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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11164 OF 2024

M/s. Asian Chemical Industries .. Petitioner

Versus

Vijay Kailas Industrial Premises CHS Ltd. and Ors. .. Respondents

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- Mr. Ashish Kamat, Senior Advocate, a/w Ms. Priyanka Chadda, D.K. Shukla i/b Mr. Shivam Singh, Advocates for Petitioner.
- Mr. Dushyant Pagare a/w Ms. Shubashree Yewale, Advocates for Respondent No. 1.
- Mr. Pradeep J. Thorat i/b Ms. Aditi S. Naikare, Advocates for Respondent No. 3.
- Mr. P.J. Gavhane, A.G.P for Respondent No. 7 – State.

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CORAM : MILIND N. JADHAV, J.

DATE: : FEBRUARY 11, 2026.

JUDGMENT:

1. Heard Mr. Kamat, learned Senior Advocate for Petitioner; Mr. Pagare, learned Advocate for Respondent No.1; Mr. Thorat, learned Advocate for Respondent No.3 and Mr. Gavhane, learned AGP for Respondent No.7 – State. By consent, Writ Petition is heard and disposed of finally.

2. Petition is filed challenging impugned Order dated 20.03.2024 passed by the District Deputy Registrar of Cooperative Societies (for short "**Respondent No.2**") granting Certificate of Unilateral Deemed Conveyance under Section 11 of Maharashtra Ownership of Flats Act, 1960 (for short "**MOFA**") to Respondent No. 1

– Society.

3. Briefly stated, in or about 1950, one Shri. Amrutlal G. Sonawala, (for short "**Original Owner**") was the absolute owner of plot bearing Survey Nos. 111, 112 and 125 corresponding to CTS No. 498, 498/1 to 8, Revenue Village - Aksar Pahadi, Borivali, Mumbai. By Indenture of Lease dated 08.05.1963, Original Owner leased plot of land bearing CTS No. 498A, 498/1 to 3, Village Aksar Pahadi, Borivali, Mumbai (for short "**subject land**") to Respondent No. 4. On or about 31.12.1964, Respondent No. 4 agreed to transfer and assign lease of subject land to Petitioner to construct certain structures. Petitioner constructed a ground plus two storey structure on subject land. Municipal Corporation of Greater Mumbai (for short "**MCGM**") assessed the structure for property tax and bill was issued for the same.

3.1. On 24.08.1966, Respondent No. 4 entered into registered Deed of Assignment with Petitioner to assign remainder leasehold rights in the subject land and ownership right in the structures constructed thereon to Petitioner. Between 1966 to 1967 Petitioner let out the Units constructed in the ground plus 2 storey structure standing on the subject land to tenants (members of Respondent No.1 Society) on tenancy basis. Thereafter in or about 1976, Original Owner submitted proposal along with building plan to MCGM to construct a ground plus one storey structure on adjacent land bearing old CTS No.

498 (Part) and new CTS No.498B however the same was not approved.

3.2. In 1985, Original Owner filed RAE & R Suit No. 398 / 1217 of 1985 in the Small Causes Court to evict Petitioner and its tenants, however during pendency of aforementioned suit, Original Owner expired and his legal heirs were brought on record and thereafter due to compromise between parties the suit was withdrawn by the legal heir/s of the Original Owner.

3.3. In 2009, Respondent No. 3 i.e. son of Original Owner executed unregistered Deed of Conveyance dated 29.08.2009 with respect to subject land in favour of proposed Respondent No.1 Society. Respondent No.3 executed individual Deeds of Conveyance in favour of all tenants directly to transfer ownership of their respective Units and one such Deed of Conveyance dated 25.03.2010 executed with one tenant viz; M/s. Kundan Industries transferring ownership of Unit / Gala No.3 is relied upon and appended to the present Petition.

3.4. On 11.04.2014, Respondent No. 1 - Society was formed and duly registered by the tenants. On 21.08.2023, Respondent No. 1 – Society filed Application No. 109 of 2023 under Section 11(3) of MOFA seeking Unilateral Deemed Conveyance Certificate before Respondent No.2 in respect of the subject land and the two standing structures thereon. On 20.03.2024, Respondent No.2 allowed the

aforementioned application and issued Unilateral Deemed Conveyance Certificate to Respondent No. 1 – Society. Hence the present Petition.

4. Mr. Kamat, learned Senior Advocate for Petitioner would submit that the impugned Order dated 20.03.2024 is illegal, perverse, passed without complete application of mind, without due consideration of Petitioner's subsisting leasehold rights in the subject land, without considering Petitioner's ownership right in the structures standing on the subject land, without considering the relationship of landlord and tenant of Petitioner with all 23 members (tenants) being in subsistence and therefore on the basis of the documents on record it deserves to be set aside.

4.1. He would submit that the Original Owner was the absolute owner of land bearing Survey No. 111, 112 and 125(part) at Village Aksar Pahadi, Goregaon East, Taluka Borivali now bearing CTS No. 498, 498/1 to 8. He would submit that on 08.05.1963, Original Owner executed registered Lease Deed in favour of Respondent No. 4 in respect of land bearing CTS No. 498A, 498/1 to 3 being the subject land. He would submit that Respondent No. 4 and Petitioner executed Deed of Assignment dated 24.08.1966 whereby Respondent No. 4 assigned the remainder of the lease period in the subject land to Petitioner and this fact is admitted and undisputed between all parties. He would submit that Petitioner constructed a ground plus two storey

structure containing 24 Units / Galas which were leased to the 23 tenants by Petitioner since 1966 onwards on monthly tenancy basis.

4.2. He would submit that structures upon the subject land were duly assessed for property tax by MCGM and property tax bill is issued in the name of Petitioner. He would submit that as per Property Register Card dated 05.01.2016, nomenclature of subject land bearing CTS No. 498 was changed to CTS No. 498A admeasuring 1246.40 square meters and 498B admeasuring 1102.70 square meters. He would submit that subject land is situated within CTS No. 498A and since there is no sub-division of plot / layout by MCGM, Petitioner remains and subsists as lessee of plot Nos.498A, 498A/ 1 to 3 and owner of the structures standing thereon.

