar H Shah HUF (Supra)** wherein

10 (2021) 19 SCC 706.

the Supreme Court postulated in no uncertain terms that the Competent Authority cannot conclusively and finally decide the question of title and notwithstanding the order under sub-Section (4) of Section 11 of the MOFA, 1963, aggrieved parties can always maintain a civil suit for establishing their rights.

32. As a second limb of the aforesaid submission, Mr. Naik would urge, even the case of the Petitioner premised on the title over the subject premises is inherently weak. Apart from the revenue proceedings, for over 40 years, no proceeding has been instituted by the Petitioner and other co-owners challenging the registered Lease Deed in respect of the subject premises in favour of the Respondent No. 6 executed by the deceased Respondent Nos. 4 and 5.

33. In the absence of the challenge to the said registered instrument on the basis of the orders passed by the Revenue Authorities, in the mutation proceeding, the challenge to the status of the Respondent No.6, as the promoter, lacks substance.

34. At any rate, the question of legality and validity of the antecedent documents would be alien to the enquiry before the Competent Authority. To bolster up the aforesaid submission, Mr. Naik placed reliance on the judgments of this Court in the cases of **Blue Heaven Coop Housing Society Ltd Vs Punit Construction Company Pvt Ltd & Ors¹¹** and **New Manoday Cooperative Housing Society Limited Vs Uday**

11 Writ Petition No. 2455 of 2023, decided on 21st November 2024.

Madhavrao Jagtap & Ors¹² wherein this Court, in the facts of the respective cases, held that the Competent Authority had overstepped its jurisdiction by unnecessarily going into title disputes while considering an Application for grant of certificate of Unilateral Deemed Conveyance under Section 11 of the MOFA, 1993. Reliance was also placed on a judgment of this Court in the case of **Acme Enterprises and Anr Vs Deputy Registrar, Cooperative Societies & Ors.¹³**

35. Mr. Naik further submit that the contentions of the Petitioner that the Respondent No.3-society had played a fraud on the Competent Authority and made a false declaration as regards pendency of the litigation is against the weight of the material on the record. Laying emphasis on the declaration made by the Respondent No.3-society, Mr. Naik submitted that the society had made a factually correct statement that no other litigation was pending by or against the society in respect of the subject premises. The Special Civil Suit was instituted by the flat purchasers who subsequently became members of the Respondent No.3-society. However, the fact remained that the society was not a party to any pending litigation.

36. Lastly, Mr. Naik would urge that the flat purchasers, who subsequently became member of the Respondent No.3-society had been left in the lurch for over three decades. Pursuant to the impugned order

¹² Writ Petition No. 1421 of 2024 and other connected matters dated 30th April 2024.

¹³ 2023 SCC OnLine Bom 1102.

only the leasehold rights of the Respondent No.3 have been conveyed in favour of the Respondent No.3-society. Having regard to the object of the MOFA, 1963 when only such leasehold rights in the subject premises have been conveyed, the impugned order does not warrant interference in exercise of the writ jurisdiction, submitted Mr. Naik.

37. I have given anxious consideration to the rival submissions canvassed across the bar. In the run of the mill cases often the challenge to the order granting certificate of Unilateral Deemed Conveyance revolves around the question of title to the subject land and building or to the extent of entitlement of the Applicant before the Competent Authority. Such challenge is determined on the basis of the principles which have been fairly crystallized. In the case at hand, as noted above, the litigation has a chequered history before various forums, yet, the core controversy revolves around the remit of the jurisdiction exercised by the Competent Authority and the legality and correctness of procedure adopted by the Competent Authority in arriving at the impugned decision.

38. To begin with, it may be apposite to keep in view the object of the MOFA, 1963. The MOFA, 1963 came to be enacted with the avowed object of regulation of the promotion of the construction, sale and management and transfer of flats taken on ownership basis as it was found that consequent to actuate shortage of housing in the several

areas of the State sundry abuses and malpractices were being indulged in and difficulties were faced in sale, management and transfer of flats taken on ownership basis. Under Section 4 of the MOFA, 1963 an obligation is cast on the promoter to enter into a written agreement for sale with each of the persons who are to take the flats in the building to be constructed by the promoter, in the prescribed format. Sub-section (1A) of Section 4 provides that such agreement shall contain the particulars as specified in Clause (a) and to such agreement copies of the documents specified in Clause (b) shall be attached. Such an agreement is required to be registered under the provisions of Registration Act, 1908.

