

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.5322 OF 2025
IN
SUIT NO. 137 OF 2025

M/s. Radha Vishweshwar Co-operative
Housing Society Limited "A" Wing
& Anr.

.....Applicants
(Orig. Plaintiffs)

In the matter between :

M/s. Radha Vishweshwar Co-operative
Housing Society Limited "A" Wing
& Anr.

.....Plaintiffs

: ***Versus*** :

M/s. New Bansi Park Co-operative
Housing Society Ltd. & Ors.

.....Defendants

Dr. Abhinav Chandrachud with Mr. Janay Jain, Ms. Diksha Shirodkar
and Mr. Sachin Mhatre i/b. Mhatre Law Associates for the Plaintiff.

Mr. Vineet Naik, Senior Advocate with Mr. Ashish A. Gatagat, Mr.
Vijay Poojari, Mr. Vivek Shiralkar and Ms. Yashoda Desai, for Defendant
No.1.

Mr. Mohit Jadhav, Additional Government Pleader for State-Defendant
Nos.5 and 8.

Mr. G.O. Giri, i/b. Ms. Komal R. Punjabi, for MCGM-Defendant Nos.6
and 7.

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CORAM : SANDEEP V. MARNE, J.

RESERVED ON: 06 OCTOBER 2025.

PRONOUNCED ON: 15 OCTOBER 2025.

JUDGMENT:

1) Plaintiffs have filed the present Interim Application seeking temporary injunction to restrain Defendant No.1-Society from proceeding further with the tender process for redevelopment of its building in respect of plot admeasuring 2182 sq.mtrs, save and except an area admeasuring 1230.39 sq.mtrs. Plaintiffs have also sought temporary injunction of stay on effect, implementation, operation and execution of order dated 18 November 2010 with further stay on making any application for seeking development permission from Defendant Nos.5 to 7 in respect of land admeasuring 2451.81 sq.mtrs and 66.59% proportionate undivided rights in FSI advantage of road set-back area admeasuring 145.36 sq.mtrs. on the basis of order dated 18 November 2010 passed in Suit No. 3454/2007 and Conveyance dated 20 February 2023.

2) Plaintiffs are Societies formed in respect of 'Building No.2' in the common layout comprising of Wings-A and B, whereas the First Defendant-Society is formed in respect of 'Building No.1' in the same layout. Defendant No.1 has secured a decree dated 18 November 2010 in its favour in Suit No. 3454/2007, based on which, Deed of Conveyance dated 20 February 2023 is executed conveying land admeasuring 2399.55 sq.mtrs. in the layout in its favour. Defendant No.1-Society wants to redevelop its buildings based on conveyance so

secured through a decree of the Court. Plaintiffs apprehends that major chunk of the land would go to the First Defendant-Society, not only depriving it of its due area but rendering its construction illegal. It has accordingly filed the present Suit for restraining the First Defendant-Society from undertaking development of its building in respect of land exceeding 1230.39 sq.mtrs. as Plaintiffs believe that they are entitled to own 66.59% share in the land with further proportionate rights in R.G. area and road-set back area. Plaintiff has accordingly challenged the Deed of Conveyance dated 20 February 2023 executed in favour of the First Defendant-Society. In its Suit, Plaintiffs have filed the present Interim Application to restrain the First Defendant-Society from undertaking redevelopment of the building on the basis of Deed of Conveyance dated 20 February 2023.

3) A brief factual background in which the disputes between the parties have arisen needs to be narrated. M/s. Comproind Pvt. Ltd. (**Comproind**) was the owner in respect of land admeasuring 3900.50 sq.mtrs. in aggregate comprising of (i) C.T.S. No.507/A admeasuring 557.60 sq.mtrs. (ii) C.T.S. No.507A/(1) to (15) admeasuring 472.10 sq.mtrs. (iii) C.T.S. No.507/B admeasuring 505.90 sq.mtrs., (iv) C.T.S. No.507/C admeasuring 2146.60 sq.mtrs. and (v) C.T.S. No.507/D admeasuring 218.30 sq.mtrs. at Village-Malad, Taluka-Borivali, Mumbai Suburban District (**larger property**). The land owner-Comproind submitted plans for development of the land with Municipal Corporation of Greater Mumbai, which was sanctioned on 22 March 1973 as revalidated on 21 March 1975 in pursuance of which, a building with four Wings-1, 2, 3 and 3A were constructed on land bearing CTS No.507/C and 50% land in CTS No.507/B. The building so constructed

in the year 1975 is referred to as 'Building No.1'. The flat purchasers of Building No.1 formed a cooperative society (Defendant No.1). The land owner-Comproind conveyed the entire larger property to Smt. Bhuvaneshwari Vithaldas Vyas vide Deed of Conveyance dated 4 September 1997, who in turn conveyed the said larger property in favour of Defendant Nos.2 to 4 vide conveyance dated 21 April 2004. This is how Defendant Nos. 2 to 4 became the new land owners of the entire larger property.

4) The new landowners (Defendant Nos.2 to 4) proposed to develop balance portion of the land out of the larger property. However, it found difficulties in getting the plans sanctioned for new buildings by segregating C.T.S. No.507/C and 50% of CTS No.507/B on which building of Defendant No.1-Society was constructed. Also, it appears that land admeasuring 218.30 sq.mtrs. forming part of CTS No.507/D was required to be left for road set back area leaving the net plot area of 3682.20 sq.mtrs. Defendant Nos.2 to 4 approached the First Defendant-Society for a 'workable arrangement' for treating the entire larger property as a common layout for the purpose of availing outside TDR and to load the same on land at C.T.S. No.507/A. Accordingly, Agreement dated 29 October 2004 was executed between Defendant No.1 and Defendant Nos.2 to 4, under which Defendant No.1 accepted consideration of Rs.12,00,000/- and in *lieu* thereof permitted Defendant Nos.2 to 4 to submit building plans to amend sanctioned layout plan and to secure development permission by treating the entire larger property as a recipient plot for availing outside TDR and to load the same on land admeasuring C.T.S. No.507/A. Defendant Nos.2 and 4 agreed not to encroach upon front side open space of Building No.1, as

well as appurtenant portion of plot of the First Defendant-Society. Based on the said Agreement dated 29 October 2004, Defendant Nos. 2 to 4 got the building plans sanctioned for construction of Building No.2 from MCGM on 26 June 2008. After completion of construction of Building No.2 (comprising of Wings A and B), Occupancy Certificate dated 26 June 2008 is issued by MCGM.

