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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.16661 OF 2024

ATUL
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1. One Astoria Cooperative Housing
Society Federation Limited,
Gowardhan, Taluka & District Nashik
2. Ashok Astoria Cooperative Town Home
Cooperative Housing Society Ltd.
3. Ashok Astoria Building No.2A, 2B, & 2C
Cooperative Housing Society Ltd.
4. Ashok Astoria Building No.3A & 3B
Cooperative Housing Society Ltd.
5. Ashok Astoria Building No.4 and 5
Cooperative Housing Society Ltd.
6. Ashok Astoria Building No.6A, & 6B
Cooperative Housing Society Ltd.

... Petitioners

Vs.

1. Peninsula Land Limited,
1, Peninsula Spenta, Mathuradas Mills
Compound, Senapati Bapat Marg,
Lower Parel, Mumbai 400 013
2. Peninsula Mega Township Developers
Private Limited, 1, Peninsula Spenta,
Mathuradas Mills Compound, Senapati
Bapat Marg, Lower Parel, Mumbai 400 013
3. The State of Maharashtra, through it's
Principal Secretary, Ministry of
Cooperation, having office at Mantralaya,
Mumbai.

4. District Deputy Registrar (C.S.), Nashik
having office at Sahakar Sankul, Near
National Urdu High School, Maulana
Abdul Kalam Azad Road, Sarda Circle,
Nashik – 422 001
(Copy for the respondent Nos.3 & 4 to be
served upon AGP (Appellate Side),
High Court, Bombay

... Respondents

Mr. Sumit Kothari for the petitioners.

Mr. Archit Jayakar with Mr. Mihir Kakade i/by Jayakar
Partners for respondent Nos.1 and 2.

Mr. Hamid D. Mulla for respondent Nos.3 and 4-State.

CORAM : AMIT BORKAR, J.

RESERVED ON : FEBRUARY 24, 2026

PRONOUNCED ON : MARCH 17, 2026

JUDGMENT:

1. By the present writ petition filed under Article 227 of the Constitution of India, the petitioners challenge the Judgment and Order dated 22 February 2024 passed by respondent No.4, whereby the application preferred by the petitioners seeking grant of deemed conveyance under Section 11(3) of the Maharashtra Ownership Flats Act, 1963, came to be rejected.

2. The facts giving rise to the present petition, stated briefly, are as follows. The subject property comprises land bearing Gat No.2, admeasuring in aggregate 7 Hectares and 54 Ares, equivalent to

75,400 square metres. Out of the said land, the petitioners claim rights in respect of land admeasuring 55,419.74 square metres along with a Club House admeasuring 2,318.10 square metres situated at Gowardhan, Nashik.

3. On 19 December 1973, the petitioners, by a registered Sale Deed, sold, conveyed and transferred the entire land in favour of Nashik Egg Enterprises. Subsequently, Nashik Egg Enterprises was incorporated as a private limited company on 25 April 2000. By an order of amalgamation dated 24 January 2001, Nashik Egg Enterprises Pvt. Ltd. merged with C and M Farming Limited. Thereafter, C and M Farming Limited, by a registered Sale Deed dated 24 May 2007, transferred the entire property in favour of respondent No.2, who undertook development of the property as a residential complex known as "Ashok Astoria".

4. On 13 April 2011, respondent No.2 obtained permission from the Sub Divisional Officer, Nashik, for construction on the entire land. The Gram Panchayat, Gowardhan, Nashik, then acting as the Planning Authority, issued an Occupation Certificate dated 3 July 2012 in respect of Building Nos.3A and 3B. Respondent No.2 executed a registered Agreement for Sale dated 22 August 2012 with one of the members of petitioner No.4 society under the provisions of MOFA. Similar agreements were executed with other members of the petitioners during the period from 2012 to 2016. On 3 July 2012, the Gram Panchayat issued a Completion Certificate in respect of Building No.6B. On 21 October 2013, a Completion Certificate was issued in respect of Building No.5. Thereafter, on 7 October 2016, the Sub Divisional Officer, Nashik

issued an Occupation Certificate in respect of Building Nos.2A, 2B and 2C (Block A), Building Nos.TH-7, 8 and RH-11, 12, 12A, 14 and 15 (Block F), Building Nos.TH-5, 6 and RH-9, 10 and 11 (Block G), Building Nos.TH-9, 10 and RH-16 to 19 (Block H), Building Nos.TH-11 and RH-20 to 24 (Block I), Amenity Building (Block O) and Club House Building (Block P). On 18 May 2017, the Sub Divisional Officer, Nashik issued an Occupation Certificate in respect of the remaining Row Houses bearing Nos.29 to 32, TH-12A and TH-14 forming part of Block K.