39. Section 4A of the MOFA, 1963, primarily insulates the purchasers from the consequences which entail the non-registration of an agreement under the Registration Act, 1908. Section 10 enjoins the promoter to take steps for registration of the organization of the persons who take flats as a cooperative society, or as the case may be, as a company. However, it does not affect the right of the promoter to dispose of the remaining flats in accordance with the provisions of the said Act.

40. Section 11, which is the pivot of the protective regime, mandates that the promoter shall take all necessary steps to complete his title and convey to the such organization his right, title and interest in the land

and the building, and execute all relevant documents therefor in accordance with the agreement executed under Section 4 of the MOFA, 1963.

41. If there is no Agreement as to the period within which the conveyance is to be executed, the Promoter is obligated to execute the conveyance within the prescribed period. If the promoter fails to execute the conveyance in favour of such organisation within the prescribed period, a right is conferred on the members of such organisation to make an application in writing to the Competent Authority, constituted under Section 5A, accompanied by true copies of the registered Agreement for sale and all other relevant documents for issuing a certificate to the effect that such organisation is entitled to get a Unilateral Deemed Conveyance executed in its favour and also have it registered. Under sub-Section (4) of Section 11 of the MOFA, 1963, the competent authority after making such inquiry as it deems necessary and after verifying authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, if satisfied that it is a fit case for issue of such certificate, shall issue a certificate to the Registrar of Assurances certifying that it is a fit case for enforcing unilateral execution of conveyance thereby conveying the right, title and interest of the promoter in the land and building in favour of such organization, as deemed conveyance.

42. Sub-Section (5) of Section 11 of the MOFA, 1963, casts a duty on the Registration Officer to issue summons to the Promoter to show cause why such Unilateral Deemed Conveyance should not be registered as “Deemed Conveyance” and after giving the Promoter and the Applicant reasonable opportunity of being heard and upon being satisfied that it was a fit case for Unilateral Conveyance, register that instrument as “Deemed Conveyance”.

43. A conjoint reading of the relevant provisions of MOFA, 1963 and the MOFA Rules, would indicate that the promoter is statutorily enjoined to first enter into a Agreement for Sale of the flats in a building, register it and then take steps to form an organization of the flat purchasers and after completion of development, execute an instrument conveying his right, title and interest in the land and building in accordance with the Agreement executed with the flat purchasers, within the time stipulated in the such Agreements or if no time is stipulated, then within four months of the organisation having been registered or constituted.

44. The general reluctance, refusal or neglect on the part of the promoters to discharge the obligation to execute the conveyance, made the legislature to step in and enforce the obligation by empowering the competent authority to certify the justifiability of the deemed conveyance. The competent authority is thus entrusted with the

responsibility to enforce the obligation of the promoter. From this standpoint, only the agency which executes the conveyance, in favour of the organization of purchasers, to which they are legitimately entitled to, stands substituted as the promoter disables himself from discharging the obligation, either by refusal or neglect.

45. The competent authority is, however, required to follow fundamental principles of judicial process. Upon verification of the authenticity of the documents and after furnishing a reasonable opportunity of hearing to the promoter, it must arrive at a satisfaction that a case for execution and registration of deemed conveyance is made out.

46. In arriving at the conclusion as to whether a case for grant of Unilateral Deemed Conveyance Certificate is made out, the Competent Authority has to follow summary procedure. The remit of the enquiry of the Competent Authority is confined to the questions as to whether there is an Agreement within the contemplation of Section 4 of the MOFA, 1963, whether the Promoter has committed default in conveying his right, title and interest in the land and building in favour of the society of flat purchasers within the stipulated or prescribed period and, thereby failed to perform his obligation under Section 11 of the MOFA, 1963, and once these conditions are satisfied, grant a certificate for Unilateral Deemed Conveyance. The Competent Authority is, however,

neither competent nor expected to delve into the question of title over the subject land.