5) In the meantime, Defendant No.1-Society filed L.C. Suit No. 3454/2007 before the City Civil Court seeking conveyance of land bearing C.T.S. No. 507/C and 507/D out of the larger property. In that Suit, Defendant No.1 did not implead Plaintiff-Societies as the same were apparently not formed by that time. During pendency of the Suit, Plaintiff No.1-Society was registered on 22 April 2009 in respect of Wing-A of Building No.2, whereas Plaintiff No.2-Society was registered on 8 June 2009 in respect of Wing-B of Building No.2. The suit filed by Defendant No.1-Society came to be decreed by the City Civil Court vide judgment and order dated 18 November 2010, *inter-alia* directing Defendant Nos.2 to 4 to execute conveyance of land at C.T.S. No.507 C and ½ portion of land in C.T.S. No.507/B along with suit buildings in accordance with Section 11 of MOFA. The Developers were directed to reconstruct the compound wall so as to restore the *status-quo ante* which was existing before demolition thereof. The Defendants therein were restrained from making any encroachment on the suit property. Based on decree dated 18 November 2010, Conveyance Deed dated 20 February 2023 has been executed and registered in favour of the First Defendant-Society. Since the developers failed to execute the Deed of Conveyance, the Registrar acting as Court Commissioner of City Civil Court executed Deed of Conveyance dated 20 February 2023 in favour

of the First Defendant-Society thereby conveying the entire land forming part of CTS No.507/C and $\frac{1}{2}$ portion of land bearing CTS No.507/B out of the said larger property. This is how Defendant No. 1-Society had become owner of entire land bearing CTS No.507/C and $\frac{1}{2}$ portion of land bearing CTS No.507/B. Name of Defendant No. 1-Society is mutated on property card in respect of land admeasuring 2399.55 sq.mtrs. out of net plot area of 3682.20 sq.mtrs. This leaves only about 1282.65 sq. mtrs. land for sustaining the buildings of Plaintiff-Societies.

6) According to Plaintiffs, execution of the decree dated 18 November 2010 has resulted in an FSI imbalance where construction of their buildings is rendered illegal. According to the Plaintiffs, the larger property is a part of common layout and Defendant No.1-Society has secured a decree behind the back of the Plaintiffs on the basis of misrepresentation. Defendant No.1-Society proposed to carry out survey of land for segregating the purpose of development of its building through City Survey Officer. Plaintiffs accordingly issued Advocate's notice dated 26 July 2023 to First Defendant-Society and also to Defendant Nos.2 to 4-Developers not to take any steps for redevelopment on the basis of the Deed of Conveyance. Defendant No.1 sent a response dated 21 August 2023 disputing the contents of the Plaintiff's notice. Plaintiffs also served notice on MCGM and other statutory authorities under section 527 of the Mumbai Municipal Corporation Act, 1888 and Section 80 of the Civil Procedure Code, 1908. A notice under Section 164 of the Maharashtra Co-operative Societies Act 1960 was also served on the Deputy Registrar. In the above background, Defendant No.1 has floated a tender on 16 January

2024 for carrying out development of its buildings. Plaintiffs have registered *lis-pendes* notice with the office of the Sub-Registrar, Borivali-9 on 15 January 2024.

7) In the above background, Plaintiffs have instituted the present Suit virtually challenging the decree dated 18 November 2010 passed in favour of the First Defendant-Society, as well as challenging the Deed of Conveyance dated 20 February 2023. Plaintiffs believe that its entitlement to land admeasuring 2451.81 sq.mtrs. together with proportionate share in R.G. and road set back area of 367.77 sq.mtrs. and 145.36 sq.mtrs. respectively. According to the Plaintiffs, Defendant No.1-Society carried out development of its buildings only for area admeasuring 1230.39 sq.mtrs. and has accordingly sought injunctive reliefs not to carry out any construction in area exceeding 1230.39 sq.mtrs. forming part of the larger property. In its Suit, Plaintiffs have filed the present Application seeking temporary injunction by raising following prayers:-

a. That pending the hearing and final disposal of the present suit herein, this Hon'ble Court be pleased to restrain Defendant No. 1, their officers, servants, and agents by a temporary order and injunction from not proceeding further with the tendering process for the Plot admeasuring 2182 sq. mtrs., save and except an area admeasuring 1230.39 sq. mtrs., only out of the said Larger Property;

b. That pending the hearing and final disposal of the present suit, this Hon'ble Court be pleased to stay the effect, implementation, operation, and execution of the Order dated 18 November, 2010 by restraining the Defendant No. 1 and/or their members or their Committee Members or any person authorized by them by a temporary order and injunction from in any manner approaching and or making any Application, seeking approvals, sanctions, permissions from Defendant Nos. 5 to 7 and other statutory Authorities, to the extent of (a) an area admeasuring 2451.81. sq. mtrs., (together with Deductible RG Area admeasuring 367.77 sq. mtrs.) out of the Larger

Property admeasuring 3682.20 sq. meters and (b) 66.59% proportionate undivided rights in FSI advantage of Road set-back area admeasuring 145.36 sq. mtrs., out of 218.30 sq. mtrs, as per the MCGM Sanctioned Building Plan bearing No. CE/8881/BP(WS)/AP dated 26 June, 2008 for any rights accrued to them under the Order dated 18 November, 2010 in Suit No. 3454 of 2007 and/or the Deed of Conveyance dated 20 February, 2023;

c. That pending the hearing and final disposal of the present suit herein, the Defendant No. 1, their officers, servants, and agents be restrained by an order of permanent injunction from utilizing any benefits such as FSI, TDR, setback areas, or any other benefits to the extent of (a) an area admeasuring 2451.81. sq. mtrs., (together with Deductible RG Arca admeasuring 367.77 sq.mtrs.) out of the Larger Property admeasuring 3682.20 sq.meters and (b) 66.59% proportionate undivided rights in FSI advantage of Road set-back area admeasuring 145.36 sq. mtrs, out of 218.30 sq mtrs, as per the MCGM Sanctioned Building Plan bearing No. CE/8881/BP(WS)/AP dated 26 June, 2008 in terms of the Architect Report dated 23 October, 2023;

d. That pending the hearing and final disposal of the present suit herein, the Defendant No. 1, their Officers, servants, and agents be restrained from obstructing and preventing the Plaintiffs and its members from entering or remaining upon or using the common passage, open space, common amenities, to the extent of (a) an area admeasuring 2451.81. sq. mtrs., (together with Deductible RG Area admeasuring 367.77 sq. mtrs.) out of the Larger Property admeasuring 3682.20 sq. meters and (b) 66.59% proportionate undivided rights in FSI advantage of Road set-back area admeasuring 145.36 sq. mtrs., out of 218.30 sq. mtrs., as per the MCGM Sanctioned Building Plan bearing No. CE/8881/BP(WS)/ AP dated 26th June 2008;

e. That pending the hearing and final disposal of the present Suit, this Honourable Court may be pleased to grant interim and/or ad-interim reliefs, in terms of prayer clause (a), (b), (c), and (d) above;

f. For costs of the present Application;

g. To pass such other and further reliefs as then nature and circumstances of the case may require, be granted

8) Dr. Chandrachud, the learned counsel appearing for Plaintiff-Societies would submit that Defendant No. 1-Society cannot be permitted to redevelop its buildings based on the impugned

Conveyance Deed in such a manner that the construction of Plaintiffs' buildings is rendered illegal. That conveyance of land admeasuring 2399.55 sq.mtrs. in favour of Defendant No. 1 results in FSI imbalance. That Defendant No.1-Society has permitted the developer to amalgamate all the plots in the larger property for construction of buildings of Plaintiff-Societies upon accepting valuable consideration for permitting the developer to do so. That paragraph 22 of the judgment and decree passed by the City Civil Court notes that Defendant No.1-Society had consented for amalgamation of the entire plot for the purpose of construction of buildings of Plaintiffs-Societies. That Agreement dated 29 October 2004 specifically permitted the developer to treat the entire layout property as a recipient plot *inter alia* for availing of outside TDR. That Occupancy Certificate issued in respect of buildings of Plaintiff-Societies and layout plan reflect that the buildings are not constructed on CTS No.507/A alone but on the entire land forming part of larger property.