4.3. He would submit that in 1976 the Original Owner submitted proposal and plan to MCGM to construct a ground plus one storey building on land presently bearing CTS No. 498B admeasuring 427.26 square meters however the same was not approved. He would submit that the proposal and plans bear no acceptance remark nor any stamp of approval from the appropriate Authority, however despite which the building was constructed thereon in total disregard of the aforementioned plan. He would submit that this building has no nexus with the ground plus two storey structure constructed authorisedly on the subject land by Petitioner and the Units / Galas in which were let

out to the tenants i.e. members of the Society. He would submit that while seeking deemed conveyance the Society fraudulently misrepresented the building plan pertaining to a building constructed on the adjacent plot of land before Respondent No.2 so as to pass it off as the ground plus two storey structure housing the tenants constructed on the subject land to obtain Unilateral Deemed Conveyance. He would submit that this is not a mere allegation but *prima facie* this misinterpretation stands proved on the face of record when the building plan referred to and relied upon by the Society is seen by the Court as appended thereto and this is not denied by the Respondent No.1 – Society. He would submit that the Plan annexed to the Deemed Conveyance Application is of a ground plus one storey structure having a much lesser dimension constructed on the adjacent parcel of land next to the subject land having no nexus with the present case at hand.

4.4. He would submit that property tax assessment bill is issued by MCGM in favour of Petitioner which is dated 01.01.1965, hence the building was constructed prior to 01.01.1965 and not in 1976 as alleged by Respondent No.1. He would submit that Respondent No. 1 produced Architect's Certificate which does not pertain to the building plan of the proposed ground plus two storey tenanted structure neither does it mention the area of the structure, hence Respondent No.1 obtained Deemed Conveyance Certificate by playing fraud and by

misrepresentation.

4.5. He would submit that the Original Owner filed RAE & R Suit bearing No. 398/1217 of 1985 for eviction of Petitioner and Petitioner's tenants (members of Respondent No.1 – Society) as well as for possession of the subject land. He would submit that in the Suit plaint, Petitioner's tenants (23 members of the Society) were termed as sub-tenants therein however the same sub-tenants now claim to be members of Respondent No. 1 – Society. He would submit that after demise of Original Owner, his legal heirs were brought on record and they withdrew the RAE & R Suit bearing No. 398/1217 of 1985 after effecting a compromise with the Petitioner. He would submit that subsequent to withdrawal of the eviction suit, neither Petitioner's leasehold right nor its ownership in the structures is challenged neither extinguished before any forum / Court or by any Court of law and hence Petitioner's leasehold rights in the subject land and its ownership in the structures are valid, subsisting and binding upon all Respondents and any person who claims under the deceased owner Original Owner.

4.6. He would submit that perusal of the Deed of Conveyance dated 25.03.2010 relied upon by Respondent No.1 – Society would show that it is averred therein that settlement was reached between Petitioner and Respondent No. 3 with regard to surrender of the leasehold right of Petitioner in respect of subject land and ownership of

structure thereon to Respondent No. 3 and a Settlement Deed was executed to that effect. He would submit that however no such Settlement Deed was produced before Respondent No.2 and Petitioner's leasehold rights in the subject land and ownership in the structures is valid, subsisting and binding upon Respondent No. 3, Respondent No. 1 – Society and all its members who are statutory tenants of Petitioner. He would submit that aforementioned Deed of Conveyance falsely states that Petitioner surrendered all right, title and interest in the structure in favour of Respondent No. 3. He would submit that Petitioner is not a party to either the alleged Deed of Conveyance dated 25.03.2010 nor the alleged Deed of Confirmation dated 18.12.2010, hence both these documents do not bind the Petitioner nor affect the leasehold rights in the subject land and ownership in the structures standing thereon.

4.7. He would submit that Petitioner through their advocates addressed notices dated 09.10.2023, 30.10.2023, 05.12.2023 and 15.02.2024 requesting Respondent No. 1 to give inspection of the documents annexed to its Application as well as other documents relied upon, however no inspection was given of the same. He would submit that Respondent No.2 granted Certificate of Deemed Conveyance in pursuance of documents executed by a person who does not fall within the definition of "Promoter" under the provisions of MOFA. He would submit that Petitioner's leasehold rights in the

subject land are not extinguished in any manner and neither tenancy of the tenants is / was was validly and legally converted into ownership as alleged. He would submit that neither the alleged Deed of Conveyance dated 25.03.2010 nor the alleged Deed of Confirmation dated 18.12.2010 prove the agreement for sale between Promoter / owner of building and the individual Gala / unit holders, hence the aforementioned Deeds cannot fall within the definition of "agreement" as per Section 4 of MOFA. He would submit that Respondent No.2 has wrongly recorded name of Respondent No. 4 as *Imla Malik* in respect of the structure on the said property which infact legally and judicially stood in the ownership of Petitioner as landlord and lessee contrary to the Property card which reflects name of Respondent No. 3 as *Imla Malik* and this erroneous observation has materially affected the decision of Respondent No.2 in passing the impugned Order dated 20.03.2024 granting Deemed Conveyance to Respondent No. 1 – Society. He would submit that the purported Deed of Conveyance dated 25.03.2010 executed by Respondent No. 3 in favour of M/s. Kundan Industries i.e. one of Petitioner's tenant does not elucidate how Petitioner as lessee gets divested of its title and its leasehold rights in the subject land stand extinguished and how tenancies of the 23 tenants get extinguished and converted into ownership so as to entitle them to form a Cooperative Housing Society, register the same in 2014 and seek Deemed Conveyance to the detriment of the subsisting legal

right of the Petitioner in the subject land and its ownership right in the structure standing thereon.

