IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 123 of 2024

IN

SUIT NO. 617 OF 2023

Mount Nirmala Co-Operative Housing Society Limited ...Applicant

<u>In the matter of:</u>

Mount Nirmala Co-Operative Housing Society Limited ...Plaintiff

Versus

Bishop John Rodrigues & Anr. ...Defendants

WITH

INTERIM APPLICATION NO. 311 OF 2025

IN

SUIT NO. 617 OF 2023

Mr. Chetan Kapadia, Senior Advocate a/w Mr. Karl Tamboly, Yuvraj Singh, Shruti Maniar, Shivani Bhandary, Kashmita Belwalkar i/by M/s. Solomon & Company for the Plaintiff.

Mr. Navroz Seervai, Senior Advocate a/w Bernando Reis, Bhushan Deshmukh, Aayushi Gohil, Umair Merchant, Triveni Jawale i/by MT Miskita & Company for Defendant No.1.

Mr. Vishal Kanade, Sourashubha Ghosh, Sanaya Patel, Aditya Trivedi i/by Indus Law for the Intervenor in IA/311/2025

CORAM : ARIF S. DOCTOR, J.
RESERVED ON : 21st APRIL, 2025
PRONOUNCED ON : 11th JUNE, 2025

ORDER:

1. The Applicant has filed the captioned Suit *inter alia* seeking a decree directing the Defendants to jointly or severally execute a conveyance/lease in respect of the Suit Property in favour of the Applicant society and other incidental reliefs thereto. The "**Suit Property**" comprises land admeasuring 12,523 square yards, i.e., 10,470 square meters, bearing Survey No. 278 part of CTS No. 277 Hissa No. 1, CTS No. B/961 and Survey No. 278 part CTS No. B/960, both of Bandra Village lying, being and situated at Bandra Hill (South-East) Bandra in Greater Bombay in the Registration sub-district of Bandra Suburban District ("**the said land**"), together with seven buildings standing thereon, i.e., Buildings A, B, C, D, E, F and G ("**the said buildings**").

2. This Order will dispose of the following two Interim Applications:

i. Interim Application No. 123 of 2024, which is filed by the Applicant seeking (a) an order of temporary injunction restraining the Defendants from, in any manner, creating third-party rights with respect to the Suit Property; (b) an order of temporary injunction restraining the Defendants from in any manner utilising/exploiting the FSI/TDR in respect of the Suit Property, and; (c) the appointment of the Court Receiver, in respect of the

Suit Property.

ii. Interim Application No. 311 of 2025 (“**Intervention Application**”) is filed by one Kadeshwari Cooperative Housing Society (“**Intervenors**”), who claim to be a society of 36 slum dwellers and *inter alia* seek to be impleaded as party Defendants to the Suit.

3. While this Order will dispose of both the captioned Interim Applications, for the sake of convenience, reference to the parties shall be as they are arrayed in Interim Application No. 123 of 2024. However, before adverting to the rival contentions, it is useful for context to set out the following facts, which are largely not in dispute:

i. Defendant No. 1 is the owner of the said land and had, in the year 1969, leased the said land to Defendant No. 2 (**“the Salsette Society”**), vide a Lease Deed dated 31st July 1969 (**“the said Lease”**).

ii. The Salsette Society had, between 1960 and 1970, constructed the said buildings, which were meant to house members of the Christian community who belonged to the low-income group. The Applicants are the occupants of buildings ‘A’, ‘B’, ‘C’, ‘D’ and ‘G’. (“**Applicant’s Buildings**”).

iii. It is the Applicant’s case that the members of the Applicant and/or their predecessors had purchased their respective flats from the Salsette Society by paying full consideration, which included the cost of construction, advance contribution towards share capital and outgoings, etc., and were also issued share certificates by the Salsette Society. It is thus, that the members of the Applicant claim to be the owners of their respective flats and not tenants.

iv. It is the Applicant's case that since the Salsette Society was facing issues in relation to the management of the Applicant's Buildings, it was agreed between the Applicant and the Salsette Society that the Applicant's Buildings would be separated from buildings 'E' and 'F'and the leasehold rights therein would be conveyed to the Applicant society.

v. The Applicant was thereafter registered as a tenant ownership society on 7th July 1982, after which the members of the Applicant returned the share certificates which had been issued to them by the Salsette Society and were issued fresh share certificates by the Applicant society.

vi. Though discussions ensued with regards to the modalities for the transfer of leasehold rights to the Applicant, the same did not reach fruition. The Salsette Society then, in the year 2009, informed the Applicant of its intention to surrender their leasehold rights under the said Lease back to Defendant No. 1. The Applicant objected to the proposed surrender of the said Lease by the Salsette Society. However, in 2018, the Salsette Society, vide a Deed of Surrender dated 27th July 2018, surrendered its leasehold rights in the Suit Property to Defendant No. 1.

vii. It is the Applicant's case that even after the surrender of the said Lease by the Salsette Society, Defendant No. 1 continued to treat the members of the Applicant as flat owners by including them in discussions in respect of the proposed redevelopment of the Suit Property. However, in the tender floated by Defendant No. 1 inviting bids for the proposed redevelopment, Defendant No. 1 referred to the members of the Applicant as "occupants" and not as "flat owners".

viii. Hence, the Suit.