9) Dr. Chandrachud would further submit that conveyance has been secured by Defendant No.1-Society behind the back of Plaintiff-Societies. Plaintiff-Societies had come in existence at the time of passing of the decree on 18 November 2010 and ought to have been impleaded as parties to the Suit. That the decree therefore would not bind Plaintiffs and consequently the deed of conveyance dated 20 February 2023 would equally not bind the Plaintiffs. Dr. Chandrachud would further submit that execution of Deed of Conveyance dated 20 February 2023 creates an FSI imbalance and renders buildings of Plaintiff-Societies illegal. That by impugned conveyance, Defendant No.1-Society is

conveyed land admeasuring 2,399.55 square meters out of larger property of 3,682.20 square meters leaving land admeasuring only 1,282.65 square meters for Plaintiff-Societies. That built up area of buildings of Plaintiff-Societies is 4,535.43 square meters and since permissible FSI is 1.00, conveyance of land vide impugned Conveyance renders construction of buildings of Plaintiff-Societies illegal. That therefore Defendant No.1-Society is required to be restrained from going ahead with the redevelopment based on illegal Deed of Conveyance dated 20 February 2023. That 50% land in CTS No.507/B is conveyed vide Deed of Conveyance dated 20 February 2023 in favour of First Defendant-Society ignoring the position that underground tank and fire tanks in respect of buildings of Plaintiffs are located on the same portion of the land. That open parking of Plaintiffs is also situated on land bearing CTS No.507/B and 507/C which is conveyed in favour of First-Defendant-Society thereby not leaving any parking space for residence of buildings of Plaintiffs. On above broad submissions Dr. Chandrachud would pray for grant of temporary injunction as prayed for in the Interim Application.

10) Mr. Naik, the learned Senior Advocate appearing for Defendant No.1-Society would oppose the Application submitting that Plaintiffs are not seeking conveyance in their favour, but only challenging conveyance granted in favour of Defendant No.1-Society. That Plaintiff-Societies can only claim through Defendant Nos. 2 to 4, who were parties to the Suit instituted by Defendant No.1-Society. That therefore, the present Suit is hit by principles of *res-judicata*. That a separate Suit cannot be filed to nullify a decree granted in favour of

Defendant No.1-Society. That even Agreement dated 29 October 2004 confirms ownership of Defendant No.1-Society on entire CTS No.507/C and 50% of CTS No.507/B. This position is also reiterated in Plaintiffs' own MOFA Agreement which are suppressed by them. That in any case, the 2004 Agreement is nothing but 'workable arrangement' which cannot be read to mean that the First Defendant has transferred its right, title or interest in CTS Nos.507/C and 507/B.

11) Mr. Naik would further submit that the entire Plaint is misconceived as the same is predicated on Architect's Certificate, which is based on a reverse calculation method. That the said Certificate would render construction of building of Defendant No.1 illegal. That the computation done by Plaintiffs' Architect are contrary to the Agreement of 2004 as well as MOFA Agreements executed in favour of members of Plaintiffs-Societies. Alongwith its written submissions, Defendant No.1 has placed on record Certificate of its own Architect which shows that TDR of 3463.90 square meters (2727.46 square meters of reservation TDR plus 736.44 square meters slum TDR) is used for construction of buildings of Plaintiff-Societies. That for division of land based on built-up area, the built-up area of Plaintiff-Societies is required to be taken as only admeasuring 1050.56 square meters based on base FSI of 1.00. That accordingly if the land is divided proportionate to built-up area of Defendant No.1 (2276.00 square meters) and of Plaintiffs' (1050.56 square meters), Defendant No.1 would be entitled to land admeasuring 2519.33 square meters as against land admeasuring 1162.87 square meters of Plaintiff-Societies. That though the entitlement of Defendant No.1 is to land admeasuring 2519.33 square meters, it is confining its

rights only in respect of land of 2,399.55 square meters as per the Deed of Conveyance.

12) Mr. Naik would further submit that the buildings of Defendant No.1-Society are constructed in the year 1973-1975 and are in dilapidated condition urgently requiring redevelopment. That the members of Defendant No.1-Society would suffer grave loss and prejudice, if any injunction is granted in Plaintiffs' favour. He would submit that Defendant No.1 is willing to abide by Conveyance Deed dated 20 February 2023 and not to claim anything beyond the same. He would accordingly pray for rejection of the Interim Application.

13) Rival contentions of the parties now fall for my consideration.

14) The case involves *prima facie* adjudication of an important issue which often arises in the context of conveyance of land to multiple societies whose buildings are constructed at different times during different FSI regimes in a common layout. Whether the principle of division of land proportionate to the built-up area utilized for construction of each building is to be followed in cases where buildings are constructed by using different FSI is a tricky issue which arises for consideration in the present case.

15) Section 11 of Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA) imposes a statutory obligation on the promoter to convey

his right title and interest in the land in favour of a society, company or association of apartments formed by the flat purchasers. Cases involving construction of a single building on a land taken up for development do not pose a difficulty in conveyance of land, which needs to be conveyed in entirety in favour of association of flat purchasers. However where multiple buildings are constructed in a layout having common amenities and multiple societies are formed, conveyance of land to such societies requires sub-division of the land. Developers many times put a restriction in the flat purchase agreements not to convey the land in the layout till the entire development therein is complete and also incorporate a covenant that the land would be conveyed only in favour of the federation of societies. However, developers do not complete their proposed development in the layout within a reasonable time, and the experience has shown that in several cases, layout developments are kept incomplete for several years. Present one is a classic case where the first building is constructed in 1973-75 and construction of second building in the same layout is completed 33 years later i.e. in 2008. FSI being a dynamic concept, which has only increased in the city of Mumbai over the years, delay in development of entire land in the layout many times enures to the benefit of the developers. To tackle the situation, the principle of grant of conveyance of land to already formed societies by sub-dividing the land proportionate to the built-up area consumed is well recognised. This principle also finds mention in the Government Resolution dated 22 June 2018 issued by the State Government permitting conveyance of land proportionate to the built-up area of the buildings which are already complete.

16) Once the principle of division and conveyance of land depending on built-up area consumed in construction of each building is recognised, conveyance of land to each society becomes a matter of simple mathematics. However the difficulty arises where different buildings are constructed under different FSI regimes, meaning thereby that different FSI is used for construction of different buildings. To illustrate, Building No. 1 is constructed with base FSI of 1.00 and building No. 2 is constructed with higher FSI (such as incentive FSI, or by loading of TDR, etc). In such cases, division of land based on built up area consumed by each society becomes difficult. This is because the building with base FSI consumes lesser built-up area as compared to the building constructed with higher incentive FSI. As observed above, many times delay in development of layout results in an opportunity to the developers to claim higher admissible FSI due to changes in policies/DCRs. How to divide the land in such cases is the issue involved for Court's *prima facie* adjudication in the present case.

17) The present case involves the situation where building of Defendant No. 1-Society is constructed by use of base FSI of 1.00 whereas the building of Plaintiff-Societies is constructed by use of higher incentive FSI plus by loading out outside TDR.