4.8. He would submit that Deed of Conveyance executed by Respondent No. 3 in favour of Respondent No. 1 does not conform to requirements of Section 4(1A) of MOFA read with Rule 15 of Maharashtra Ownership of Flats Rules, 1959. He would submit that as per the aforementioned provisions, title certificate, approved sanction plan, Commencement Certificate ought to be annexed however no such documents were annexed, hence the purported Deed of Conveyance is not an agreement as per Section 4 of MOFA. He would submit that copies of Intimation of Disaproval (IOD) and Commencement Certificate (CC) were mentioned in the list of documents however they were never produced before Respondent No.2. He would submit that Respondent No. 1 produced certain documents pertaining to permissions and sanctions for construction issued by MCGM, however the same pertain to the construction of a ground plus one storey structure standing on the adjoining plot i.e. plot bearing CTS No. 498B and not to the ground plus two storey structure occupied by the 23 tenants (members of Respondent No.1 – Society).

4.9. He would submit that Deed of Confirmation dated 08.12.2010 clearly shows that its registration was refused as Respondent No.3 was not present. He would submit that perusal of the

Deed of Confirmation shows that on one particular internal page i.e. page No.127, the Sub-Registrar's stamp affixed is of the year 2011 whereas the rest of the document pages bear the stamp of the year 2010. This *prima facie* clearly suggests that Respondent No.1 has engaged in foul play and fraud to register the Deed of Confirmation dated 18.12.2010, which is ignored by Respondent No.2 for reasons best known to him. He would urge the Court to call upon Respondent No.1 and Respondent No.2 to answer the above issue which is *prima facie* not only shocking but it clearly borders on illegality and dishonesty.

4.10. He would submit that Affidavit-in-reply dated 30.09.2024 filed by Respondent No.1 before this Court, brings out a completely new set of facts which contradict the initial stand adopted by Respondent No.1 before the Respondent No.2 while seeking deemed conveyance. He would submit that Respondent No.1 has now during hearing before this Court placed a purported Deed of Conveyance dated 29.08.2009 which was never even produced before Respondent No.2 for seeking Deemed Conveyance. He would submit that through the aforementioned 2009 Deed of Conveyance, it shows that Respondent No.3 allegedly conveyed the subject land to Respondent No.1 for consideration of Rs.11,00,631.60/- 14 years prior to the filing of the Application for Deemed Conveyance. He would submit that this Deed of Conveyance is fundamentally flawed and it is a clear attempt

to mislead the Court and is unsustainable in law. He would submit that the Affidavit-in-reply dated 30.09.2024 also brings on record alleged rent receipts which were never ever produced before Respondent No2 at the time of seeking deemed conveyance. He would submit that the alleged rent receipts are a complete afterthought and a premeditated attempt by Respondent No.1 to defeat Petitioner's ownership right in the structure standing on the subject land which is occupied by its tenants (members of the Society). He would submit that when Respondent No.1's Advocate could not answer the discrepancy pointed out in the 2010 Deed of Conveyance to the Court, on the next date of hearing the 2009 Deed of Conveyance was produced before the Court. He would submit that during pendency of the RAE & R Suit, Petitioner has deposited lease rent in the Court and also paid it to Respondent No.3 directly and the purported rent receipts predate the RAE & R Suit, hence it is impossible for Respondent No.1 to have paid rent directly to Respondent No.3 at the same time simultaneously.

4.11. In support of his above submissions he has referred to and relied upon the following decisions of the Supreme Court and this Court to contend that in the facts of the present case the present Petition deserves to be allowed and the Certificate of Deemed Conveyance dated 20.03.2024 and all consequential actions thereto be quashed and set aside.

(i) *Dinkar S. Vaidya vs. Ganpat S. Gore & Ors.*[1]*;*

(ii) *Nimesh J. Patel vs. MCGM & Anr.*[2]*;*

(iii) *AH Wadia Trust & Ors. vs. State of Maharashtra and Ors.*[3]*;*

(iv) *Mazda Construction Co. and Ors. vs. Sultanabad Darshan CHS Ltd. and Ors.*[4]*;*

(v) *Nagindas Ramdas vs. Dalpatram Ichharam alias Brijram & Ors.*[5]*;*

(vi) *Narhari Chandrayya Kanda vs. Heren Damji Gala and Anr.*[6]

(vii) *S.P. Chengalvaraya Naidu (Dead) By LRS. vs. Jagannath (Dead) and Ors.* [7]*.*

5. ***PER CONTRA,*** Mr. Pagare, learned Advocate for Respondent No. 1 – Society would support the impugned order as correctly passed in law after due consideration of all material on record. He would submit that the Original Owner leased the subject land to Respondent No. 4 vide Indenture of Lease dated 08.05.1963. He would submit that Respondent No.4 assigned leasehold right in the subject land to the Petitioner vide Deed of Assignment dated 24.08.1966 to develop a factory building. He would submit that Lease Deed dated 08.05.1963 expired by efflux of time on 31.03.1983 and Original Owner filed Eviction Suit in Small Causes Court, Mumbai to evict the Petitioner, however during pendency of the suit, Original Owner expired and Respondent No. 3 i.e. heir of Original Owner settled the suit wherein

1 1980 SCC OnLine Bom 137
2 2021 SCC OnLine Bom 6588
3 2021 SCC OnLine Bom 1441
4 2010 SCC OnLine Bom 1266
5 (1974) 1 SCC 242
6 2024 SCC OnLine Bom 1933
7 (1994) 1 SCC 1

Petitioner surrendered all its right, title and interest in the subject land to Respondent No. 3. Though this last submission is advanced, it is not substantiated by any documentary evidence *prima facie* so as to consider Respondent No.1's case.