Submissions on behalf of the Applicant

4. Mr. Kapadia, Learned Senior Counsel appearing on behalf of the Applicant, submitted that there could be no manner of doubt that the members of the Applicant and/or their predecessors were flat purchasers and not merely occupiers/tenants of their respective flats. In support of his contention, he pointed out that the members of the Applicant and/or their predecessors had (i) paid the entire consideration for their respective flats to the Salsette Society (ii) the Salsette Society had issued share certificates to each member and/or their predecessors; (iii) the members of the Applicant society had paid all outgoings towards the sinking fund and property tax; (iv) the Salsette Society had issued a Building Occupation Certificate dated 7th December 1977 for submission to authorities in which members of the Applicant society and/or their predecessors were referred to as "flat owners"; and (v) the Salsette Society had issued a Certificate of Sale of Flats dated 7th December

1977, which recorded that the flats were sold to prospective purchasers on an ownership basis. He also placed reliance upon Statement "B" appended to the application for registration of the Applicant society, in which Defendant No.1 was referred to as the vendor of the Suit Property, to support the contention that the said flats were sold to the members of the Applicant and/or their predecessors.

5. Mr. Kapadia then pointed out that merely because the letters of allotment referred to the members of the Applicant society and/or their predecessors as "tenants" would not by itself change the fact that the members of the Applicant and/or their predecessors were infact the owners of their respective flats, as was evident from the material upon which reliance was placed by the Applicant. He submitted that the letters of allotment had inartistically described the members of the Applicant and/or their predecessors as tenants since these letters were issued when the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**"MOFA"**), was still in its infancy.

6. Mr. Kapadia then submitted that Defendant No.1 would clearly fall within the definition of a 'promoter' as defined under Section 2(c)[1] of MOFA since the Salsette Society had carried out construction of the said buildings with the

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[1] 2. In this Act, unless the context otherwise requires;-

(a)...

(c) "promoter" means a person who constructs or causes to be constructed a block or building of flats [or apartments] for the purpose of selling some or all of them to other persons, or to a company, co-operative society, or other association of persons, and includes his assignees; and where the person who builds and the persons who sells are different persons, the term includes both;

...

knowledge and consent of Defendant No.1. In support of his contention, he placed reliance upon a letter dated 11th October 1965 addressed by the predecessor of Defendant No.1 to one Mr. Giles Rebello, from which he pointed out that the predecessor of Defendant No.1 had coordinated with the architect for certification of the cost of the flat allotted to one of the Applicant's members (or their predecessor). He also placed reliance upon a letter dated 6th March 1971 addressed by the predecessor of Defendant No.1 to point out that the predecessor of Defendant No.1 had even offered to give a flat for a price which was lesser than the actual cost of the flat. He thus submitted that it was not open to Defendant No.1 to now contend that the provisions of MOFA would not apply or that Defendant No.1 was not a promoter as defined under Section 2 (c) of MOFA.

7. Mr. Kapadia then without prejudice to the above, submitted that the members of the Applicant could never be said to be tenants of their respective flats with only a right to occupy the same since, in the case of a regular tenancy, (i) a separate tenancy agreement is entered into with the occupant of each flat (ii) a tenant is required to only pay rent periodically (and refundable security deposit in some cases); no other form of payment is made by tenants (iii) no separate society of tenants is created (iv) no share certificates are issued to tenants (v) tenants do not have to contribute to share capital (vi) no transfer of leasehold rights/conveyance or of the interest in the underlying land takes place; and (ix) tenants are not required to pay for maintenance of their buildings and property tax.

8. Mr. Kapadia then submitted that it was on account of the fact that the Salsette Society was facing problems in the management of the Applicant's Buildings that it was decided between the Applicant and the Salsette Society to separate the Applicant's Buildings from buildings 'E' and 'F'. He submitted that this decision was to the knowledge of Defendant No.1, as was evident from the meeting held on 14th November 1974, which was attended by the predecessor of Defendant No.1, the representatives of Salsette Society and the Applicant's members and/or their predecessors, at which time various details pertaining to the separation of the Applicant from the Salsette Society were discussed. He also placed reliance upon the resolutions of the Salsette Society dated 4th December 1976 and 8th October 1978, by which the Salsette Society *inter alia* resolved that a separate society of the Applicant's Buildings would be formed and registered and that on registration, all the assets and liabilities of the said buildings would be transferred to the new society and that the lease of the demarcated land along with the Applicant's Buildings would be assigned to the new society that was formed.

9. Mr. Kapadia then pointed out that, in keeping with the aforesaid resolutions, the Applicant on 7th July 1982 registered itself as a tenant co-operative housing society. He pointed out that Rule 10[2] of the Maharashtra Co-operative Societies Rules, 1961, defined a tenant co-operative housing society *inter alia* as one in which land is held either on a leasehold or freehold basis by the societies, and the

[2] 10.**Classification and sub-classification of societies:-** (1) After registration of a society, the Registrar shall classify the society into one or other of the following classes and sub-classes of societies prescribed below according to the principal object provided in its bye-laws:

houses are owned or to be owned by the members. He also pointed out that after registration of the Applicant as a tenant co-operative housing society, fresh share certificates were issued to the members of the Applicant and for their predecessors, and the earlier share certificates issued by the Salsette Society were returned/cancelled. He also pointed out that the share capital, which was collected by Salsette Society from the members of the Applicant, was transferred to the Applicant society. He submitted that the Applicant society had consistently borne all expenses and taxes in relation to the maintenance of the Applicant's Buildings, including contributions to a sinking fund. He thus submitted that all these factors made it clear that the Parties had acted in pursuance of the agreement to transfer the Suit Property to the Applicant society.