18) The building No.1 of Defendant No.1-Society is constructed during 1973-75 and the said society has secured a decree dated 18 November 2010 from City Civil Court for conveyance of land admeasuring 2399.55 sq.mtrs. in its favour. The decree is executed vide of Deed of Conveyance dated 20 February 2023 and Defendant No.1-Society is now the owner of land admeasuring 2399.55 sq.mtrs. in the

layout. The Building No. 2 of the Plaintiff-Societies is constructed in 2008 and grant of conveyance of land admeasuring 2399.55 sq.mtrs. in favour of Defendant No.1-Society had created an apprehension in the mind of Plaintiff-Societies that construction of its building would be rendered illegal on account of FSI imbalance and that Defendant No.1 is walking away with larger chunk of land thereby depriving Plaintiff-Societies of their due share in the layout. Plaintiffs want division and conveyance of land in the layout proportionate to the built-up areas consumed by each societies. Plaintiffs believe that after dividing the land proportionate to built-up area consumed for construction of their buildings and for building of Defendant No.1-Society, the entitlement of Plaintiff-Societies is to the extent of 66.59% against the entitlement of Defendant No.1-Society to only 33.41% share in the layout land. Plaintiff-Societies further believe that the rival Societies must secure proportionate share in R.G. area and road set back area. This is how the present Suit is filed for seeking a declaration that Plaintiffs are entitled to conveyance of land admeasuring 2084.04 sq.mtrs. plus proportionate right of 367.77 sq.mtrs. in R.G. area totally admeasuring 2451.81 sq.mtrs. in addition to proportion undivided FSI advantage of 145.36 sq.mtrs. in the road set back area. Plaintiffs have accordingly set up a challenge both to the decree dated 18 November 2010 passed in favour of Defendant No.1 as well as Deed of Conveyance dated 20 February 2023.

19) Before proceeding further, it would be necessary to first consider the exact description of the larger property which was originally owned by the Developer-Comproind and which has passed

hands to the current Developers-Defendant Nos.2 to 4. The entire larger property comprises of following pieces of land:-

CTS NO.	Area (In Sq. Mt.)
507/A	557.60
507/A/1 TO 15	472.10
507/B	505.90
507/C	2146.60
507/D	218.30
Total	3900.50

20) Out of the above larger property, the land at C.T.S. No.507/D admeasuring 218.30 sq.mtrs. has gone in road set back area thereby leaving net plot area of only 3682.20 sq.mtrs.

21) The original Developer-Comproind got approved plan dated 22 March 1973 which are revalidated on 21 March 1975 for construction of Building No.1. The said plan dated 22 March 1973/21 March 1975 shows that the net area of the plot, on which construction was undertaken and plans were sanctioned in respect of Building No.1, was indicated as 2126.70 sq. mtrs, to which set back FSI was added in respect of area admeasuring 162.70 sq. mtrs. and this is how the total area of the land was indicated 2289.40 sq.mtrs. FSI of 1.00 was sanctioned and accordingly total built-up area permissible was 2289.40 sq.mtrs. the actual built-up area of Building No. 1 (building of Defendant No.1-Society) is 2276.00 sq mtrs. Though the description of the land in the said plan of 1973/1975 was described as CTS No.507 and 508, now there is no dispute to the position that construction of

Building No.1 is carried out on entire land forming part of CTS No.507/C and 50% of the land of CTS No.507/B. CTS No.507/C admeasures 2146.60 sq.mtrs, whereas CTS No.507/B admeasures 505.90 sq.mtrs. Thus, the total land in respect of which Building No. 1 is constructed admeasures approximately 2399.55 sq.mtrs.

22) As observed above, the original landowner-Comproind sold the entire larger property, after completion of construction of Building No.1, in favour of Smt. Bhuvaneshwari Vithaldas Vyas on 4 September 1997. Smt. Bhuvaneshwari Vithaldas Vyas thereafter sold and conveyed the entire larger property in favour of Defendant Nos.2 to 4 vide Deed of Conveyance dated 21 April 2004.

23) Defendant Nos.2 to 4, who became owners of the larger property desired carrying out of further development on portion of land excluding CTS No.507/C and 50% of CTS No.507/B. It appears that Defendant Nos.2 to 4 found it difficult to carry out desired quantity of construction on the balance portion of land. Defendant Nos.2 to 4 therefore approached Defendant No.1-Society with a request to permit them to submit plans to the Municipal Corporation for carrying out construction on balance portion of land by treating the entire larger property as a common layout. Defendant No.1-Society agreed with the proposal and accordingly Articles of Agreement dated 29 October 2004 came to be executed between Defendant No.1-Society and Defendant Nos.2 to 4. In recital-3, Defendant Nos.2 to 4 expressly admitted use and occupation of Defendant No.1 in respect of land bearing CTS No.507/C and half of CTS No.507/B. The said recital reads thus:-

AND WHEREAS the Party of the First Part (Society) is in use and occupation of a building standing on the said property known as Bansi Park located at C.T.S. No. 507/C Mumbai for the last 28 years and is joint owner of C.T.S 507/B

24) Recital-4 of the Agreement refers to arrival of a 'workable arrangement' between the parties and the said recital reads thus :-

AND WHEREAS the parties hereto have arrived at a workable arrangement and are desirous of recording the same in the manner hereinafter appearing.

25) Defendant Nos.2 to 4 agreed to pay a sum of Rs.12,00,000/- to Defendant No.1-Society. Against consideration of Rs.12,00,000/- Defendant No.1-Society agreed for (i) relocation of 15% R.G. in C.T.S. No.507/B, (ii) treatment of entire layout property or a part thereof as a recipient plot, (iii) availing of outside TDR and to load the same either on the entire property or in CTS No.507/A. Clauses-5 to 10 of the agreement read thus :-

5. The Party of the Second Part shall by reallocating 15% of the recreation ground in 507/B at their costs, charges and expenses and shall be entitled to submit building plans and amend the sanctioned layout plan and obtain L.O.D. and C.C. accordingly and The Party Of The Second Part shall at their own costs, charges and expenses construct the building on a portion of the property and shall sell flats, shops, garages, terraces, stilt parking. The Party of the Second Part shall treat entire layout property or any part thereof as a recipient plot and avail of outside T.D.R. to load the same on the said property or in C.T.S. No. 507/A. The layout plan of the property of the Party of the First Part showing boundary wall/limit is annexed here as Annexure "I". However the Party of the Second Part have agreed not to encroach upon the front side 52' open space from the building No.1 and shall not encroach upon appurtenant portion of plot of Society known as Bansi Park. The Party of the Second Part shall immediately on issuance of the sanctioned plan submit a certified true copy thereof

to the Party of the First Part. The copy shall be certified by Architect of the Party of the Second Part. The Party of the Second Part shall also furnish a true copy of the Registered Deed of conveyance executed by Smt. Bhuvneshwari Vithaldas Vyas in their favour dated 21 April, 2004. The Party of the Second Part shall forward a copy of the draft conveyance to be executed in favour of the Party of the First Part for their prior approval. The Party of the First Part shall cause the said draft duly approved by the Advocate of the Society and furnish copy thereof to the Party of the Second Part. The party of the Second Part will fully bear the charges of Registration and Stamp Duty. The Party Of the Second Part shall execute a deed of conveyance in favour of the Party of the First Part within 30 days from the date of Occupation or even Part Occupation Certificate being issued by the Corporation in respect of any part structure of the proposed development. If the Party of the Second Part fails to execute such deed of conveyance within 30 days of such occupation or part occupation certificate being obtained by the Party of the Second Part, the Party of the Second part shall also be liable to pay damages to the Party of the First Part at the rate of Rs. 500/- per day till the deed of conveyance is executed. The said charges or damages will be charge on the property.