5.1. He would submit that since Petitioner surrendered its right, title and interest in the subject land and structure thereon, Respondent No.3 began accepting rent from the tenants (members of the Society) of the structure and in 2010, after they agreeing to pay 120 months rent to Respondent No.3 they approached Respondent No.3 to purchase their respective galas on ownership basis. He would submit that Respondent No.3 at that time accepted their request and executed the Deed of Conveyance with each gala owner and one such Deed of Conveyance dated 25.03.2010 is appended to the Petition at Exhibit "I" at page No. 106. He would submit that Respondent No. 3 executed a Power of Attorney in favour of his son to execute the Deed of Conveyance however since the Power of Attorney holder of Respondent No. 3 was not available at the time of registration, Deed of Confirmation dated 18.12.2010 was executed unilaterally to confirm conveyance of Gala No.3 to its owner i.e. M/s. Kundan Industries. He would submit that on execution of Power of Attorney on 13.09.2010, Deed of Conveyance dated 25.03.2010 was presented for registration once again along with Deed of Confirmation dated 18.12.2010.

5.2. He would submit that Respondent No.1 – Society also executed unregistered Deed of Conveyance dated 29.08.2009 with Respondent No.3 i.e. present owner to convey the subject land however since he never presented himself for registration, Respondent No.1 was constrained to file Application for Deemed Conveyance.

5.3. He would submit that the Deed of Conveyance is to be treated as "agreement" as contemplated by Section 4 of MOFA. He would submit that Petitioner ought to challenge the Conveyance Deed dated 25.03.2010 and Confirmation Deed dated 18.12.2010 in the Civil Court and the same cannot be set aside by this Court in Writ Jurisdiction. He would submit that there is no bar under Section 119 of the Transfer of Property Act, 1882 to transfer the title of leasehold property.

5.4. He would submit that on 11.02.2014 Respondent No .1 registered itself as Cooperative Society and since then Respondent No. 1 is paying municipal taxes and other Government levies. He would submit that Respondent No. 1 addressed letters to Respondent No. 3 to convey the subject land however no response was received, hence Respondent No. 1 filed Application No. 109 of 2023 before Respondent No.2 seeking Deemed Conveyance of the subject land.

5.5. He would submit that during hearing of the Application for Deemed Conveyance before Respondent No.2, Respondent No. 3

denied Respondent No.1's entitlement to said land. He would submit that Respondent No. 3 falsely claimed that tenants under misrepresentation entered into Deed of Confirmation to confirm conversion of their tenancy into ownership. He would submit that if that be the case then Respondent No. 3 ought to have challenged the aforementioned Deed of Confirmation before the appropriate forum. He would submit that neither Respondent No. 3 nor Petitioner challenged the Conveyance Deed or Confirmation Deed neither did they challenge the status of registration of Respondent No. 1 as Society. He would submit that it is trite law that rights of vendor and lessor transfer to the Society on the date Deemed Conveyance is granted to the Society and hence as Petitioner was lessee of the predecessor of Respondent No. 3, Petitioner would now become the lessee of Respondent No. 1 – Society and thus Petitioner as lessee now cannot challenge the order of Deemed Conveyance.

5.6. He would submit that Petitioner has not paid lease fee to the Original Owner since 1985 and after his demise to Respondent No. 3, hence Petitioner has committed breach of the terms of the Lease Deed, thus in view of such default, the lease deed between Petitioner and Original Owner's legal heirs i.e. Respondent No. 3 would automatically stand terminated. He would submit that Petitioner was permitted to occupy the subject land for the purpose of constructing 2 structures thereon and for no other purpose, hence on completion of

construction, the Lease Deed would otherwise automatically terminate as per Section 111(b) and (c) of Transfer of Property Act, 1882. He would submit that Petitioner does not possess right to claim any title over the suit property and challenge the order granting Deemed Conveyance. He would submit that Petitioner does not possess leasehold rights over the subject land and hence has no locus to file the present Petition.

5.7. He would submit that it is Petitioner's case that both structures were constructed after requisite permissions and certificates were granted by MCGM hence Petitioner is precluded from claiming that both structures were constructed illegally. He would submit that since Petitioner constructed both structures and since requisite MCGM permissions all lie in the name of Original Owner, then Petitioners would be deemed "promoter" under the provisions of MOFA.

5.8. He would submit that Respondent No. 1 obtained Deemed Conveyance Certificate from Respondent No.2 on the basis of registered documents hence if Petitioner seeks to set aside the Deemed Conveyance Certificate granting Deemed Conveyance then Petitioner ought to challenge all registered documents submitted before Respondent No.2 in the Civil Court with a prayer seeking cancellation of the said documents.

5.9. In support of his above submissions he has referred to and

relied upon the following decisions of the Supreme Court and this Court to contend that the present Petition deserves to be dismissed in view of the ratio cited in the said cases:-

(1) *Arunkumar H. Shah Huf V/s Avon Arcade Premises Cooperative Society Limited and Ors.*[8] *;*

(2) *Nahalchand Laloochand Private Limited & Ors. V/s. Panchamrut CHS Limited & Ors.*[9] *;*

(3) *Blue Heaven Cooperative Housing Society Limited V/s. Punit Constructions Company Ltd & Ors.*[10]

(4) *Riddhi Gardens Building No. A-1, A-2 Cooperative Housing Society Limited V/s District Deputy Registrar, Cooperative Societies and Ors.*[11] *;*

(5) *ACME Enterprises and Anr. V/s. Depurty Registrar of Cooperative Societies and Ors.*[12] *;*

(6) *Subash Ramchandra Navare and Anr V/s. Premji Meghji Rambia and Ors.*[13] *;*

(7) *Mahanagar Housing Partnership Firm & Ors. V/s. District Deputy Registrar of Cooperative*[14] *;*

(8) *Jai Jalaram Cooperative Housing Society Lts. V/s. M/s. Nanji Khimji & Coperative and Ors.*[15] *;*

(9) *Tanish Associates and Ors. V/s. State of Maharashtra*[16] *;*

(10) *M/s. Shree Chintamani Builders V/s. The State of Maharashtra*[17] *;*

(11) *Zainul Abedin Yusufali Massanwala & Ors. V/s. Competant Authority District Deputy Registrar of Cooperative Housing Societies, Mumbai and Others.*[18] *;*