10. Mr. Kapadia submitted that even after the registration of the Applicant society, the Defendants held discussions and assured the Applicant society about conveying/assigning the leasehold rights in respect of the Suit Property in favour of the Applicant. In support of his contention, he placed reliance upon the following:

i. A letter dated 20th August 1982 addressed by the Salsette Society to the

Class	Sub-class	Examples of societies falling in the class of sub-class, as the case may be.
5. Housing society	(a) Tenant Ownership Housing Society. …	Housing Societies where land is Held either on lease hold or free-Hold basis by societies and houses are owned or are to be owned by members.

Applicant *inter alia* recording that the Advocates of the Applicant and Salsette Society had informal discussions about the proposed transfer of the Suit Property to the Applicant;

ii. The Applicant's letter dated 3rd June 1983 addressed to the Salsette Society which *inter alia* recorded that the predecessor of Defendant No. 1 did not have an objection to the transfer of leasehold rights of the Suit Property in favour of the Applicant;

iii. The letter of the Salsette Society dated 10th June 1983 addressed to the Applicant assuring the Applicant that the Salsette Society was doing its best to complete the assignment of the leasehold rights of the Suit Property in favour of the Applicant;

iv. The letter of the Salsette Society dated 28th August 1984 forwarding a cheque of Rs. 16,000/- towards the balance amount of refund of shares of the Applicant's members and calling upon the Applicant to send the share certificates issued by the Salsette Society back for cancellation and also informing the Applicant society that the final balance of the share capital held by the Salsette Society would be settled at the time of conveyance of Suit Property in the Applicant's favour;

v. Defendant No.1's letter dated 6th April 1986, by which, according to the Applicant, Defendant No.1 informed the Salsette Society that the conveyance of Suit Property was pending and offered to help in case any assistance was required.

vi. The letter of the Salsette Society dated 2nd May 1986 informing Defendant No.1 about the hurdles that were being faced in the transfer/conveyance of Suit Property in the Applicant's favour and assuring Defendant No.1 that the Salsette Society was working towards separation of the Applicant from the Salsette Society.

vii. The letter of Defendant No.1 dated 5th June 1991 to the Applicant stating that Defendant No.1 would agree to the decisions arrived at between Salsette Society and the Applicant with regard to the Suit Property.

11. Mr. Kapadia then pointed out that the Applicant society had even addressed a letter dated 11th August 1998 to the Mumbai District Co-operative Housing Federation Ltd, raising a query as to whether Defendant No. 1 could convey the Suit Property to the Applicant society. He submitted that the Federation had, vide its letter dated 29 August 1998, confirmed that Defendant No. 1 was capable of conveying the Suit Property to the Applicant society.

12. Mr. Kapadia submitted that the Applicant continued to follow up with the Defendants for the transfer of the Suit Property, despite which no steps were taken by the Defendants to effect the same. In support of his contention, he pointed out that the Applicant had addressed a letter dated 23rd January 2002 to the Salsette

Society referring to its previous letters dated 13th January 1998, 3rd September 1998, 20th October 1998 and 13th November 1998 on the issue of conveyance of the Suit Property in its favour and had requested Salsette Society to call for a special managing committee meeting to decide on the issue of conveyance of the Suit Property to the Applicant. He pointed out that in response the Salsette Society had, by its letter dated 13th March 2002, informed the Applicant that since Defendant No.1 was the lessor of the Suit Property, the Applicant should approach Defendant No. 1 with regards to conveyance thereof. He, however, pointed out that no steps were taken by either Defendant No. 1 or the Salsette Society to convey/lease the Suit Property in favour of the Applicant.

13. Mr. Kapadia then submitted that the Salsette Society suddenly, in the year 2009, informed the Applicant of its intention to surrender its leasehold rights under the said Lease. He pointed out that the Applicant had immediately, on being informed, objected to the same vide a letter dated 22nd December, 2010. He, however, pointed out that the Salsette Society did not pay any heed to the Applicant's objection and, by a letter dated 12th September 2016, informed the Applicant that the surrender of the said Lease was in its final stages and called upon the Applicant to make arrangements to pay the ground rent to Defendant No.1. He submitted that it was thus that the Applicant addressed a letter dated 31st January 2017, to Defendant No.1, *inter alia,* requesting Defendant No.1 to inform the Applicant about the next course of action with regard to the payment of the ground rent. Mr. Kapadia

submitted that the Defendants had, on one pretext or another, avoided accepting the ground rent and other outgoings, which were otherwise being paid on a regular basis by the Applicant. In support of his contention, he placed reliance upon several letters addressed by the Applicant to the Defendants regarding the issue of payment of ground rent, as also by which the Applicant had sent cheques for the same.