47. In the case of **Arunkumar H Shah, HUF (Supra)** the Supreme Court expounded the nature and import of the proceeding before the Competent Authority, as under:

“18. Thus, sub-section (1) of Section 11 contains the obligation of the promoter to convey title in respect of the land and the building developed by him. Sub-section (3) of Section 11 gives a remedy to a cooperative society or a company formed under Section 10 or the association of apartment owners, as the case may be, to apply to the competent authority appointed under Section 5A for issuing a certificate that the said society or the company, as the case may be, is entitled to have unilateral deemed conveyance executed in their favour and have it registered. This provision has been enacted to ensure that a speedy remedy is available to the flat purchasers for enforcing the promoter's obligation under sub-section (1) of Section 11. The MOFA has been enacted with the object of protecting the flat purchasers.

19. The procedure for dealing with applications made under sub-section (3) of Section 11 has been laid down in the MOFA Rules. Rule 11(2) provides for the competent authority to issue a notice of the application to the promoter. Even the form of application under Section 11(3) has been prescribed by the MOFA Rules. Under Rule 13(3), the opponent to whom a notice is issued is entitled to file a written statement. Rule 13(4) permits the production of documents. Sub-rule (5) of Rule 13 provides for the procedure for the hearing of the application. It provides that on receiving a written statement

of the opponent, the applicant shall prove the contents of the application and also deal with the contention of the defence. However, it is specifically provided that no cross-examination of any of the parties shall be permitted. Clause (c) of sub-rule (5) of Rule 13 provides that the outer limit for passing an order on a Section 11 application is six months. It provides that the competent authority shall make such enquiry as may be deemed necessary, and after verifying the authenticity of the documents submitted by the parties and after hearing them, the competent authority shall pass an order. The requirement to comply with the principles of natural justice is also incorporated in clause (c). Considering the nature of the power conferred on the competent authority, it follows that while passing orders on the application under Section 11(3), the competent authority must record reasons.

20. It is undoubtedly true that quasi-judicial powers have been conferred upon the competent authority while dealing with applications under Section 11(3) of the MOFA. However, proceedings before the competent authority under Section 11(3) are of summary nature, as can be seen from the MOFA Rules. Even cross-examination of the parties is not permissible. There is an absolute prohibition under Rule 13(5) on cross-examination of parties. Thus, it follows that the competent authority, while following the summary procedure, cannot conclusively and finally decide the questions of title. Therefore, notwithstanding the order made under sub-section (4) of section 11, aggrieved parties can always file a civil suit for establishing their rights.

(emphasis supplied)

48. The Supreme Court further concluded that the Competent Authority while following the summary procedure cannot conclusively and finally decide the question of title. Therefore, notwithstanding the order under sub-Section (4) of Section 11, the aggrieved parties can always maintain a civil suit for establishing their rights. The provisions of Section 11 are for the benefit of the flat purchasers. In writ jurisdiction, the Court should not interfere with the order granting deemed conveyance unless the same is manifestly illegal. The writ Court should generally be slow in interfering with such orders. The reason is that, notwithstanding the order under Section 11(4), the remedy of aggrieved parties to file a civil suit remains open.

49. In the case of **Acme Enterprises (Supra)** this Court, after adverting to a large body of precedents, summarised the legal position as under:

“30. From the above statutory provisions and enunciation, the position which emerges can be summarized as under. The authority to grant deemed conveyance is conditioned and controlled by the primary obligation of the promoter to convey to the organization of flat purchasers right, title and interest in the land and buildings, in accordance with the agreement executed under Section 4. Competent authority cannot convey more than what the promoter had agreed to convey under the agreement executed under Section 4. What competent authority is thus required to consider is, the extent of the obligation incurred by the promoter, whether the obligation to execute the conveyance became enforceable and

whether the promoter committed default in, or otherwise disabled himself from, executing the conveyance.