(12) *Mazda Constructions Company & Others V/s. Sultanabad Darshan CHS Ltd. & Others.*[19] *;*

(13) *Swastik Promoters and Developers through partners Chetan Purushottam Patel & Ors. V/s. Competent*

8 2025 SCC OnLine 828
9 2025 SCC OnLine Bom 341
10 2024 SCC OnLine Bom 338
11 2024 SCC OnLine Bom 760
12 2023 SCC Online Bom 1102
13 2020 SCC OnLine Bom 316
14 2018 SCC OnLine 19563
15 Writ Petition No. 2082 of 2018 decided on 09th February 2024
16 2016 SCC OnLine Bom 12653
17 2016 SCC OnLine Bom 9343
18 2016 SCC OnLine Bom 6028
19 2013 (2) All MR 278

Authority District Deputy Registrar of Cooperative Housing Societies, Mumbai and Others.[20] *;*

(14) Vasundhara Dhananjay Dongare V/s. The State of Maharashtra & Others[21] *;*

(15) Basheera Khanum V/s. The City Municipal Council and Anr.[22] *;*

(16) ALJ Residency Cooperative Housing Society V/s. State of Maharashtra and Ors.[23] *;*

(17) Shree Chintamani Builders V/s. State of Maharashtra & Ors.[24] *and;*

(18) Yogesh Jayant Khadilkar V/s. State of Maharashtra and Ors.[25]

6. Mr. Thorat, learned Advocate for Respondent No.3 would submit that Respondent No.2 did not have the jurisdiction to entertain the Application for Deemed Conveyance and has passed the impugned Order dated 20.03.2024 without due consideration of the facts and material on record and hence the impugned order deserves to be set aside. Respondent No.3 supports the Petitioner (its lessee) and opposes Respondent No.1.

6.1. He would submit that Section 4 of MOFA requires the Promoter to enter into registered Agreement for Sale with the flat purchaser and Section 11 of MOFA requires Promoter to execute Deed of Conveyance in favour of the organization of flat purchasers. He would submit that in the present case Respondent No.3 is the owner of the subject land. He would submit that Petitioner, as its lessee,

20 2025 SCC OnLine Bom 256
21 Writ Petition (L) No. 23095 of 2021
22 Civil Appeal No. (S) 9317 of 2014
23 Writ Petition No. 406 of 2018
24 2016 SCC OnLine Bom 9343
25 Writ Petition No.13755 of 2022

constructed commercial units on the subject land and inducted tenants into those commercial units. He would submit that those tenants formed the Respondent No.1 Cooperative Housing Society without permission of the Petitioner nor Respondent No.3, hence Respondent No.3 cannot be deemed to be a Promoter within the definition of Section 2(c) of MOFA.

6.2. He would submit that Petitioner, as owner of the structure, did not execute Agreement for Sale in favour of any of the tenants in the structure constructed upon the subject land, hence requirement of Section 4 of MOFA is also not fulfilled.

6.3. He would submit that Respondent No.1 claims that Respondent No.3 executed Deed of Conveyance dated 25.03.2010 in respect of Unit / Gala No.3, however this position cannot be accepted as Respondent No.3 is not the owner of Unit / Gala No.3, neither he has constructed or developed the said Gala / Unit No.3 and hence he did not possess any right to convey the same to the tenant. He would submit that Respondent No.1 – Society claims that Respondent No.3 executed Deed of Confirmation dated 08.12.2010, however this is not so as perusal of the alleged Deed of Confirmation would show that it is a fabricated document altogether wherein one page bears registration stamp of the year 2011 whereas all other pages bear registration stamp of the year 2010. He would submit that both documents are on the

face of record false and fabricated and hence do not create any legal right and obligations in favour of Respondent No.1. He would submit that Respondent No.3 has never executed any Conveyance Deed or Confirmation Deed either in favour of the Respondent No. 1 - Society and or in favour of any member of the Society, hence requirements of Section 11 of MOFA are clearly not fulfilled as alleged by Respondent No.1.

6.4. He would submit that the Competent Authority was not possessed of jurisdiction to entertain Respondent No.1's application for Deemed Conveyance, since members of Respondent No.1 – Society are mere statutory tenants of Petitioner, inducted by the Petitioner as tenants who do not possess ownership right in their respective Gala / Unit and therefore the present Petition be allowed and the impugned Deemed Conveyance order be set aside.

7. I have heard Mr. Kamat learned Senior Advocate for Petitioner, Mr. Pagare, learned Advocate for Respondent No. 1 and Mr. Thorat, learned Advocate for Respondent No. 3 and the learned Government Pleader and with their able assistance perused the record of the case. Submissions made by the learned Advocates at the bar have received due consideration of the Court.

8. At the outset, principal question for determination is whether Respondent No.2 Competent Authority has on the basis of the material

placed on record erred in granting Certificate of Deemed Conveyance to Respondent No.1 – Society? It is seen that genesis of the dispute begins with execution of Lease Deed dated 08.05.1963 between the Original Owner and Respondent No.4 who subsequently has assigned the remainder of the period of lease by Deed of Assignment dated 24.08.1966 to the Petitioner. Subsistence of this lease is the first limb of Petitioner's argument. Admittedly thereafter Petitioner constructed a ground plus 2 storey building structure and inducted 23 tenants (members of the Society) therein in 23 Units / Galas as its statutory tenants since long. This position is undisputed. It is seen that aforementioned Deed of Assignment is not appended to the Petition neither it was ever disclosed and produced before Respondent No.2. However reference to both the aforementioned documents of 1963 and 1966 do find place in the purported Conveyance Deed dated 25.03.2010 relied upon by Respondent No.1. It is thus admittedly seen from the flow of title as argued by Respondent No.1 – Society before Respondent No.2 for seeking conveyance and appended at Exhibit "L" page No. 168 to the present Petition that Petitioner is the subsisting lessee of Respondent No.3 in respect of the subject land and is the owner of the structure standing thereon. Hence it is an admitted position that Respondent No.4 (Original Owner) assigned leasehold rights to Respondent No.3 who further assigned remainder of the same leasehold rights to Petitioner. Next it is an undisputed position that