14. Mr. Kapadia submitted that even after the surrender of the said Lease by the Salsette Society, Defendant No.1 had acknowledged the rights of the Applicant in the Suit Property as was evident from the following:

i. Sometime in 2019, Defendant No.1 and the Applicant met to discuss matters relating to the rights of the Applicant's members in their respective flats/premises and the potential redevelopment of the Suit Property.

ii. Subsequent to the said meeting, Defendant No. 1 wrote a letter dated 15th June 2019 to the Applicant *inter alia,* requesting the Applicant to participate in the discussions to be held on 22nd June 2019 for the proposed redevelopment.

iii. The Applicant, by its letter dated 18th June 2019, informed Defendant No. 1 of the fact that the Applicant had held a Special General Meeting on 17th June 2019 and had passed a resolution to take a legal opinion on the issue of redevelopment before engaging in further discussions.

iv. Defendant No. 1, by its letter dated 22nd August 2019, *inter alia* invited the Applicant to have another meeting on 29th August 2019, assuming the Applicant had obtained a legal opinion.

v. Post the meeting held on 29th August 2019, the Applicant sent a handwritten letter to Defendant No. 1, *inter alia,* recording that no presentation was given to the Applicant in the earlier meeting, either individually or collectively.

vi. In the meeting held on 29th August 2019 between Defendant No.1 and the Applicant information relating to the proposed redevelopment of the Suit Property was shared by Defendant No. 1 with the Applicant;

vii. Defendant No.1, then vide its letter dated 14th September 2019 addressed to the Applicant referred to the meeting on 29th August 2019 and shared an extract of the presentation given during the said meeting. Defendant No. 1 also provided contact details of its representatives who would be able to provide further clarifications and information with respect to the proposed redevelopment, if required.

15. Mr. Kapadia submitted that it was clear that even post the surrender of the said Lease, Defendant No.1 had continued to recognise the rights of the Applicant in the Suit Property and was thus now estopped from contending that the Applicant society did not have any rights in the Suit Property and/or say in its redevelopment.

16. He then placed reliance upon the judgement of this Court in the case of ***Crystal Blur Premise Co-operative Society Limited Vs. State of Maharashtra and Ors.***[3] to submit that a conveyance of property under MOFA could even be granted on the basis of letters of allotment, commencement and an occupation certificate issued by authorities in the absence of a flat purchaser's agreement.

17. Basis the above, Mr. Kapadia submitted that the Applicant had made out a *prima facie* case for the grant of interim relief in terms of prayer clauses (a) to (c). He submitted that if the reliefs sought were not granted, grave prejudice would be caused to the Applicant since it would entail redevelopment of the property by excluding the Applicant despite the fact that the Applicant had a vested right in the same. He pointed out that if interim relief was granted, no prejudice would be caused to Defendant No. 1, and thus the balance of convenience was entirely in favour of the Applicant. Basis this, Mr. Kapadia submitted that the Interim Application 123 of 2024 may be allowed in terms of the prayer clause (a) to (c).

Submissions made on behalf of Defendant No. 1.

18. Mr. Seervai, Learned Senior Counsel, at the outset submitted that the present Suit was hopelessly barred by limitation, and assuming it was not, the Applicant was not entitled to any relief on the ground of delay and laches. In support of his contention, he adverted to the following:

[3] 2024:BHC-OS:5176-DB

i. The letter dated 21st December, 2009, by which the Salsette Society had specifically informed the Applicant of its intention to surrender the said Lease.

ii. The letter dated 20th May, 2010, by which the Salsette Society had specifically informed the Applicant of its resolution dated 9th August, 2009, to surrender the said Lease to Defendant No.1.

iii. The letter dated 14th August, 2018, addressed by the Salsette Society to the Applicant, informing the Applicant that the Salsette Society had executed a registered Deed of Surrender on 27th July, 2018, by which the said Lease had been surrendered to Defendant No. 1.

19. Mr. Seervai then pointed out that despite the fact that the Applicant had been informed in the year 2009 of the resolution passed by the Salsette Society to surrender the said Lease and had, in the year 2018, been informed that the Salesette Society had infact surrendered the said Lease to Defendant No. 1, vide a registered Deed of Surrender, the present Suit was filed only on 8th February 2023 i.e. after over 5 years from the date of the Deed of Surrender. It was thus he submitted that even assuming the cause of action was a continuous one as contended by the Applicant, the delay and laches on the part of the Applicant in approaching this Court disentitled the Applicant to any interim relief.

20. Mr. Seervai then pointed out that even though the Applicant had in the

legal notice dated 24th March 2021 made specific reference to the fact that the Deed of Surrender was a threat to the rights of the Applicant, the Deed of Surrender had not been challenged by the Applicant either in the present Suit or otherwise. He submitted that the Applicant's failure to challenge the Deed of Surrender was fatal to the Applicant's claim and would not entitle the Applicant to any final relief, much less any interim relief.

21. Mr. Seervai submitted that the Applicant was also not entitled to any relief on the ground that the Applicant had approached this Court by suppressing the fact that the Applicant had previously filed a Suit, being Suit No. 8290 of 1984 ("**the First Suit**") in the City Civil Court, Dindoshi, in which the Applicant had *inter alia* sought a decree and order directing the Salsette Society to forthwith implement the resolution dated 8th October 1978 by transferring the ownership rights of buildings A, B, C, D and G along with leasehold rights of land to the Applicant.