31. The enquiry is thus of limited nature. The competent authority cannot delve into the aspects of title. Nor the finding of the competent authority precludes a party from agitating the grievance as to the entitlement of the organization of purchasers to have the conveyance, before the Civil Court. The remit of enquiry by the competent authority is, thus, whether the conditions stipulated for enforcement of the obligation to execute the conveyance have been satisfied and, if yes, order an unilateral deemed conveyance.”

(emphasis supplied)

50. In the case of **Blue Heaven Coop Housing Society (Supra)** a learned Single Judge of this Court, reiterated the limited nature of the jurisdiction of the Competent Authority in the following words:

“62. Once the non performance of obligations as envisaged by the MOFA is established, the Competent Authority is mandated to comply with the promoter’s obligations. It is not open for the Competent Authority in the limited extent of jurisdiction to delve into the validity of the documents executed between the parties including the issue of title and to reject the application of deemed conveyance on the ground of validity of the documents.

63. The conspectus of the findings of Competent Authority is that the Agreement of Assignment executed on 15th May 2003 being an unregistered unstamped notarised document and not as per the transfer scheme of CIDCO did not create any rights in the Respondent No.1 or the flat purchasers. The documents submitted are incomplete documents containing blanks. Despite

notice being issued by planning authority for vacating the dilapidated premises during the period from 20th July 2016 to 3rd August 2016, 26 flat purchasers agreement were executed for a sum of Rs.1,00,000/- only, and more than 30 tenements/commercial shops are in the name of directors of the Respondent No.1-developer. There was suppression of the fact of demolition of building and conveyance under Section 11(1) of MOFA can be of the land and building. The building is not in existence and the authenticity of the agreements is pending before the civil Court.

64. The rejection of the application by arriving at the above findings, in my view, goes way beyond the jurisdiction of Competent Authority. It was not necessary to consider the validity of Agreement of Assignment dated 15th May, 2003 as all permissions such as the commencement certificate and the occupancy certificate were issued in name of the Owners and having caused the construction, the Owners were Promoters under MOFA and bound by the flat purchasers agreement. For the same reason the finding of the Competent Authority that there is no privity of contract between the owners and the flat purchasers cannot be accepted.

65. The right of Respondent No.1 to enter into flat purchasers agreement was not an issue to be considered by the Competent Authority when it noticed that the permissions were obtained by the Owners making them Promoters. The flat purchasers cannot be caught in the cross-fire between the developer and the Owners and be deprived of their entitlement to deemed conveyance where non compliance of MOFA obligations is established. Learned Single Judge of this Court has in New Manoday CHS Ltd (Supra) held that if any person claims that

promoter is not the owner in respect of the land on which building is constructed, it is for that person to institute civil suit and establish his rights to the land. Pendency of such title disputes cannot be a ground for not conveying land under Section 11 by the Competent Authority. The authenticity and validity of the Agreement is an issue to be decided by the Civil Court. The manner of sale of the flats could not be gone into by the Competent Authority under Section 11 of MOFA. The Competent Authority has ventured in the title dispute between the parties by holding that the development agreement is not validly executed and therefore no rights accrue to the flat purchasers. The rights of the flat purchasers flow from the statutory obligations under MOFA which includes the owner as promoter.”

(emphasis supplied)

51. In New Manoday Cooperative Housing Society Limited (Supra)

another learned Single Judge of this Court, emphasised the remit of the enquiry by the Competent Authority as under:

“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.”

(emphasis supplied)

52. On the aforesaid touchstone, reverting to the facts of the case, the challenge to the impugned order passed by the Competent Authority is required to be appraised in two parts. First, the non-adherence to the principles of natural justice.

53. It is the case of the Petitioner that notice of the Application was not served on the Petitioner. Incontrovertibly, the Petitioner did not appear before the Competent Authority and, therefore, the Competent Authority proceeded to pass the impugned order *ex parte*. The crucial question that crops up for consideration is, whether the Competent Authority was justified in proceeding *ex parte*.