Petitioner constructed the ground plus 2 storey structure and inducted 23 tenants (members of the Society) as its statutory tenants therein which position is not denied by Respondent No.1. Thus Petitioner is the owner of the structure occupied by the tenants (members) which position is not denied by Respondent No.1. In these facts, attention is drawn to a decision of this Court in the case of ***Dinkar S. Vaidya v/s. Ganpat S. Gore & Ors. (Supra)*** which is relied upon by Mr. Kamat to apply the doctrine of dual ownership of Petitioner to the facts of the present case. Paragraph Nos. 39 to 40B are relevant and reproduced hereunder:-

> *"**39**. At first blush the question appears to be quite simple; but it has got to be answered in the context of two legal positions:*
>
> *(i) that the doctrine of dual ownership is recognised in India meaning thereby that there is no presumption that the owner of the land is also the owner of the structure standing on the land. 'A' is the owner of the land. He may let out the same to 'B'. 'B' may construct a structure on the same and let out the same to 'C'. 'A' the owner of the land does not automatically become the owner of the structure constructed by 'B'; and that there are rent restriction laws in India, most of which prohibit tenant subletting the premises let out to him. In any event this is the position which obtains in the cities of Maharashtra under the Bombay Rent Act.*
>
> *40. The answer to the question as to whether 'C' who is the tenant of the structure, automatically becomes tenant of 'A', the owner of the land, has got to be decided in the context of these two legal positions.*
>
> *The question can be decided:*
>
> *(a) in the light of authorities, and*
> *(b) by discussion of first principles.*
>
> *40A. Firstly I will deal with the authorities having bearing upon this question. The first authority is the judgment of the Division Bench decided by Patel and K.K. Desai, JJ., in S.R. Shetty v. P.N. Kulabawala, C.R.A. No. 1511 of 1960, decided on 21-11-1962, as mentioned above. The facts of that case may be briefly stated as follows:—*
>
> *40B. One Kolabawala was the owner of an open plot of land which*

he let out to one Gangawal. Gangawal constructed structures on the same, which structures were let out by him to S.R. Shetty, proprietor of Popular Covering Works. Kolabawala filed a suit against Gangawal for recovery of possession of the plot of land after removal of the structures and a decree for recovery of possession was passed in that suit against the said Gangawal. When Kolabawala tried to execute that decree, S.R. Shetty, the tenant of the structure, obstructed. The contention of the obstructionist was that though he was a tenant in respect of the superstructure, he was the sub-tenant in respect of the land beneath the superstructure. He further contended that upon the eviction decree having been passed against Gangawal, he, S.R. Shetty, had become direct tenant of Kolabawala by virtue of the provisions of Section 14 of the Rent Act This contention was negatived by the trial Court and the decree of the trial Court was confirmed by the Division Bench. In support of the said contention of the obstructionist the ruling of the Supreme Court in Mrs. Dossibai N.B. Jeejeebhoy v. Khemchand Gorumal, 64 Bom LR 256 : (AIR 1966 SC 1939), was relied upon. While dealing with this argument and contention, the Division Bench of this Court held that as per the ruling of the Supreme Court what is held is that the Rent Act applies as between a landlord and a tenant where the land is let for the purposes of a structure, since, ultimately, that structure is intended to be used either for residence, business or trade etc. But this Court held that merely because the Rent Act applies to a lease in respect of an open plot of land it did not mean that the tenant of the structure ipso facto became the sub-tenant in respect of the same. This is what the Division Bench observed in that behalf:

> *"It does not, however, decide that it after a structure is built and a tenant has been let into it by the original tenant, who built the structure, the tenant of the structure becomes, only for this reason, a sub-tenant of a portion of the land. It is almost impossible to accept the suggestion and for obvious reasons. In the present case, the structure consists only of a ground floor. However, there may be cases where, the structure may consist of several floors, and if there are several tenants, one sitting on top of another, it will be impossible by any amount of ingenuity for any Court to say of what portion of the land a particular tenant is a sub-tenant. In our view, therefore, the learned trial Judge was justified in the conclusion to which he reached":*

The practical difficulty quite unnecessarily invited by holding that the tenant of the structure became automatically sub-tenant of the land beneath the structure is, therefore, fully highlighted by the said judgment of the Division Bench."

9. Thus from the above it is clearly seen that ownership of land and ownership of structure constructed thereon can vest in different

parties. In the present case, Respondent No.3 owns and is possessed of the subject land as owner / superior lessor whereas Petitioner is its lessee of the land and owns the right, title and interest in the ground plus 2 storey structure which it has constructed thereon. This position stands undisputed.

10. Record in the present case shows that Original Owner i.e. father of Respondent No.3 filed RAE & R Suit No. 318 / 1217 of 1985 seeking eviction of the Petitioner and its tenants (member of the Society) however during pendency of the RAE & R Suit, the Original Owner expired and his legal heirs were substituted and impleaded as Plaintiff in his place. It is seen from the order dated 07.08.2007 on the Certified Copy of the Suit Plaint appended as Exhibit 'G' at page No. 88 to the Petition that C.A of the Plaintiff therein filed withdrawal praecipe which was accepted by the Court and the Presiding Judge disposed of the RAE & R Suit for want of further prosecution. Record shows that no Deed of Settlement, Deed of Surrender, Decree of competent Court or any other such document to the effect of Petitioner's surrender its leasehold right along with its ownership right in the structure thereon was ever arrived at between the parties as alleged by Respondent No.1. It is seen that it is a figment of imagination of Respondent No.1 that Petitioner's right were terminated or came to an end enabling the Competent Authority to award Deemed Conveyance to Respondent No.1 in such alleged facts. It is proven by

documentary evidence that Petitioner admittedly has a valid and subsisting assignment of the lease in the subject land and ownerhsip of the structure constructed thereon. It is seen that absence of any cogent or relevant document showing Petitioner's settlement of the RAE & R Suit and surrender of its leasehold right in the subject land along with its ownership right in the structure standing thereon *prima facie* creates an encumbrance on the title of the subject land and hence the submission that Petitioner had settled the RAE & R Suit with Respondent No.3, surrendered its leasehold right in the subject land as well as its ownership right, title and interest in the ground plus 2 storey structure constructed thereon and only Respondent No.3 was fully possessed of the subject land and structure and was therefore capable of executing the Deed of Conveyance dated 25.03.2010 along with the alleged Deed of Confirmation dated 08.12.2010 leading to awarding Deemed Conveyance cannot be countenanced and accepted at all. Respondent No. 2 has not considered this position and has given a complete go-bye to the same.