22. He submitted that the First Suit was dismissed on 25th February 1999 for want of prosecution and that given the fact that the prayer made in the First Suit was directly and substantially the same as in the present Suit, the same ought to have been disclosed by the Applicant but had not been disclosed. He submitted that athis failure to disclose the First Suit amounted to suppression of a material fact and thus disentitled the Applicant society to any relief, not only interim but also final.

23. Mr. Seervai then, without prejudice to the above, submitted that Defendant No. 1, being a public charitable trust, could not have created and/or

transferred any interest in the Suit property without the prior sanction of the Charity Commissioner. He submitted that it was not in dispute that the sanction of the Charity Commissioner had not been obtained in the present case, and hence, absent such prior sanction, no enforceable right could have been created in favour of the Applicant, either by the Salsette Society or Defendant No. 1.

24. Mr. Seervai then also submitted that the Suit was bad for non-joinder of necessary parties, namely the occupant of blocks 'E' and 'F'. He submitted that the occupants of blocks 'E' and 'F' would be necessary parties to the Suit as they would be affected by any order that was passed in the Interim Application. He pointed out that the occupants of blocks 'E' and 'F' had already given their irrevocable consent to the proposed redevelopment of the Suit Property as proposed by Defendant No.1. It was thus, he submitted that the Suit was bad for non-joinder of occupants of blocks 'E' and 'F'.

25. Mr. Seervai then pointed out that the Applicant did not have any privity of contract with Defendant No.1. He submitted that at no point of time was there ever any agreement between the Applicant and/or its members and Defendant No.1 for a lease and/or conveyance of the Suit Property in favour of the Applicant. He pointed out that all the correspondence relied upon by the Applicant was only between the Applicant and the Salsette Society and not with Defendant No.1. It was thus that he submitted that absent any privity between the Applicant and Defendant No.1, there was no question of the Applicant making a claim and/or seeking any

reliefs against Defendant No.1. He submitted that Defendant No. 1 was not bound by any understanding which the Applicant might have had with the Salsette Society. He thus submitted that the Applicant did not have the right to any relief against Defendant No. 1, nor could such relief be claimed, much less granted, on the basis of *inter se* communication and/or any understanding arrived at between the Applicant and the Salsette Society.

26. Mr. Seervai submitted that as per the said Lease, the Salsette Society had been granted leasehold rights in respect of the Suit Property for 98 years commencing from 16th April 1965. He pointed out that Clause 6(n)(1) of the said Lease Deed expressly prohibited the Salsette Society from assigning or transferring the lease without the written consent of Defendant No.1. He thus submitted that any such transfer or agreement to transfer the leasehold rights absent the consent of Defendant No.1 and the sanction of the Charity Commissioner would be entirely illegal and null and void.

27. Mr. Seervai also took pains to point out that the allotment letters issued by the Salsette Society to the members of the Applicant and/or their predecessors specifically conferred only occupancy rights in respect of the said flats and not any rights of ownership. He pointed out that the letters of allotment clearly stipulated that the lease would be executed only after the Charity Commissioner's approval, which approval he reiterated had not been obtained to date. Mr Seervai then pointed out that recital (iv) of the Deed of Surrender also specifically recorded that the

occupants of the said flats only had occupancy rights in the said flats. He thus submitted that given the express terms of the Letters of Allotment, it was now not open for the members of the Applicant society and/or their predecessors to assert any right other than the right to occupy the said flats, much less claim ownership rights in the said flats. He thus submitted that it was beyond any doubt that no ownership or leasehold rights were created in favour of the members of the Applicant and therefore the question of Defendant No. 1 being a promoter as contemplated under Section 2(c) of MOFA did not arise, nor did the provisions of MOFA in any manner apply.

28. Mr. Seervai submitted that the Applicant society was not entitled to the grant of any interim relief since the Applicant society had failed to make out a *prima facie* case. He submitted that in the facts of the present case the balance of convenience lay entirely in favour of Defendant No. 1, since Defendant No.1, as the owner of the Suit Property, was in the process of inviting tenders for its redevelopment. He submitted that the redevelopment contemplated would, infact, include the occupants of all the buildings, including the Applicant's Buildings and that on completion of the redevelopment, the members of the Applicants would get flats which were not only substantially bigger than the flats that they were presently occupying but also that they would be put in possession of the redeveloped flats as owners thereof. He thus submitted that no prejudice would be caused to the members of the Applicant and that they would infact stand to benefit from the same. He then

pointed out that if any interim relief as prayed for was granted, the entire redevelopment would be imperilled and would cause grave prejudice to over 74 occupants of blocks 'E' and 'F'.

29. Basis this, Mr. Seervai submits that the interim application is devoid of merit and prays that the same be dismissed with costs.

Submissions of the Intervenor

30. Mr. Kanade, Learned Counsel appearing on behalf of the Intervenors, submitted that the Intervenors were slum-dwellers who had been in occupation of land admeasuring approximately 1596 sq. mts., forming part of CTS No. B/960 (**"Intervenors' Land"**), along with adjoining land admeasuring 380.4 sq. mts. bearing CTS No. B/967, both situated at Bandra, Taluka Andheri, Mumbai – 400050. He submitted that the Intervenors had been in occupation of their land since prior to 1960.

31. He then submitted that by a Notification dated 30th November 1978 issued under Section 4(1) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 (**"Slum Act"**), an area of 1334 sq. mts. forming part of CTS No. B/960 had been declared a slum and that by a subsequent corrigendum dated 12th June 2002, the said area of the Slum was revised and increased to 1532 sq. mts.