5. The petitioners filed an application under Section 11(3) of MOFA before respondent No.4 on 18 April 2022 seeking grant of deemed conveyance in respect of the property. The petitioners claim undivided rights in land admeasuring 55,419.74 square metres and joint rights in the Club House admeasuring 2,318.10 square metres. It was specifically asserted that petitioner Nos.2 to 6 are members of the Apex Body, namely petitioner No.1. According to the petitioners, respondent Nos.1 and 2 failed to execute conveyance within the statutory period of four months, thereby compelling them to invoke the provisions of MOFA. It was further stated that nine buildings were constructed by respondent Nos.1 and 2, the first building having been completed in the year 2012 and the last in the year 2017. Reliance was placed upon Government Resolution dated 22 June 2018 to contend that the developer is mandatorily required to convey ground coverage, plinth area, open spaces, common amenities and roads as undivided share. Respondent Nos.1 and 2 opposed the claim for conveyance by filing written submissions.

6. On 19 September 2022, respondent No.1 instituted Writ Petition No.11348 of 2022 seeking directions against respondent No.4 to furnish certified copies of the proceedings in the deemed conveyance application filed by the petitioners. Respondent No.1 also sought quashing of the order dated 2 September 2022 whereby its application seeking stay of the deemed conveyance proceedings was rejected.

7. Petitioner Nos.2 to 6 also filed a complaint under Section 31 of the Real Estate (Regulation and Development) Act, 2016 before MahaRERA alleging violation of the provisions of the said enactment by respondent No.1. By order dated 9 July 2021, MahaRERA rejected the complaints on the ground that the development of the project had been physically completed prior to commencement of the RERA Act, 2016 and, therefore, the provisions of the said Act were held to be inapplicable.

8. The petitioners instituted Regular Civil Suit No.413 of 2021 before the Civil Judge, Senior Division, Nashik seeking injunctive reliefs against respondent No.1. An application at Exhibit 5 seeking temporary injunction was also filed. By order dated 17 October 2022, the said application was partly allowed, restraining respondent No.1 from carrying out further construction, modification or development pursuant to the revised layout plan of 2021 pending disposal of the suit. Respondent No.1 was further restrained from carrying out construction beyond P+4 (Parking plus four floors) in Block T as reflected in the revised sanctioned plan dated 1 July 2021.

9. Being aggrieved by the order dated 17 October 2022, both the petitioners and respondent No.1 preferred separate appeals bearing CMA No.75 of 2022 and CMA No.78 of 2022. By order dated 8 September 2023, the District Judge 11, Nashik partly allowed the appeal preferred by the petitioners and dismissed the appeal filed by respondent No.1. The respondents have challenged the said order by filing Writ Petition No.1619 of 2024, which is stated to be pending.

10. By the impugned Judgment and Order dated 22 February 2024, respondent No.4 rejected the application filed by the petitioners for deemed conveyance on the ground that the application was premature as the project was incomplete. Aggrieved thereby, the petitioners have instituted the present writ petition.

11. Learned Advocate appearing for the petitioners submitted that the agreements executed by respondent No.1 with various purchasers belonging to the petitioner societies for sale of flats were entered into under the provisions of the Maharashtra Ownership Flats Act, 1963. It was contended that the petitioners are entitled to conveyance in respect of land admeasuring 55,419.74 square metres forming part of Gat No.2 situated at Village Gowardhan, Taluka Nashik, together with nine buildings comprising 270 units constructed thereon. It was further submitted that respondent No.1 has modified the building plans without obtaining requisite consent of the petitioners and such modification is not binding upon them.

12. Learned Advocate further submitted that Section 11(3) of MOFA provides that where the promoter fails to execute conveyance in favour of a co operative society formed under Section 10, such society is entitled to seek unilateral deemed conveyance. According to him, the impugned order suffers from an error apparent on the face of the record, inasmuch as the application for deemed conveyance came to be rejected solely on the ground that respondent No.4 could not grant conveyance under the provisions of the Real Estate (Regulation and Development) Act, 2016. It was argued that the provisions of the RERA Act are supplementary to the existing statutory framework and do not override or nullify the operation of MOFA. Therefore, once the competent authority is empowered to exercise jurisdiction under Section 11(3) of MOFA, there exists no legal impediment to grant deemed conveyance under the said enactment.