11. It is the case of Respondent No.1 that since Respondent No.3 executed Deed of Conveyance dated 25.03.2010 Petitioner ceased to be lessee of Respondent No.3 and is now the lessee of Respondent No.1. I am afraid I cannot accept this submission and position as legally tenable in the above facts and circumstances as also status of the members of Respondent No. 1 since there is absolutely no material

produced on record in the form of Decree from any competent Court or any Deed / document declaring termination of there tenancy rights neither is there any notice / communication from Respondent No.3 informing Petitioner about termination of Petitioner's long standing leasehold right in the subject land and or tenancies with members of Respondent No.1 – Society. After perusal of the lease deed it is seen that its tenure expires after 20 years but in that case Petitioner will be a lessee holding over in view of the compromise in the RAE & R Suit between Respondent No. 3 – Landlord and the Petitioner. However in so far as the structure housing the tenant / members is concerned, admittedly it belongs to the Petitioner as owner.

12. It is seen that since there is an encumbrance upon the subject land as Petitioner's ownership in the structure constructed on the subject land subsists and is not considered by the Competent Authority, Respondent No.3 is clearly precluded from executing any Conveyance Deed or any other document to transfer any right, title and interest in the subject land and in the structure therein. Respondent No. 1 has relied upon the Deed of Confirmation dated 18.12.2010 which is a registered document however on perusal of the said document it is seen that all pages of the said document bear registration stamp of the year 2010 except but one page i.e. internal page No.127 of the Deed of Confirmation which bears registration stamp of the year 2011. This raises a very serious question and doubt

as to the veracity of the said Deed of Confirmation dated 18.12.2010. A document cannot contain registration stamp of one year on one page and registration stamp of another year on all other pages. Therefore filing of such Deed of Confirmation dated 18.12.2010 by Respondent No.1 and the same being accepted leads to, *prima facie* grave fraud being played upon Respondent No. 2 and this Court cannot allow the same to subsist. No reasonable explanation, rather no explanation at all is offered by the Counsel and Advocate of Respondent No.1 after being repeatedly asked by this Court as to how such registration stamps of two different years are affixed on the internal pages of the Deed of Confirmation dated 18.12.2010, thus raising a grave suspicion that it is *prima facie* a forged and fabricated document which was filed to merely comply with the provisions of MOFA to hoodwink all concerned and obtain the Certificate of Deemed Conveyance. It is shocking to the core that Respondent No.2, the Competant Authority has also turned a blind eye to this fact and accepted the said document as true and correct which speaks volumes of the exercise undertaken by the Competent Authority and raises serious questions on the due process of law adopted while considering Applications for Deemed Conveyance.

13. It is seen that Section 111 and Section 114 of the Transfer of Property Act, 1882 cannot apply to the facts of the present case as they were never pleaded before Respondent No.2 therefore these objections

cannot be raised before this Court by Respondent No.1. That apart, it is seen that Petitioner's lease with Respondent No.3 was in subsistence during the hearing of the Deemed Conveyance Application and it subsists till date hence it is Respondent No.3 who ought to have raised these objections and Respondent No.1 is precluded from raising the same before me.

14. Another serious issue or lapse noted *prima facie* by the Court is that Respondent No.1 filed Deemed Conveyance Application before Respondent No.2 and annexed the prescribed documents in support of its application. It is seen that documents annexed thereto are the Deed of Conveyance dated 20.03.2010 and Deed of Confirmation dated 08.12.2010. It is seen that none of these documents comply with the requirements of Section 4 of MOFA which elucidate requirement of Agreement of Sale to be executed between the Promoter and flat purchasers. It is seen that individual Conveyance Deeds were executed between Respondent No.3 and Petitioner's tenants despite provision of Section 4 of MOFA being clear in its wording that Agreement for Sale is to be executed between the owner / Promoter and flat purchasers. Respondent No.3 admittedly is not the owner of the structure and it is the Petitioner who is admitted owner of the structure. It is argued by Respondent No. 1 that wording of recitals of Deed of Confirmation dated 18.12.2010 make it an Agreement for Sale as contemplated by Section 4 of MOFA and further Respondent No.2 in paragraph No.8 of

his order dated 20.03.2024 has held that Respondent No.3 sold Units in the said structure to Petitioner's tenants by entering into Agreement for Sale with the Unit purchasers as per provisions of MOFA 1963 and the said agreements are as per MOFA Act. However perusal of the same would show that the recital merely states that the party/s thereto failed to appear for registration within the time limit prescribed under Section 4 of MOFA. Hence mere recital does not confer status of Agreement for Sale as contemplated by Section 4 of MOFA on the Deed of Conveyance dated 25.03.2010 which is executed unilaterally merely because such term is used in Section 4 of MOFA and so used in the recital. Hence lacunae in compliance of statutory requirements laid down in Section 4 of MOFA for grant of Certificate of Deemed Conveyance remain unfulfilled.

15. It is trite law that Application for Deemed Conveyance for land with structure thereon require Commencement Certificate, building plan approved by competent / planning authority and Architect Certificate is required to be annexed to the Application. It is seen that in the present case, Commencement Certificate was never produced before Respondent No.2, hence Respondent No.2 ought to have considered absence of Commencement Certificate which, for the sake of argument, would imply that the structure upon the subject land is illegal and constructed without requisite approvals and permissions from the planning authority i.e. MCGM.