32. Mr. Kanade further submitted that on 29th December 2020, the

Intervenors' Land was notified as a 'Slum Rehabilitation Area' and that pursuant to an application made by the Intervenors, the Slum Rehabilitation Authority (SRA) had on 29th March 2022 granted its approval for acquisition of the Intervenors' Land under Section 14 of the Slum Act.

33. Mr. Kanade further pointed out that the Applicant had also participated in the proceedings before the SRA and had contested the declaration of the Intervenors' Land as a slum rehabilitation area. He pointed out that the approval granted by the SRA was challenged by Defendant No.1 in Writ Petition No. 1212 of 2022, which came to be disposed of by this Hon'ble Court by an order dated 11th June 2024. He further submitted that an SLP [SLP (C) No. 15711 of 2024] filed by the Intervenors in respect of the said issue was presently pending before the Hon'ble Supreme Court.

34. Mr. Kanade then pointed out that while the Applicant had sought a conveyance of the land described as bearing Survey No. 277 Hissa No. 1, CTS No. B/961 and Survey No. 278 part, CTS No. B/960, admeasuring approximately 12,523 sq. yards (i.e., 10,470 sq. mts.), both situated in Bandra Village, the Lease Deed, which formed the basis of the Applicants claim described the demised land as follows (i) Survey No. 277 Hissa No. 1, CTS No. B/961 admeasuring 1754 sq. yards (approx. 1466.57 sq. mts.), and (ii) Survey No. 278 part, CTS No. B/960 part, admeasuring 9304 sq. yards (approx. 7779.35 sq. mts.) which aggregated to 11,058 sq. yards (approx. 9245.92 sq. mts.), both of Bandra Village. He thus pointed out that there

was a clear and admitted discrepancy between the area and description of the Suit Property in the Plaint and that in the Lease Deed for which no explanation had been offered by the Applicant.

35. Mr. Kanade thus submitted that in the absence of any clarification with regards to the discrepancy in the area as stated in the Plaint and the Lease Deed the Intervenors had a reasonable apprehension that their land which was lawfully occupied by them and formed the subject matter of proceedings under the Slum Act would be included within the Suit Property. He submitted that it was thus that the Intervenors had a direct and substantial interest in the outcome of the present Suit and Interim Application, and are therefore proper and necessary parties to these proceedings.

Submissions of the Applicant in Rejoinder

36. Mr. Kapadia first pointed out that the contention that the Suit was barred by limitation and that Applicants were disentitled to interim relief on the ground of delay and laches was plainly misconceived. He first reiterated that post the Deed of Surrender, Defendant No.1 had acknowledged the Applicant's rights in the Suit Property by *inter alia* involving them in the discussions qua the redevelopment, which was in the year 2019. He then pointed out that in March 2020 the world was afflicted by the Covid-19 pandemic, which continued till about February 2022; despite which the Applicant through its Advocate, addressed letters to the Defendants (i) objecting to the surrender of the said Lease by the Salsette Society, (ii) sought a

copy of the Deed of Surrender and (iii) called upon the Defendants to execute the definitive documents for the conveyance and/or creation of leasehold rights in respect of the Suit Property in favour of the Applicant society. He submitted that despite being specifically called upon to provide the Applicant with a copy of the Deed of Surrender, the Defendants did not do so. He submitted that it was only in or around October 2022, from the tender floated by Defendant No.1 for the redevelopment of the Suit Property, that the members of the Applicant became aware that Defendant No.1 had referred to them as being "occupants" instead of flat owners. He submitted that it was only at this time that the cause of action to file the present Suit arose.

37. Mr. Kapadia then submitted that in the present case, the cause of action was a continuous one and arose on account of the fact that Defendant No. 1 had failed to fulfil its statutory obligations under MOFA, which constituted a continuing wrong. It was thus he submitted that neither the question of limitation nor delay at laches would arise in the present case, much less disentitle the Applicant to the grant of interim relief.

38. Mr. Kapadia then submitted that the objection raised by Defendant No.1 regarding the absence of any challenge to the Deed of Surrender was also wholly untenable. He first pointed out that the Deed of Surrender was shared with the Applicant society only on 13th March 2023, which was after the Suit and *secondly*, that the Applicant's entitlement stemmed from the obligations owed to the

Applicant by the Defendants under the statutory provisions of MOFA. It was thus that he submitted that the Applicant's failure to challenge the Deed of Surrender was irrelevant and of no consequence.

39. Mr. Kapadia then submitted that the objection regarding lack of prior permission from the Charity Commissioner was also devoid of any merit and would not preclude the grant of interim relief in favour of the Applicant. He submitted that the permission of the Charity Commissioner could always be applied for and granted post facto, i.e., after a decree was passed recognising the Applicant's rights/entitlement. In support of his contention that the grant of such permission post facto was permissible in exceptional cases, Mr. Kapadia placed reliance upon Section 36(5)[4] of the Maharashtra Public Trusts Act, 1950.