13. It was further submitted that respondent No.4 failed to consider the orders passed by the learned Civil Judge in Regular Civil Suit No.413 of 2021 and in Civil Miscellaneous Appeal Nos.75 of 2022 and 78 of 2022, whereby respondent No.1 has been restrained from carrying out further construction in accordance with the revised layout plan of 2021, the said plan having been prepared without consent of the members of the petitioner societies.

14. Learned Advocate also submitted that the petitioners possess an architect's certificate certifying their entitlement to an area admeasuring 57,063 square metres inclusive of common spaces and the club house. On the basis of the said material, it was prayed

that the writ petition be allowed.

15. Per contra, learned Advocate appearing for respondent Nos.1 and 2 opposed the writ petition and contended that the petitioners suppressed material facts while filing the deemed conveyance application. It was further submitted that the petitioners simultaneously pursued the civil suit as well as the deemed conveyance proceedings. According to the respondents, when the issue of overlapping reliefs was raised in the present writ petition, the petitioners adopted a contrary stand and filed a pursis before the Civil Judge on 17 December 2024 stating that they would not press the declaratory relief sought in prayer clause 8(e) at that stage.

16. Learned Advocate further submitted that the petitioners failed to comply with Rule 13 read with Rules 10 and 11 and Form VII of the MOFA Rules while filing the application for deemed conveyance. It was contended that only one agreement for sale appears to have been annexed with the application, which is contrary to the mandatory requirements prescribed under the MOFA Rules. It was also submitted that owners of eleven subdivided plots and purchasers of commercial units in the Bay Side Plaza building were not impleaded as parties to the deemed conveyance proceedings, though any order granting unilateral deemed conveyance would directly affect their rights and entitlements.

17. Learned Advocate submitted that the petitioners had not filed any architect's certificate along with the deemed conveyance

application. It was pointed out that such certificate was tendered for the first time across the bar before this Court on 17 February 2026 and was not placed on record by way of any affidavit. The said course of action, according to the respondents, is impermissible and stands deprecated by this Court in the decision in *Vithal Shankar Dokhe vs. Bhavdu Sakharam Dokhe*.

18. Without prejudice to the aforesaid submissions and in the alternative, it was argued that even if this Court were to consider the architect's certificate produced by the petitioners, the claim made therein is unsustainable. The petitioners seek conveyance of land admeasuring 55,419.74 square metres together with a club house admeasuring 2,318.10 square metres, whereas the aggregate area beneath the buildings of the petitioner societies is only 10,427.96 square metres. It was contended that the certificate includes open spaces admeasuring 6,762.86 square metres which, according to the respondents, are incapable of conveyance as they are intended for existing residential buildings as well as future development on the balance land admeasuring 10,427.96 square metres, where a plotted layout is proposed in place of the presently approved Blocks N, R, S and T. On these grounds, dismissal of the writ petition was sought.

REASONS AND ANALYSIS:

Legal framework and governing principles.

19. Section 11 of the Maharashtra Ownership Flats Act gives a clear and enforceable right to a cooperative society to seek deemed conveyance when the promoter does not execute conveyance

voluntarily. The provision is a remedy created by Act to prevent promoters from holding title indefinitely even after selling flats and handing over possession. Once a society is formed and the promoter fails to transfer ownership, the Act steps in and allows the competent authority to complete what the promoter was legally bound to do. The idea is that purchasers who have paid consideration and formed a society should not remain without legal ownership because of delay or unwillingness on the part of the promoter.

20. The MOFA Rules also prescribe documentary requirements and procedural steps. These include submission of agreements for sale, plans, certificates and other supporting material. These requirements exist to ensure fairness. They help the competent authority verify what has been sold, what has been promised and what exactly is to be conveyed. However, these procedural safeguards are not meant to be used to defeat the main right itself. Where the essential entitlement is established, procedural deficiencies that are curable should not be allowed to frustrate the statutory protection granted to purchasers.

21. The Real Estate (Regulation and Development) Act, 2016 does not take away or cancel rights already created under MOFA. Both enactments operate in the same field but for a common purpose. RERA regulates ongoing real estate activity and promotes transparency, while MOFA continues to protect purchasers and govern obligations arising from earlier agreements. Therefore, the existence of RERA cannot be used as a ground to deny relief available under MOFA. A promoter cannot avoid statutory duties

by shifting from one statute to another. The rights of flat purchasers remain intact.