54. The facts which bear upon the aforesaid question are few and rather clear. The Competent Authority issued notice of the Application on 19th April 2022 and posted the Application for hearing on 5th May 2022. The roznama of the proceeding indicates that the Application was heard on two dates only, i.e., 5th May 2022 and 24th May 2022. On 5th May 2022, the Competent Authority recorded that the Respondents were absent and, thus, public notice was ordered to be issued, returnable on 24th May 2022. The material on record indicates that public notices were published in the newspaper dated 6th May 2022. On the next date, 24th May 2022, the Competent Authority after recording that the Respondents were absent in spite of public notice, closed the matter for orders *ex parte*.

55. What is conspicuous by its absence in the roznama of the proceeding dated 5th May 2022 is that, the notices were served on the Respondents, especially the Petitioner. The roznama simply records that the Respondents were absent. The endeavour of Mr. Naik to urge that since the notice issued on behalf of the society was served on the Petitioner on the very same address, on which the notice of the Application was sent, it must be presumed the notice of the Application was duly served on the Petitioner, takes the matter in the realm of surmises and conjectures. It was incumbent upon the Competent Authority to satisfy itself and record that the notice of the Application was duly served on the Petitioner. In the absence of clear proof of service of notice on the Petitioner, the Competent Authority could not have proceeded to decide the Application *ex parte*, on the ground that the notices were published in the newspapers.

56. It is imperative to note that Rule 13 of the MOFA Rules, 1964, enjoins the Competent Authority to issue notice to the opponents and maintain a record thereof. When the notices were published in the newspaper which do not have wide circulation in the area where the proposed noticee ordinarily resides and, there is no proof of either actual service of notice or refusal or avoidance on the part of the noticee to accept the service of notice, the exercise of proceeding ahead with the enquiry is fraught with the risk of the decision making process

suffering from the vice of breach of most elementary rule of *audi alteram partem*.

57. The submission of Mr. Naik that in the facts of the case no prejudice as such can be said to have been caused to the Petitioner, cannot be readily acceded to. In the case of **Sudhir Kumar Singh (Supra)**, the Supreme Court, after an analysis of the previous precedents has enunciated that the breach of the *audi alteram partem* rule cannot, by itself, without more, lead to the conclusion that prejudice is thereby caused. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction *per se* does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

58. However, in the facts of the case, as elaborated above, especially the chequered history of litigation, the denial of opportunity of hearing to the Petitioner to bring to the notice of the Competent Authority the various facets of the claim including the previous proceedings, cannot be said to be inconsequential or immaterial. It cannot be said that the Petitioner was disinterested or indifferent. When the society had given notice demanding execution of conveyance, the Petitioner and other co-

owner had given an elaborate response and refuted the claim of the society.

59. In a sense, the Competent Authority was also deprived of the benefit of full disclosure of the facts which bear upon the determination of the Application for grant of certificate of Unilateral Deemed Conveyance. In my considered view, what accentuates situation is the fact that, on the very second date of hearing of the Application, the Competent Authority decided to reserve the matter for *ex parte* order. It is not the case that there was a clear proof of either service of notice on the Petitioner or refusal or avoidance to accept the notice. In the absence thereof, the Competent Authority committed a grave procedural irregularity in deciding to proceed *ex parte* against the Respondents, including the Petitioner.

60. This leads me to the question as to whether the Competent Authority had kept in view the factors which were germane for the determination of the Application. Undoubtedly, the Competent Authority was not expected to delve into the question of title. However, the mere fact that the Respondents did not appear, or for that matter the Competent Authority, decided to proceed *ex parte* did not necessarily imply that the Competent Authority was not enjoined to pose unto itself the relevant questions for grant of a certificate of Unilateral Deemed Conveyance.

61. First and foremost, it is imperative to note the impugned order singularly lacks consideration as to the what was the exact nature of the obligation the Respondent No.6-Promoter had undertaken. Nor does it indicate that the Competent Authority considered the nature of the right, title and interest of the Respondent No. 6 in the subject land.