6. It is mutually agreed that in the joint ownership in respect of Plot No. 507/B which is recreation ground, the Party of the First Part shall have their 50% undivided share, right, title and interest and balance 50% of the right, title and interest shall belong to the Society of the proposed building after development.

7. The Party of the Second Part shall renovate the temple standing on the property bearing C.T.S. No. 507/B in a fair manner. The said temple shall be open to the members of the Party of the First Part as well as to the members of the Society (in building to be constructed by the party of the Second Part).

8. It is mutually agreed that the proposed new building shall not in any manner affect the easements of light and ventilation of any of the structure occupied by the existing members of the Party of the First Part i.e. Society

9. The Farty of the Second Part shall be entitled to develop the proposed building, in accordance with the finally approved sanctioned plans, rules and regulations of Municipal Corporation of Greater Mumbai prevailing as on this date and Development Control Rules 1991 and they have agreed to furnish certified true copy of the finally approved plans as well as I.O.D. and C.C. copies duly certified by their Architect.

10. It is mutually agreed that the well on boundary wall will be joint property of the Party of the First Part and the Party of the Second Part and both parties will have equal rights to draw water from the well.

26) Thus, under the Articles of Agreement dated 29 October 2004, Defendant No.1-Society agreed to treat the entire larger property as a common layout for the purpose of sanctioning of plans based on admissible FSI, as well as for loading of TDR for the purpose of carrying out construction by Defendant Nos.2 to 4 on balance portion of land. However, what needs to be noted at this stage is the express admission in the recital of the Agreement that the First Defendant-Society was in use and occupation of the entire land at C.T.S. No.507/C (2146.60 sq.mtrs.) and 50% of C.T.S. No.507.B (252.95 sq.mtrs.). The Articles thus proceeds on express admission that the First Defendant-Society owned whole of CTS No.507/C and 50% of CTS No.507/B. The Articles of Agreement only permitted Defendant Nos.2 to 4 to treat even the land owned by Defendant No.1-Society as a part of common layout for FSI computation and for loading of TDR. This valuable right was granted in favour of Defendant No.2 to 4 by Defendant No.1 on a paltry consideration of Rs.12,00,000/-. In view of the settled legal position that inadequacy of consideration cannot be a ground for questioning sale which is otherwise valid, coupled with the fact that the First Defendant-Society has not challenged the said Articles of Agreement, in my view, it is not necessary to delve deeper into the aspect of consideration. At this stage, therefore the Articles of Agreement dated 29 October 2004 will have to be treated as binding on Defendant No.1-Society.

27) Based on rights secured under the Articles of Agreement dated 29 October 2004, Defendant No.2 to 4 secured sanctioned building plans dated 26 June 2008 for construction of Building No.2. The plan was submitted in respect of the entire larger property comprising of CTS No.507/A, 507/A-1 to 15, 507/B, 507C and 507/D. The FSI computation was also made by considering the total area of larger property of 3900.50 sq.mtrs. After deducting road set back area of 218.30 sq.mtrs, the net plot area was considered as 3682.20 sq.mtrs. from that, R.G. area of 552.33 sq.mtrs. was deducted. Thereafter, FSI for road set-back area of 218.30 was added back by considering total area of 3348.17 sq.mtrs.

28) It appears that on such available land area of 3348.17 sq.mtrs, Defendant No.2 to 4 availed additional FSI over and above the base FSI of 1.00. In the copy of the plan annexed at Ex.G page137 of the plaint, the exact figure of FSI is not visible. However, it appears that Defendant No.2 to 4 procured slum TDR of 2727.46 sq.mtrs, however only 40% of the same was permitted to be utilized, which was accordingly scaled down to 736.44 sq.mtrs. Thus effectively, Defendant No.2 to 4 were allowed to utilize slum TDR of 736.44 sq.mtrs. Architect of Plaintiff has confirmed the position that total TDR utilised for construction of Building No.2 of Plaintiff-Societies is 3463.90 sq.mtrs. (2727.46 sq.mtrs of reservation TDR + 736.44 sq.mtrs of slum TDR). This is how the sanctioned plan permitted total built-up area of 6812.07 sq.mtrs. which again depicts that FSI in excess of 1.00 was sanctioned in respect of the entire layout in favour of Defendant Nos.2 to 4 by M.C.G.M. From the total permissible built-up area of 6812.07 sq.mtrs., Defendant No.2 to 4 deducted built-up area of Building No.1

of Defendant No.1-Society of 2276.00 sq.mtrs. thereby leaving total permissible built-up area of 4535.43 sq.mtrs. for construction of Building No.2. Column No.15 of the area statement indicates that the FSI consumed in respect of the entire larger property was apparently 1.84.

29) This is how by securing permission from Defendant No.1-Society for treating the entire large property as common layout, Defendant Nos.2 to 4 secured a huge advantage of constructing Building No.2 comprising of built-up area of 4535.43 sq.mtrs. as against built-up area of Building No.1 of only 2276.00 sq.mtrs. In other words, Defendant Nos. 2 to 4 developers who admitted ownership of entire CTS No.507/C and 50% of CTS No.507/B (total area of 2399.55 sq.mtrs.) by Defendant No.1 and was left with only land admeasuring about 1282.65 sq.mtrs. (557.60 sq.mtrs. in CTS No.507/A, 472.10 sq.mtrs. in CTS No.507-A/1 to 15 and 252.95 sq.mtrs. as 50% of CTS No.507/B) got sanctioned virtually twice the built-up area for construction of Building No.2 as compared to the built-up area of Building No.1. Thus, as against ownership of only 1282.65 sq.mtrs of land, Defendant Nos.2 to 4 were sanctioned built-up area of 4535.43 sq.mtrs. as against Defendant No.1-Society owning much larger area of land admeasuring 2399.55 sq.mtrs. with much lesser built up area of only 2276.00 sq.mtrs. To paraphrase, the buildings of Plaintiffs are constructed by consuming four times built up area (4535.43 sq.mtrs) as compared to its land entitlement of 1282.65 sq.mtrs.