40. Mr. Kapadia then submitted that even the contention that the Suit was bad for non-joinder of the occupants of buildings "E" and "F" was without substance. He submitted that the non-joinder of the occupants of buildings "E" and "F" was not fatal to the Suit or the Applicant's entitlement to interim relief since it was always open to the occupants of buildings "E" and "F" to pursue their remedies in accordance with the law. He also pointed out that Defendant No. 1's objection on such grounds

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[4] ***36. Alienation of immovable property of public trust*** *.— (1) Notwithstanding anything contained in the instrument of trust - …*

(5) Notwithstanding anything contained in sub-section (1), in exceptional and extraordinary situations where the absence of previous sanction contemplated under sub-section (1) results in hardship to the trust, a large body of persons or a bona fide purchaser for value, the Charity Commissioner may grant ex-post-facto sanction to the 2 [transfer of the trust property, effected by the trustees prior to the date of commencement of the Maharashtra Public Trusts (Second Amendment) Act, 2017 (Mah. IV of 2018)], if he is satisfied that,...

was an implicit acknowledgement of the fact that flat owners/members of the buildings standing on the Suit Property have legitimate rights therein.

41. Mr. Kapadia then submitted that the Applicant was seeking enforcement of the statutory obligations of Defendant No.1 under the provisions of MOFA, and thus the absence of privity of contract between the Applicant society and Defendant No.1 was wholly immaterial. He reiterated that given that Defendant No.1 had caused the construction of the said Buildings, Defendant No.1 was a promoter as defined in Section 2(c) of MOFA and, as such, was bound in law to transfer/convey the rights in the Suit Property to the Applicant. He further reiterated that Defendant No.1 was also bound by the assurances made over the years by the Salsette Society to the effect that the Suit Property would be conveyed to the Applicant society, as was also borne out in correspondence relied upon. He thus submitted that there could be no manner of doubt that the Defendants were "promoters" as defined under MOFA and were thus bound to convey the Suit property to the Applicant.

42. Mr. Kapadia then submitted that clauses 3 and 6(n) of the Lease Deed *inter alia* provided that Defendant No. 1 would not unreasonably withhold its consent for the creation of any third-party rights. He further submitted that the restriction imposed by the said clauses was in respect of the transfer/alienation of the "demised premises", being the underlying land, and not with regards to the sale of the flats constructed and sold by the Salsette Society to the members of the Applicant. He thus submitted that there was infact no violation of the said clauses by the sale of

the flats by the Salsette Society and that clause 6(n) specifically provided that Defendant No.1 would not unreasonably withhold its consent. He reiterated that the predecessor of Defendant No. 1 had not raised any objection to rights being created by the Salsette Society in favour of the Applicant and/or its members. He submitted that the duration of the lease was for 98 years commencing from 31st July 1969, and that the Applicant society was therefore entitled to its benefit even after the surrender.

43. After having heard Learned Counsel for the Parties and having considered the material upon which reliance is placed, I find that I am unable to grant the Applicant interim relief for the following reasons :

A. *First*, the entire case of the Applicant is premised on an alleged agreement between the Salsette Society and the Applicant society, under which the Applicant's Buildings were to be carved out and separated from Buildings 'E' and 'F'. It is premised on this Agreement that the Applicant has sought a conveyance or transfer of the Applicant's Buildings in the Applicants its favour. However, in the present Suit, the Applicant has sought a conveyance/lease in respect of the entire Suit Property, which includes all seven buildings, i.e., including Buildings 'E' and 'F'. This is plainly contrary to the Applicant's own case in the Plaint and beyond the scope of the very Agreement which the Applicant claims was arrived at with the Salsette Society and Defendant No. 1.

B. *Second*, and *crucially*, even assuming the prayers in the Suit could be moulded by this Court and reliefs granted, I find that I am still unable to grant the Applicant any interim relief since the very letters of allotment upon which reliance has been placed by the Applicant in no uncertain terms provide as follows:

> "*You may occupy the flat… 4. A draft copy of the lease of the Flat containing all the terms and conditions of tenancy which is to be executed by you is sent herewith… 7. As soon as the sanction of the Charity Commissioner has been obtained the fair Lease will be sent to you for execution. …* "

Thus, the terms of the Allotment Letters, in my view, are absolutely clear and do not even remotely contemplate any sale or ownership rights being created in the Allottees. I therefore cannot accept the contention that the Allotment Letters have been inartistically drafted. Hence, in these facts, the judgement of this Court in the case of ***Crystal Blur Premise Co-operative Society Limited vs. State of Maharashtra and Ors.*** upon which reliance was placed by the Applicant would therefore not apply.

C. *Third*, even the Lease Deed executed between Defendant N0. 1 and the Salsette Society specifically records as follows :

i. "Buildings *in terms of clause 5(b) in the draft lease annexed to the agreement for lease dated 16th day of April 1965 have been completed and are presently occupied by tenants of the Lessee*"

ii. *"neither by act or deed to assign or transfer by way of mortgage sale or on ownership basis or sub-lease or otherwise however or part with possession of the demised premises or any part thereof or any interest therein without the consent in writing of the Lessor first had and obtained which consent subject as next herein provided the Lessor shall not unreasonably withhold, PROVIDED THAT the Lessor without assigning any reason shall be entitled to refuse any such assignment or transfer as aforesaid of any part of the demised promises or any interest in any part of the demised premises…"*.