62. As noted above, sub-Section (4) of Section 11 provides that the Competent Authority shall make such enquiry as deemed necessary and verify the authenticity of the documents submitted and, thereafter, upon being satisfied that it is a fit case for issue of Unilateral Deemed Conveyance Certificate, shall issue such certificate. The primary document which the Competent Authority was required to consider was the MOFA Agreement executed by the Promoter in favour of the individual flat purchasers. A perusal of the Application before the Competent Authority would indicate that, in the list annexed to the said Application, at Item 6, model Agreement executed with the Developer was included. A bare perusal of the said document at (pages 10 to 23 of the Application) would indicate that it was not an Agreement executed by the Respondent No.6 in favour of the flat purchasers. It appeared to be an Agreement executed by one of the flat purchasers in favour another person thereby conveying the right, title and interest in Unit No. B/49. The perfunctory nature of the consideration by the Competent Authority becomes evident from the fact that the impugned

order does not even refer to the MOFA Agreement executed by the Promoter in favour of any of the flat purchasers, let apart the ascertainment of the obligations under the said Agreement which the Competent Authority professed to enforce by granting a certificate of Unilateral Deemed Conveyance.

63. Mr. Naik attempted to salvage the position by inviting the attention of the Court to the Sale Deeds executed by Amrutlal Patel in favour of flat purchasers on 16th December 1983. It was submitted that those documents were impounded under Section 33 of the Maharashtra Stamps Act and thus the defect stood cured.

64. In the light of the view this Court is persuaded to take, it may not be appropriate to comment on the nature and character of those Sale Deeds. Those Sale Deeds simply record that the Units have been sold for a consideration of Rs.12,000/-. Suffice to note the Agreement does not incorporate the necessary particulars prescribed under Section 4(1)(a) of the MOFA, 1963, though it contains a recital that the said Sale Deed would be governed by the provisions of MOFA, 1963.

65. Moreover, it does not appear that those Sale Deeds were placed before the Competent Authority. Nor those Sale Deeds disclose the nature of the interest of the Respondent No. 6 which eventually was transferred by way of Unilateral Deemed Conveyance.

66. It would be contextually relevant to note that 108 flat purchasers had instituted the Suit seeking a declaration that they had become owners of the respective Units and the subject premises by way of adverse possession. The broad case of the flat purchasers was that initially the Respondent No. 6 had been in adverse possession of the subject premises and, after the execution of the instruments in favour of the Plaintiffs, they were also in adverse possession of the respective units. A case of tacking of adverse possession was sought to be put forth.

67. Evidently, the Competent Authority was not apprised of the pendency of the said Suit. Whether the statement made on behalf of the society that no litigation by or against the society in respect of the subject premises was pending was fraudulent or otherwise need not be answered definitively.

68. The submission of Mr. Naik that since the society was not party to the Suit instituted by 108 flat purchasers seeking declaration of title by way of adverse possession, the pendency of the said Suit or for that matter the stand of the individual flat purchasers in the said Suit was of no consequence, cannot be acceded to unreservedly. It can hardly be disputed that a majority of those very persons became the members of the Respondent No.3-society. The stand of those persons thus cannot be said to be wholly immaterial or inconsequential.

69. At this juncture the nature of a cooperative society and especially its relations qua the members who form the society after its incorporation, assumes critical salience. Under Section 36 of the MCS Act 1960, the registration of a society shall render it a body corporate by name under which it is registered, with perpetual succession and a common seal, and with power to acquire, hold and dispose of property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all such things as are necessary for the purpose for which it is constituted.

70. With the registration under the Act of 1960, a society becomes a corporate body. In the case of **Daman Singh & Ors Vs State of Punjab & Ors**,¹⁴ a Constitution Bench of the Supreme Court had an occasion to consider the juridical status of a cooperative society under the Punjab Cooperative Societies Act, 1961. Section 30 of the Punjab Cooperative Societies Act, 1961 also conferred status of a body corporate on every society registered thereunder. In the context of the submission that the cooperative societies were not the corporations within the meaning of Article 31-A(1)(c) of the Constitution of India, the Supreme Court examined as to what a “corporation” means and comprehends ordinarily and in the scheme of the Constitution. Thereafter the Supreme Court ruled that there cannot be the slightest of doubt that a cooperative society is a corporation as commonly understood.

14 (1985) 2 SCC 670.

71. In the case of **Daman Singh (Supra)** the Supreme Court also expounded the position in law as to what happens to the person who formed themselves into a society or subsequently became members of the society. The Supreme Court enunciated that once a person becomes a member of a cooperative society, he loses his individuality qua the society and has no independent rights except those given to him by statute and by-laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body.