16. A third serious lapse clearly ignored by Respondent No.2, the Competent Authority is the building plan approved by the competent / planning authority which is a necessary mandatory pre-condition for grant of Deemed Conveyance. In the present case, it is clearly seen that Petitioner constructed a ground plus 2 storey structure upon the subject land admeasuring 2,443 square meters housing the tenants (members of the Society) however Respondent No.1 has appended and filed building plan in its Deemed Conveyance Application appended at Exhibit – "F" on page No.85 of the Petition which pertains to a ground plus one storey structure constructed upon the adjoining land bearing i.e. CTS No. 498B admeasuring 427 square meters. Thus a completely different plan of the structure is placed before the Competent Authority i.e. Respondent No.2 for seeking deemed conveyance which is blindly accepted in the present case.

17. It is further seen from the building plan filed by Respondent No.1 that there is no stamp of acceptance or approval by the MCGM affixed thereon. Therefore, Respondent No.1 has managed to obtained Deemed Conveyance Certificate from Respondent No.2 on the basis of a building plan pertaining to a structure which is not constructed on the subject land neither does the alleged building plan relied upon pertains to the subject land or the structure thereon and the CTS Number and measurements completely differ from that of the structure on the subject land. When repeatedly asked about this lapse and the

correct building plan, learned Counsel and Advocate of Respondent No.1 are unable to give any answer to the Court and are evasive in their reply by repeatedly relying upon the alleged unilateral Deed of Confirmation and Conveyance which are alluded to hereinabove. Respondent No.2 failed to observe such glaring deficiencies in Respondent No.1's application for deemed conveyance and therefore ought to have rejected the application seeking Deemed Conveyance Certificate. When such deficiencies are *prima facie* seen and when asked repeatedly to the Advocate for Respondent No.1 there is no valid explanation forthcoming to overcome such drastic failure. Respondent No.1 is unable to put forth any valid explanation to such deficiencies which is writ large as fraudulent on the face of record and equally colluded by Respondent No.2 for reasons best known to him.

18. It is Respondent No.1's case that Respondent No.3 executed Deed of Conveyance dated 29.08.2009 with Respondent No.1 thereby conveying the subject land along with the structure (ground plus 2 storey) ground plus 2 storey thereon to Respondent No.1. It is seen that this Deed of Conveyance dated 29.08.2009 is not even a registered document as per Section 17 of the Registration Act, 1908 and hence it cannot have any legal standing or validity neither can any party act upon the same. It is seen that this Deed of Conveyance dated 29.08.2009 was never produced before Respondent No.2 neither was such case pleaded before Respondent No.2 at the time of hearing of

the Application for Deemed Conveyance and it was produced before this Court only when the veracity of the 2010 Deed of Conveyance was gone into by me *prima facie* by questioning the alleged incorrect registration number and stamp on one of the internal pages of the said document. To overcome that hurdle in the course of arguments, Respondent No.1 produced the unregistered document of 2009. This new document of 2009 would itself *prima facie* suggest that it is a forged and fabricated document on the face of record. Perusal of the entire record shows that there is not a singular reference or pleading to this unregistered Deed of Conveyance dated 29.08.2009 neither the said Deed of Conveyance dated 29.08.2009 finds reference in the subsequent Deed of Conveyance dated 25.03.2010 and Deed of Confirmation dated 18.12.2010 the statutory notice dated 03.03.2023. Hence *prima facie* a very serious doubt is cast on the legality, veracity and tenability of this 2009 unregistered document which surfaces for the first time today as also the conduct of Respondent No.1. The conduct of Respondent No.1 clearly borders as dishonesty and fraud in the present case.

19. It is seen that the stand taken by Respondent No.1 before this Court substantially differs from the stand taken before Respondent No.2 – Competent Authority and such differing and inconsistent positions *prima facie* show the fraudulent and *malafide* intention of Respondent No.1 to obtain the Certificate of Deemed Conveyance at

any cost by hook or by crook to the exclusion of the subsisting rights of Petitioner in the subject land, in the subject structure and Respondent No.3 as superior lessor. It is *prima facie* proven from the record that the documents relied upon by Respondent No.1 as appended to the Application seeking Deemed Conveyance are not only erroneous but fraudulent altogether. Such ambiguous stance of Respondent No.1 does not inspire any faith of this Court in its cause as such conduct does not bring out any clarity neither does it give transparent answers to the questions and deficiencies raised in the present matter. Record shows numerous deficiencies in the stand adopted by Respondent No.1 and the documents annexed to the Application for Deemed Conveyance as observed and alluded to hereinabove rendering the impugned Order granting Deemed Conveyance passed by Respondent No.2 unsustainable in law and hence it deserves to be quashed and set aside.

20. In view of my above observations and findings, the impugned order dated 20.03.2024 passed by Respondent No.2 is clearly unsustainable, bad in law and is therefore quashed and set aside. Certificate of Deemed Conveyance dated 20.03.2024 granting Deemed Conveyance in favour of Respondent No.1 – Society stands cancelled. All actions taken pursuant to the said Certificate are also quashed and set aside. Resultantly, the Petition succeeds and is allowed in terms of prayer clause (a).

21. Writ Petition is allowed and disposed in the above terms.

[MILIND N. JADHAV, J.]

22. After the Judgment is pronounced in open Court, Ms. Yewale, learned Advocate appearing for Respondent No. 1 persuades the Court to stay the effect of the judgment for 8 weeks in order to enable Respondent No. 1 to test its validity and legality in the Superior Court. However in view of my observations and findings and blatant misconduct of Respondent No. 1 which has been alluded to by me in the aforesaid findings, I am not inclined to accede to the request made by Respondent No.1. Hence, the request for stay of this Judgment is rejected.

[MILIND N. JADHAV, J.]

Ajay

HARSHADA HANUMANT SAWANT

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