22. Courts are required to read statutes harmoniously whenever possible. This means that if two laws can operate together without conflict, the Court must interpret them in a way that preserves the purpose of both. Such an approach prevents one Act from defeating another. In matters concerning conveyance, harmonious construction ensures that the protective scheme created under MOFA continues to function even after the enactment of RERA.

23. At the heart of these provisions lies one central objective. Protection of flat purchasers. These buyers invest life savings, take possession of homes and form societies expecting security of title. The Act recognises their vulnerable position compared to promoters who control documents, approvals and land ownership. Therefore, the statutory scheme leans in favour of securing ownership rights quickly. The Supreme Court has repeatedly emphasised that courts and authorities must protect substantive rights and not allow technical or procedural objections to defeat justice. When a promoter seeks to avoid a clear statutory obligation, the court must look at the substance of the transaction and the purpose of the Act. Technical defects cannot become route to delay or deny conveyance. Interpretation must therefore advance the legislative purpose. In cases like the present, the approach must ensure that flat purchasers receive the ownership which the statute promises them, rather than leaving them in uncertainty.

On completeness and prematurity.

24. On completeness and prematurity. The issue raised by the promoter that the project is incomplete and therefore conveyance should wait needs careful examination. The principles laid down in the decision in *Flagship Infrastructure (P) Ltd. v. Competent Authority*, 2025 SCC OnLine Bom 1240, provide clear guidance. That judgment dealt with a similar situation where the promoter attempted to postpone conveyance by linking it to future development. The same pattern appears in the present case. When those principles are applied to the facts on record, the legal position becomes straightforward and leaves little room for doubt.

25. The first aspect concerns the reasoning found in paragraph 32 of the said decision. In that case, as in the present one, the promoter relied on future completion of the larger project to justify delay. Here also, the promoter says that since some part of the project or future development remains, conveyance cannot be granted at this stage. This argument does not withstand scrutiny. Rule 9 of the MOFA Rules imposes a clear obligation. Once a cooperative society is registered, the promoter must execute conveyance within four months unless a definite and specific alternative period is agreed. The law does not recognise vague or uncertain events as valid reasons for postponement. Completion of future phases, revised layouts or proposed developments are uncertain matters. They depend on approvals, finances and decisions that flat purchasers cannot control. Therefore, such events cannot become conditions for delaying conveyance. The respondents' submission, if accepted, would defeat the statutory

scheme itself.

26. The second aspect flows from paragraph 33 of the judgment, which explains the object behind Rule 9. MOFA is a welfare legislation. Its purpose is to protect flat purchasers who invest their savings in homes and expect secure ownership. The timeline in Rule 9 is a safeguard created to prevent promoters from retaining control over land and common areas long after flats are sold. In the present case, occupation certificates have been issued. Purchasers are residing in their flats for several years. Societies have been formed. If conveyance is still postponed merely because some future development is proposed, purchasers would remain without clear title despite having fulfilled all obligations. Such a situation would bring back the very uncertainty that MOFA seeks to remove. Therefore, the Act must be interpreted in a way that ensures certainty of ownership rather than prolonging uncertainty.

27. The third aspect arises from paragraph 34 of the judgment, which interprets the word “period” in Rule 9. The word has been understood in its ordinary meaning, that is, a fixed and definite block of time. It cannot mean an open ended event. In the present matter, the promoter’s argument converts a fixed statutory timeline into condition dependent on future development. If such an interpretation is accepted, there would be no real deadline at all. The promoter could continue to hold title for years by merely showing that some portion of development remains. Courts cannot permit such a reading because it would amount to rewriting the statute and undermining legislative intent.

28. The fourth aspect is equally important. The reasoning in *Flagship Infrastructure* makes it clear that private arrangements or clauses in agreements cannot override statutory obligations under MOFA. Even if any agreement suggests that conveyance will be postponed till completion of the entire township, such a clause cannot prevail over Rule 9. Statutory duties are mandatory and cannot be diluted by contractual terms. The relationship between promoter and flat purchaser is governed by the statute, and the promoter cannot contract out of those obligations. Therefore, reliance on future development proposals or private clauses cannot justify refusal to execute conveyance or refusal to issue a certificate under Section 11(4).