30) While Defendant No.4 was in the process of getting sanctioned plans for construction of Building No.2 based on Agreement dated 29 October 2004, Defendant No.1 took prompt steps in filing

Long Cause Suit No.3454/2007 before the City Civil Court seeking conveyance of entire CTS No.507/C and ½ of CTS No.507/B. Perusal of the plaint in L.C. Suit No. 3454/2007 would indicate that the cause of action for filing the suit was proposed action of Defendant Nos.2 to 4 to demolish the wall which had segregated the land owned by Defendant No.1-Society from rest of the portion of the larger property. The suit was filed under an apprehension that the compound wall would be demolished thereby committing encroachment on land belonging to the First Defendant-Society. At the time when the Suit was filed, construction of Building No.2 was yet to be undertaken as its plans were sanctioned much after filing of the Suit. Therefore, there was no question of Plaintiffs being impleaded to L.C. Suit No.3454/2007. Accordingly the Municipal Corporation and Defendant Nos.2 to 4-Developers were impleaded as party Defendants to the Suit. After contest by the developers, the Suit came to be decreed by a detailed judgment and order dated 18 November 2010. By the time the suit was decided, the plans for construction of Building No.2 dated 26 June 2008 were already sanctioned. It appears that during the course of hearing of the Suit, it was suggested by Defendant No. 1 that sanction of the said plan was illegal, which suggestion was rejected by the City Civil Court by holding in paras-21 and 22 as under:-

21. So far as entitlement of Defendant No.2 to load TDR on the property bearing CTS No.507/A, it is clear that the plaintiff has given consent thereto under the above said agreement of Exh.10 Hence now the plaintiff cannot be permitted to back up from the above said document/agreement. Thus they are estopped U/s. 115 of Evidence Act to deny the said agreement. Therefore, defendant has succeeded in proving that it is entitled to load TDR on the property i.e. CTS No.507-A.

22. So far as objection raised by the plaintiff to the sanctioned plan dated 01/2/05 of the new building constructed by Defendant No.2 is concerned, it is revealed that attempt has been made on the basis of oral evidence to point out that the said plan has been got approved by Defendant Nos. 2 to 6 having hand in gloves with Defendant No.1. However, if the terms & conditions of Agreement dated 29/10/04 of Exh. 10 executed by the plaintiffs in favour of Defendant No.2 is considered, it depicts that plaintiffs have given no objection for amalgamation of the plan of entire CTS wherein suit buildings and new building of Defendant No.2 are situated Therefore by no stretch of imagination, it can be said that above said approved plan has been illegally approved by Defendant No. 1 in connivance with Defendant Nos. 2 to 6. Hence I am not swayed with the submission of the Id. advocate for the plaintiffs thereto. Consequently I answer Issue Nos. (1) & (2) accordingly.

31) So far as entitlement of Defendant No.1 for conveyance of land is concerned, the learned Judge referred to recitals in the Agreement dated 29 October 2004 where ownership of Defendant No.1-Society in respect of CTS No.507/C and ½ of CTS No.507/B was admitted by Defendant Nos. 2 to 4. The Court accordingly held as under:-

As against this, the Agreement dated 29/10/04 of Exh. 10 executed by the plaintiffs in consonance with consensus of all the members of plaintiffs-society in favour of Defendant No.2 speaks that plaintiff has accorded sanction to allow Defendant Nos. 2 to 6 to develop Survey No. 48, Hissa No.4, CTS Nos. 507A, 507A (1 to 15), 507 B, 507 C and 507 D as described in the Schedule. The plaintiff has also admitted that Defendant No.2 had purchased said property from Bhuvandeshwari Vyas under the registered Conveyance dated 21/4/04 and therefore has stepped into the shoes of builder-developer along with all the liability of the suit property. The plaintiffs have also categorically admitted that **they are in use and occupation of the suit buildings located at CTS No.507/C for the last 28 years and are joint owners of CTS No.507/B.** Therefore in view of this agreement having been executed by the plaintiffs in favour of Defendant Nos. 2 to 6, now the plaintiffs cannot be permitted to seek conveyance of entire CTS No 507/C & 507/D in terms of prayer-clause of para-30 of plaint. At the most they are justified in claiming conveyance of CTS No 507/C and half share out of CTS No.507/B along with suit buildings, 52 open space situated adjacent to bldg. No. 1 and common accesses.

32) The Suit of Defendant No.1 was accordingly decreed by the City Civil Court. The operative portion of the decree reads thus:-

- 1) Suit is party decreed with costs
- 2) The Defendant Nos. 2 to 6 are directed in execution Conveyance of the suit property situated on CTS No.507 C and in respect of ½ portion of CTS No.507 B along with suit buildings, common passage, open space, common amenities, open space of 52', in consonance with Sec. 11 of MOFA, Agreement to Sell the suit flat dated 29/3/1974 of Art. A and in consonance with Agreement executed by the plaintiffs in favour of Defendant No.2 on 29/10/04 of Exh. 10, within 3 months of this order, failing which, Defendant Nos 2 to 6 shall be liable in paying compensation @ Rs.500/- per day to the Plaintiffs-society till the date of execution of conveyance.
- 3) If Defendant Nos. 2 to 6 avoided to execute conveyance accordingly, the plaintiffs will be entitled to get it executed through Court Commissioner.
- 4) The Defendant Nos. 2 to 6 are directed, by mandatory injunction in re-constructing the compound wall so as to bring its status quo ante as it existed before the demolition thereof, within 3 months of this order, failing which, the plaintiffs will have liberty to construct it at the costs and consequences of defendants who shall be liable to pay charges as estimated by the plaintiffs.
- 5) The Defendants, their agents, servants and persons claiming through it are hereby perpetually restrained from making any sort of encroachment on suit property on 52' open space, common passage, accesses.
- 6) The Copy of the Agreement to Sell of Art. A dated 29/3/1974, the agreement executed by the plaintiffs in favour of Defendant No.2 on 29/10/04 of Exh.10 and rough sketch of suit property of Exh. F shall form part of the decree.
- 7) Plaintiffs has liberty to supply certified copy of the Agreement to Sell of Art. A at the time of execution of the Conveyance.
- 8) Decree be drawn accordingly.

33) The decree has attained finality on account of non-challenge thereto by the Defendants therein. However, it appears that the Defendants in the Suit did not execute Deed of Conveyance in favour of Defendant No.1-Society in pursuance of the decree and accordingly the Deed of Conveyance is ultimately executed and registered in favour of the First Defendant-Society by the Registrar of the City Civil Court on 28 January 2023. Thus, the First Defendant-Society has become owner in respect of land at CTS No.507/C and ½ portion of CTS No.507/B by virtue of decree, as well as Deed of Conveyance. Its name is mutated to the revenue records to the extent of land admeasuring 2399.55 sq.mtrs.

34) In the light of the above position, grievance of the Plaintiff is that if the land admeasuring 2399.55 sq.mtrs. out of the layout is carved out for First Defendant-Society, Plaintiffs would be left with land admeasuring only about 1282.65 sq.mtrs, which it believes would be insufficient for sustaining their buildings having total built-up area of 4535.43 sq.mtrs. Plaintiffs believe that since the buildings of Plaintiff and Defendant No.1-Society are constructed by considering the entire larger property as a common layout, the land in the layout must be proportionately subdivided in proportion to the built-up area utilised for construction of each building. Plaintiffs have accordingly relied upon certificate of Architect dated 23 October 2023 in which following computations are made :-

Sr. No.	Statement	Areas as per Approved Plan
1	Area of Plot	3900.50 Sq.mts.
2	Area under Road Set-back	218.30 Sq.mts.
3	Net Plot Area	3682.20 Sq.mts.
4	Deductible R. G. Area (15%)	552.33 Sq.mts.

5	Balance Plot Area	3129.87 Sq.mts.
6	Additions for FSI purpose (Road Set-back)	218.30 Sq.mts.
7	Total Area	3348.17 Sq.mts.
8	FSI Permissible	1 (one)
9	FSI Credit available by D. R. (T.D.R.)	3463.90 Sq.mts.
10	Total Permissible Floor Area	6812.07 Sq.mts.
11	Built Up Area of Building No. 1	2276.00 Sq.mts.
12	Built Up Area of Building No. 2 [Radha Vishweshwar CHSL]	4535.43 Sq.mts.
13	Total Built Up	6811.43 Sq.mts.