72. In the light of the aforesaid juridical status of a cooperative society and the relation of the individual members qua the society, the nature of the underlying dispute between the parties assumes critical salience. It can hardly be contested that the rights and obligations of the parties have their genesis in the Agreements for Sale executed by Respondent No.6 in favour of individual flat purchasers. By executing those Agreements, the society claimed, the Respondent No.6 subjected himself to the regime of MOFA.

73. In the aforesaid view of the matter, non-disclosure of the pendency of the Suit wherein 108 unit purchasers had claimed ownership of title by way of adverse possession cannot be said to be of no significance.

74. Whether the disclosure of the pendency of such Suit, where 108 flat purchasers claimed that they were holding the units and the subject premises adversely to the owners would have influenced the decision of the Competent Authority is a different matter. Whether the Competent Authority had before it all the relevant material is the moot question.

75. It also does not appear that the Competent Authority had the benefit of the Lease Agreement. What the Competent Authority was expected to consider, albeit without delving into the legality and validity of the Lease Agreement, was whether under the Lease Agreement, the Respondent No. 6 was conferred with the rights which the Respondent No. 6 was further obligated to convey to the society of flat purchasers.

76. From a perusal of the Lease Agreement, on which emphasis was laid by Mr. Naik, it becomes evident that the lessees had the right to construct the building for residential and commercial purpose, at their own risk and costs. However, two clauses of the Lease Agreement deserve to be taken into account.

77. Clauses 5 and 10 of the Lease Agreement read thus:

“5. That the lessees shall have not right to transfer his leasehold rights on the land hereby demised. The Lessors expressly grant the right to erect the residential and/or commercial buildings on the leasehold properties and sell out the same to the prospective purchasers.

10. That on expiry or on termination of this lease and/or on removal thereof in writing, the lessees shall immediately

give vacant and peaceful possession to the lessors or such person or persons they may appoint in this behalf over the land hereby demised and over all constructions, improvements, groves, orchard, trees or tanks whether constructed or planted by the lessee or existing and in such condition as may be no worse than he originally received it. The lessee shall not be entitled to any compensation for any construction and such improvement which he may have made in or upon the demised land. In case the lessee hold over without renewal of the lease in writing or illegally continuous their possession after termination of this lease, they shall be liable to pay damages for use and occupation to the lessors at the rate of Rs.100/- per day for each day of their trespass.”

78. Clause 5 of the Lease Agreement recorded that the lessee shall have no right to transfer his leasehold rights of the land thereby demised, though the lessee was expressly granted right to erect residential or commercial building on the leasehold property and the lease out the same to the prospective purchasers. Under Clause 10, the lessee agreed to deliver vacant and peaceful possession of the subject land to the lessor, and that the lessee was not entitled to any compensation for construction or improvement which he might have made in or upon the demised land.

79. The question as to whether the Respondent No.6 could have conveyed the leasehold rights in the subject premises in the face of a clear interdict against the transfer of the leasehold rights, was also required to be examined, if eventually the Deemed Conveyance was

granted in the nature of the assignment of the leasehold rights. Again, the absence of these documents, before the Competent Authority disabled it from examining the said issue.

80. On the aspect of the registration of the instrument pursuant to the certificate granted by the Competent Authority, *prima facie*, it appears that the Registration Officer did not comply with the mandate contained in sub-Section (5) of the Section 11 of MOFA, 1963. The duty and the nature of enquiry to be conducted by the Registration Officer in the light of the provisions contained in sub-Section (5) of Section 11 was expounded by the Supreme Court in the case of **Arunkumar H. Shah HUF (Surpa)** as under:

“22. Now, we deal with the scope of powers of the registration officer under the Registration Act, 1908 (for short, ‘the 1908 Act’) under sub-section (5) of Section 11. As provided in sub-section (4) of Section 11, a certificate regarding the entitlement of the applicant to deemed conveyance has to be issued by the competent authority to the appropriate registration officer under the 1908 Act. After receiving the certificate, the registration officer is required to issue a summons to the promoter to show cause why such a unilateral instrument should not be registered as a deemed conveyance. After giving an opportunity of being heard to the promoter and after being satisfied that it was a fit case for registration of a unilateral conveyance, the registration officer can register the certificate as deemed conveyance. We may make it clear that the power conferred on the registration officer does not enable him to reopen or set aside the findings recorded by the competent authority while passing an order of

grant of certificate. The registration officer is neither an appellate authority nor a revisional authority.