Thus, on a conjoint reading of the Letters of Allotment and the specific clauses of the Lease Deed it is expressly clear that (i) the Salsette Society was not permitted to sell the flats, (ii) only a lease of the said flats was contemplated, and (iii) the lease was to be after the prior sanction/approval of the charity commissioner.

D. *Fourth*, thus, in view of the fact that (i) the members of the Applicant and/or their predecessors had accepted allotment of their respective flats on the basis of the Letters of Allotment and (ii) a plain reading of the clauses of the Lease Deed makes it expressly clear that Defendant No.1 had never authorised the Salsette Society to carry out construction on the said land with the intention of selling the said Flats. Therefore, in my *prima facie* view, it would now not be open to the members of the Applicant to assert a right which was clearly not contemplated by the Letters of Allotment, nor would it be open to them to contend that Defendant No. 1 is a Promoter as defined under Section 2(c) of

MOFA.

E. *Fifth*, while there is no doubt that the Applicant has placed on record ample material to *prima facie* support the contention that the Salsette Society had agreed to treat the Applicant's Buildings separately and that Defendant No. 1 had not opposed the same; this, in my view, would not make Defendant No. 1 liable as a promoter under MOFA. Even assuming Defendant No. 1 had agreed to transfer/convey the Applicants Buildings to the Applicant society, the provisions of MOFA would not ipso facto apply since at no time was the sale of the said flats ever contemplated by either the Salsette Society and/or Defendant No.1. The Applicant society would therefore, at the highest, have been entitled to a sublease and/or a separate lease of the Applicant's Buildings and the demarcated land underlying the Applicant's Buildings and not the entire Suit Property as has been prayed for. Also, such a lease/sublease would necessarily have required (i) the subsistence of the said Lease and (ii) the prior approval/sanction of the Charity Commissioner, both of which today do not exist.

F. *Sixth,* any independent agreement between the Applicant and the Salsette Society, even if to the knowledge of Defendant No. 1, would not foist any obligations upon Defendant No. 1, which otherwise in fact and law were not the obligations which Defendant No. 1 was required to discharge qua the Applicants. For that it would have been incumbent upon the Applicant to have demonstrated that either in fact or in law, Defendant No. 1 was a promoter as defined under Section 2(c) of MOFA and, as such, was required to discharge the obligations as a promoter. Also, already noted above, in the present case, there is no basis either in fact or in law by which Defendant No. 1 would fall within the definition of a promoter under Section 2(c) of MOFA.

G. *Seventh,* even if I were to accept that the other incidents of a regular tenancy are absent in the present case, the same would not *ipso facto* elevate the status of the members of the Applicants from allottees/occupiers of the said flats to that of flat owners/purchasers. At the highest, it can at this stage be concluded that members of the member of the Applicant had therefore clearly agreed to occupy their respective flats on the terms offered by the Salsette Society.

H. *Eight,* even independent of the above, the Applicant is, on the ground of delay and laches, not entitled to any interim relief. The Applicant has, (i) despite being put to notice in the year 2009 that the Salsette Society was intending to surrender the said Lease (ii) having been informed in the year 2018 of the registered deed of surrender and (iii) having expressly recorded in their advocate's notice dated 24th March 2021 that the surrender of the said Lease would affect the rights and interests of the Applicant, filed the present Suit in the year 2023. Thus, the Applicant has clearly not acted with the due dispatch to safeguard its rights and interests. Conversely, Defendant No. 1, who is admittedly the owner of the said land, has taken steps to develop the same. As already noted above, the redevelopment proposed by Defendant No.1 would be in the interests of all the occupants of the said buildings.

I. *Ninth,* the Applicant's explanation/justification for the delay (i) that the Deed of Surrender was not made available and (ii) Defendant No.1 had, even after surrender of the said Lease, treated the Applicant as flat owners by involving them in discussions with regard to the redevelopment are both untenable. *Firstly,* it is the Applicant's own case that the Deed of Surrender is wholly immaterial since the Applicant is asserting its statutory rights under MOFA, and *secondly,* the Applicant though having been provided a copy of the Deed of Surrender, has not challenged the same. Thus, merely because discussions were held between the Applicant and Defendant No.1 would not justify the delay in filing the Suit, especially when it is the Applicants stated case that surrender of the said Lease would affect the rights and interests of the Applicant. This, in my view, is clearly a concession made on the part of the Applicant that the subsistence of the said Lease would be fundamental to the Applicants claim.

44. Insofar as Interim Application No. 311 of 2025 is concerned, given the submissions made by Mr. Kanade and the fact that there was no real opposition thereto by the Applicant, or answer to the fact that (i) the Intervenors are occupants of the Intervenors' Land and (ii) that the Intervenors have, in respect of the Intervenors' Land, adopted proceedings before the Hon'ble Supreme Court, the

Intervenors would be proper, if not necessary, parties. Hence, Interim Application 311 of 2025 would have to be allowed.

45. Hence, for the reasons recorded above, I pass the following Order :

i. Interim Application No. 123 of 2024 in Suit No. 617 of 2023 is dismissed.

ii. Interim Application No. 311 of 2025 in Suit No. 617 of 2023 is allowed in terms of prayer clause (a).

iii. No order as to costs.

iv. Needless to state, all observations made are *prima facie* and for the purposes of disposing of the present Interim Applications. All contentions of parties are expressly kept open to be decided during the trial of the Suit.

(ARIF S. DOCTOR, J.)