Determination of Percentage Share as under:

1	Share in Built Up Area of Building No. [2276.00/6811.43 X 100]	33.41 %
2	Share in Built Up Area of Building No. 2 [Radha Vishweshwar CHSL][4535.43/6811.43 X 100]	66.59 %
	TOTAL	100 %

Determination of Proportionate Rights in Balance Plot Area as under:

1	Proportionate Rights of Building No. 1 [2276.00/6811.43 X 3129.87]	1045.83 Sq.mts.
2	Proportionate Rights of Building No. 2 [Radha Vishweshwar CHSL][4535.43/6811.43 X 3129.87]	2084.04 Sq.mts
	TOTAL	3129.87 Sq.mts

Determination of Proportionate Rights in R. G. Area as under:

1	Proportionate Rights of Building No. 1 [2276.00/6811.43 X 552.33]	184.56 Sq.mts
2	Proportionate Rights of Building No. 2 [Radha Vishweshwar CHSL][4535.43/6811.43 X 552.33]	367.77 Sq.mts
	TOTAL	552.33 Sq.mts

Determination of Proportionate Rights in Road Set-back Area as under:

1	Proportionate Rights of Building No. 1 [2276.00/6811.43 X 218.30]	72.94 Sq.mts
2	Proportionate Rights of Building No. 2 [Radha Vishweshwar CHSL][4535.43/6811.43 X 218.30]	145.36 Sq.mts
	TOTAL	218.30 Sq.mts

35) This is how Plaintiffs claim that they must secure 66.59% land in the layout on the strength of built-up area of 4535.43 utilised for construction of its building and Defendant No.1-Society needs to be allotted only 33.41% land in the layout on the strength of built-up area of 2276.00 sq.mtrs. used for construction of its building. The Architect has deducted road set back area and R.G. area and has taken into consideration the balance plot area as 3129.87 sq.mtrs. and has divided them into 66.59% for Plaintiffs and 33.41% for Defendant No.1. The area entitlement for Plaintiffs is thus computed at 2084.04 sq.mtrs. leaving only land admeasuring 1045.83 sq.mtrs. for Defendant No.1. The architect has thereafter divided the R.G. area of 552.33 sq.mtrs and has granted 367.77 sq.mtrs. to Plaintiffs and 184.56 sq.mtrs. to Defendant No.1. The road set-back FSI advantage in respect of 218.30 sq.mtrs is also divided into 145.36 sq.mtrs. for Plaintiff and 72.94 sq.mtrs. for Defendant No.1. The Architect had drawn following conclusions in the Certificate :-

E) Conclusion:-

This is to certify that as per the Sanctioned Plan by MCGM U/Ref. No. CE/8881/BP(WS)/AP Dated 26 JUN 2008 r/w Occupation Certificate Dated 26 JUN 2008, Area to be considered for

Conveyance in favor of "RADHA VISHWESHWAR CO-OPERATIVE HOUSING SOCIETY LIMITED" is 2084.04 Sq.mts. plus proportionate share in R.G. Area admeasuring 367.77 Sq.mts. aggregate total 2451.81 Sq.mts, out of 3682.20 Sq.mts. comprising total of 557.60 Sq.mts, area being CTS No. 507/A, 472.10 Sq.mts, area being CTS No. 507/A/1 to 15, 505.90 Sq.mts, area being CTS No. 507/B & 916.21 Sq.mts. area from CTS No. 507/C of Village Malad (N), Taluka Borivali, City Survey Office Malad of Mumbai Suburban District. And also entitled for 66.59% proportionate undivided rights in FSI Advantage of Road Set-back Area admeasuring 145.36 Sq.mts, out of 218.30 Sq.mts.

36) This is how Plaintiffs' architect has determined total land area of 2084.04 sq.mtrs plus proportionate R.G. area of 367.77 sq.mtrs. totally aggregating 2451.81 sq.mtrs. in addition to proportionate undivided right in FSI advantage in road set back area of 145.36 sq.mtrs. The computation in the certificate would leave miniscule area of 1045.83 sq.mtrs. plus R.G. share of 184.56 sq.mtrs. = 1230.39 sq.mtrs.to Defendant No.1 plus road set back FSI advantage of 72.94 sq.mtrs.

37) Plaintiffs' objection that conveyance of land admeasuring 2399.55 sq. mtrs. vide impugned Deed of Conveyance executed in pursuance of City Civil Court's decree would render construction of its Building No. 2 illegal applies with full force to the computations made by its architect as allotting only 1230.39 sq. Mtrs. land and road setback FSI advantage of 72.94 sq. mtrs. would also render the building of Defendant No. 1 with built-up area of 2276.00 sq mtrs. constructed with 1.00 FSI illegal.

38) In my view, there is fundamental flaw in the methodology adopted by Plaintiffs' Architect for dividing the land in the layout considering the peculiar facts and circumstances of the case. In ordinary

circumstances, what has been done by the Architect could have been accepted. In fact, the GR dated 22 June 2018 contemplates division of land in a layout proportionate to the built-up area utilised for construction of building of each society. However, there is a reason why such a formula of division of land proportionate to built-up area cannot be adopted in the present case. This is because the buildings are constructed by applying different FSI norms. As observed above, building of Defendant No.1 has been constructed by use of FSI 1.00 and this is how built-up area of 2276.00 sq.mtrs. has been sanctioned for construction of buildings of First Defendant-Society. If the same FSI norms of 1.00 was to be applied for construction of buildings of Plaintiff-Societies, the formula of subdivision of land corresponding to utilisation of FSI could have been applied. In that case, the built-up area that would have been sanctioned for construction of buildings of Plaintiff-Society could only be about 1282.65 sq. mts. However, by utilising FSI of 1.84 by loading external TDR of 3463.90 sq.mtrs, buildings of Plaintiff-Societies are constructed with massive built-up area of 4535.43 sq.mtrs. though the balance land available for construction was only about 1282.65 sq.mtrs. Therefore the simple methodology of subdivision of land corresponding to utilised built up area for each building cannot be applied in the present case. Doing so would result in Plaintiff-Societies walking away with larger share of land on account of higher built up area of 4535.43 sq mtrs. used in its buildings as compared to much smaller built up area of 2276.00 sq. Mtrs. used for construction of building of Defendant No.1-Society. The division of land, RG area and road setback FSI in proportion of 66.59 % for Plaintiff-Societies and 33.41% for Defendant No.1-Society cannot be accepted.