23. The requirement of sub-section (5) of Section 11 has been incorporated to enable the registering officer to give an opportunity to the promoter, as the certificate issued by the competent authority is a “unilateral certificate”. In a given case, there may be a statutory requirement of obtaining prior permission or consent of an authority before the execution and registration of a conveyance. The registering officer cannot register the instrument unless such statutory consent/permission is produced. Therefore, he can refuse to register the certificate of deemed conveyance till the permission/consent is produced. There may be a prohibitory order of a competent court restraining the promoter from executing a conveyance. In such a case, the certificate cannot be registered as a conveyance till the restraint order is in force. Moreover, the registering officer must be satisfied that the requirements, such as payment of stamp duty and other procedural requirements under the 1908 Act, are complied with. This is the limited scope of adjudication by the registering officer under sub-section (5) of Section 11. The registering officer has no power to sit in appeal over the order of the competent authority while exercising the power under Section 11(5). He has no power to go into the correctness or otherwise of the order of the competent authority. He can refuse registration only on the grounds indicated above. Thus, the scope of the powers conferred on the registering officer is limited as indicated above. This is the only way sub-sections (4) and (5) of Section 11 of the MOFA can be harmoniously construed.”

(emphasis supplied)

81. In the case at hand, it appears that the Registration Officer was informed by the Petitioner on 28th March 2025 that the Petitioner had preferred Writ Petition before this Court and, therefore, the instrument may not be registered pursuant to the impugned order. In response thereto, on 4th April 2025 the Registration Officer called upon the addressee to produce true copies of the orders passed by the Court. Surprisingly, the Deed of Unilateral Deemed Conveyance was executed two days prior thereto, i.e., 2nd April 2025.

82. It is true, the Registration Officer has no authority to sit in Appeal over the Competent Authority, while exercising power under Section 11(5). However, when the Registration Officer was intimated about the challenge to the order passed by the Competent Authority and the objection thereto, it was in the fitness of things for the Registration Officer to give an opportunity of hearing to the Petitioner. Instead, on 4th April 2025 the objector was called upon to furnish certified copies of the order passed by the Court whilst the instrument was already executed and registered two days prior thereto.

83. Cumulatively, an inference becomes inescapable that the impugned order was passed by the Competent Authority without adhering to the fundamental principles of judicial process and providing an effective opportunity of hearing to the Petitioner and also without conducting an enquiry as envisaged under Section 11 (4) of MOFA 1963.

84. Resultantly, the impugned order passed by the Competent Authority as well as the instrument of Unilateral Deemed Conveyance are required to be quashed and set aside and the matter remitted back to the Competent Authority for a fresh decision after providing an effective opportunity of hearing to the parties.

85. Hence, the following order:

: O R D E R :

- (i) The Petition stands partly allowed,
- (ii) The impugned order dated 14th June 2022 passed by the Competent Authority stands quashed and set aside.
- (iii) The Unilateral Deed of Deemed Conveyance dated 2nd April 2025 also stands cancelled.
- (iv) The Application for grant of Unilateral Deemed Conveyance stands remitted back to the Competent Authority for afresh decision in accordance with law after providing an effective opportunity of hearing to the parties.
- (v) The parties shall appear before the Competent Authority on 24th November 2025. The Competent Authority is requested to make an

endeavour to hear and decide the Application as expeditiously as possible.

(vi) By way of abundant caution, it is clarified that the consideration was confined to test the legality and correctness of the impugned order and the Competent Authority shall not be influenced by any of the observations hereinabove while deciding the Application afresh.

(vii) All contentions of all the parties are expressly kept open for consideration.

No costs.

[N. J. JAMADAR, J.]