39) Thus, application of formula of subdivision of land corresponding to utilised built up area in the present case would amount to comparing an apple with an orange. Though the said formula has been recognised in various judgments of this Court, as well as in the G.R. dated 22 June 2018 and seeks to tackle tendency on behalf of the Developers in not conveying land for several years, grant of proportionate land area to Plaintiffs commensurate to the built up area utilised for their building would put Defendant No.1-Society to a disadvantageous position. Mere execution of the Agreement dated 29 October 2004 by the Defendant No.1-Society permitting the entire layout property as recipient plot for use of TDR does not mean that the Defendant No.1- Society has diluted its rights in respect of land at CTS No. 507/C and half of CTS No.507/B. As observed above, the said Agreement actually proceeds on admission of use and occupation of CTS No. 507/C and half of CTS No.507/B by Defendant No.1-Society. I am therefore *prima-facie* not inclined to accept the computations made by Plaintiff's Architect in Certificate at Exh.B to the Plaint. The issue of conveyance of land in a layout to different societies whose buildings are constructed by use of different FSI, as of now, appears to be not decided in any judgment. Therefore an equitable argument needs to be done in the unique facts and circumstances of the case, which I propose to do in following paragraphs.

40) The building of Defendant No.1-Society utilizes built up area of 2276.00 sq. mtrs. In my view therefore, as of now and during pendency of the suit, Defendant No.1-Society can be permitted to carryout construction by considering its land entitlement of 2276 sq. mts. The total plot area is 3900.50 sq. mtrs (including road setback area

of 218.30 sq. mtrs). If Defendant No.1- Society is permitted to carry out construction by utilizing land admeasuring 2276 sq. mts, Plaintiffs entitlement for balance land would be to the extent of 1624.50 sq. mtrs. Though the said entitlement of 1624.50 sq. mtrs for Plaintiff-Societies may still be insufficient for sustaining its construction by considering the base FSI of 1.00, it is an admitted position that TDR has been loaded for construction of buildings of Plaintiff-Societies. If the contention advanced on behalf of Defendant No.1-Society is believed to be correct, TDR of 3463.90 square meters (2727.46 square meters of reservation TDR plus 736.44 square meters slum TDR) appears to have been used for construction of buildings of Plaintiff-Societies. Plaintiffs' architect has also confirmed this position as his certificate has the following column while doing FSI/built-up area computations

9	FSI Credit available by D. R. (T.D.R.)	3463.90 Sq.mts.
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Thus construction of Plaintiffs' buildings is by utilizing massive TDR of 3463.90 sq. mtrs. Thus, the built up area of 4535.43 sq mtrs. of Plaintiffs' does not entirely arise out of the larger property. 76% of its built-up area is constructed by utilizing outside TDR. Therefore Plaintiff-Societies cannot claim land entitlement based on built-up area consumed for construction of its buildings. The Plaintiff-Societies can use the balance land entitlement of 1624.50 sq. mtrs by loading outside TDR. The FSI has already increased in DCPR 2034 depending on width of access road. Therefore as and when occasion for reconstruction of buildings of Plaintiff-Societies would arrive, they can either bring outside TDR or take benefits of increased FSI or purchase permissible

fungible area to construct either equivalent (4535.43 sq mts) built up area or even more built up area depending on the then prevalent FSI norms.

41) Plaintiff's apprehension that development of land by Defendant No.1 would render its building illegal or that it would be deprived of due land entitlement as and when development of their buildings is taken up is misplaced. If Plaintiffs' building are constructed by taking benefit of additional FSI and TDR, Plaintiff cannot seek higher land area on account of utilisation of excess FSI and TDR as compared to Defendant No.1, whose building has been constructed by utilising base FSI. Now Development Control Promotion Regulations, 2034 (DCPR 2034) are in vogue under which higher FSI is admissible. Therefore, as of now, there is no danger of Plaintiffs' buildings or any portion thereof being rendered illegal. What is being permitted to be constructed by the First Defendant-Society, as of now, is only land admeasuring 2276.00 sq.mtrs. The entire balance portion of larger property is available for use and computation of FSI by Plaintiff-Societies. Therefore, considering the peculiar facts and circumstances of the case, equities amongst the parties can be balanced by ensuring that the land entitlement of the First Defendant-Society is restricted only to admeasuring 2276.00 sq.mtrs, while permitting Plaintiff-Societies to utilise the entire balance portion of land forming part of larger property, R.G. area and road set back area as and when it decides to undertake redevelopment of their buildings. Therefore, it is not necessary to restrain the First Defendant-Society from carrying out redevelopment of its buildings by utilizing land entitlement upto 2276.00 sq. mtrs.

42) Therefore in my view, the unique conundrum in the present case can be temporarily resolved at this stage by balancing the equities between the parties by permitting Defendant No.1-Society to carry out construction by utilizing land admeasuring 2276.00 sq. mts. This would provide a partial relief to the Plaintiff-Societies as Defendant No.1 will not, at the moment, carry out construction by considering its land entitlement as 2399.55 sq. mts. This is the limited *prima facie* case made out by Plaintiffs.

43) Plaintiff has thus not made out a *prima-facie* case for restraining Defendant No.1-Society from constructing on land admeasuring 2451.81 sq.mtrs plus FSI advantage for road set back area of 145.36 sq.mtrs as prayed for in the Plaint. Since the Plaintiffs are not likely to secure conveyance of land admeasuring 2451.81 sq.mtrs, injunction cannot be granted to restrain development activity undertaken by Defendant No.1 on land upto the extent of 2276.00 sq. mts.

44) Plaintiff-Societies shall not suffer any irreparable loss or injury if temporary injunction, as prayed for, is not granted. There is no danger to their buildings being rendered illegal. There appears to be no immediate prospect of reconstruction of buildings of Plaintiff-Societies in respect of which Occupancy Certificate has been issued only on 26 June 2008. They are just about 17 years old and are not in the immediate requirement of redevelopment. On the other hand, grave and irreparable injury would be caused to the First Defendant-Society if redevelopment of its buildings is stayed. The buildings of the First Defendant-Society have been constructed in pursuance of plans

sanctioned during 1973 to 1975. The buildings are now almost 50 years old and in need of immediate redevelopment. Grant of any interim relief in favour of Plaintiffs, as prayed for by them, would endanger lives of residents of buildings of First Defendant-Society. The balance of convenience is thus heavily tilted against the Plaintiffs and in favour of Defendant No. 1-Society.

45) Considering the overall conspectus of the case, I am of the view that Defendant No. 1-Society can be permitted to carryout redevelopment of its buildings by considering its land entitlement in the layout as 2276.00 sq. mtrs during pendency of the suit, till actual land entitlement of Plaintiff is determined at the time of final hearing of the suit.

46) I accordingly proceed to pass the following order:

- (i) Pending the hearing and final disposal of the Suit, Defendant No. 1-Society is permitted to carry out redevelopment of its buildings on the basis of its land entitlement of 2276.00 sq. Mtrs. only.
- (ii) Defendant No.1-Society is retrained from carrying out redevelopment of its buildings by utilizing land in excess of 2276.00 sq. mtrs.
- (iii) Except as directed above, Plaintiffs are held not entitled for any further injunctive relief.

47) Interim Application No. 5322/2025 is accordingly **disposed of**.

[SANDEEP V. MARNE, J.]

48) After the order is pronounced, the learned counsel appearing for the Plaintiffs seeks stay of the order and for continuation of the ad-interim order dated 9 December 2024. The request is opposed by the learned counsel appearing for Defendant No.1-Society. Considering the nature of findings recorded in the judgment, so also considering the partial relief granted in favour of the Plaintiffs by restricting the land entitlement of First Defendant-Society to only 2276.00 sq.mtrs, the request for continuation of ad-interim relief is rejected.

[SANDEEP V. MARNE, J.]