29. The fifth aspect concerns application of these principles to the present facts. The project consists of multiple completed buildings. Occupation and completion certificates exist. Cooperative societies have been formed. Purchasers are in possession. The promoter did not execute conveyance within the statutory period. In these circumstances, the petitioners were fully justified in invoking Section 11(3) and seeking issuance of certificate under Section 11(4). The objection that the project is incomplete or that future development is contemplated cannot legally defeat their entitlement. Completion of the entire township is not a precondition recognised by law.

30. The sixth aspect relates to common areas. This dispute also becomes clear once the above principles are applied. If promoters are permitted to delay conveyance on the ground of future development, they would continue to retain control over common

spaces indefinitely. That would defeat the rights of flat purchasers. Common areas shown in the sanctioned plan form part of the rights sold to purchasers. These areas must pass to the societies along with conveyance. Future development cannot be used as a reason to keep those areas outside the conveyance. At the same time, the law recognises that future development may proceed on portions specifically earmarked for that purpose in the sanctioned plan. Such development, however, cannot disturb or reduce common areas already promised and shown in the approved layout.

On statutory purpose and Government Resolution of 22 June 2018.

31. On statutory purpose and Government Resolution dated 22 June 2018. The issue of deemed conveyance cannot be decided only by looking at isolated provisions. The Court must keep in mind the larger statutory purpose of MOFA and the practical difficulties faced in large layout projects where several buildings are constructed in phases. The Government Resolution dated 22 June 2018 issued by the Co operation, Marketing and Textile Department are guidelines to competent authorities while granting deemed conveyance. Though such a resolution does not override the statute and rules, it explains how statutory powers are to be exercised in real situations and therefore becomes relevant while preparing the judgment.

32. The first principle reflected in the Resolution is that many large projects consist of several buildings constructed on one

layout. Some buildings may be completed while others remain incomplete. The Resolution clarifies that this situation should not stop conveyance of completed buildings. It directs that while granting deemed conveyance of a completed building, the society must be given an undivided share in the land proportionate to its construction, including ground coverage or plinth area, and also proportionate rights in open spaces, common services, facilities and roads. This principle directly supports the statutory object of MOFA. The law does not expect flat purchasers to wait indefinitely until the entire project is completed. Once their building is complete and the society is formed, they are entitled to a proportionate and undivided interest. The concept of proportionate share ensures fairness both to existing societies and to any future development.

33. The second direction in the Resolution concerns layouts where additional development rights such as TDR have been utilised. In such cases, conveyance is to be made according to plinth area and appurtenant area. The reasoning behind this is that when additional development rights are used, the layout becomes more complex and may involve future construction. Even then, conveyance cannot be denied. Instead, the authority must identify the area linked to completed construction and grant conveyance accordingly. This approach protects purchasers while preserving the possibility of lawful development on remaining portions.

34. The third direction addresses a practical problem. In many projects, more than one society exists within the same layout, but only one society may apply for deemed conveyance. Sometimes

other societies do not cooperate in measurement or demarcation. The Resolution instructs the competent authority to permit measurement through an architect from the approved panel based on sanctioned plans. The right of one society cannot be held hostage because another society chooses not to cooperate. The authority must ensure that technical difficulties do not frustrate statutory rights. In the present case, where measurement and area determination became an issue, this principle becomes relevant because it shows that the law provides workable mechanisms to determine entitlement even in complex layouts.

35. The fourth direction states that if a developer keeps the project incomplete in expectation of additional FSI or TDR, deemed conveyance should still be granted for the number of flats actually constructed as per approved plans. This makes the legislative intent clear. Future expectations of development cannot be used as a reason to deny present rights. A promoter cannot indefinitely postpone conveyance by saying that more development may happen in future. The Resolution recognises this tendency and expressly prevents it. This reasoning aligns fully with the principles laid down in judicial decisions interpreting Rule 9 of the MOFA Rules.

36. The fifth direction concerns common easements and common facilities. It requires that the deemed conveyance order and certificate clearly record that the applicant society has undivided rights in common easements proportionate to its construction. This principle has direct relevance in the present case where the dispute concerns open spaces, roads and the club house.

The Resolution recognises that common areas cannot remain under exclusive control of the developer once buildings are sold. Such areas must be treated as common rights belonging to societies in proportion to their construction.

37. When these directions are read together, it shows that the Government Resolution seeks to recognise the purpose of MOFA. It accepts the reality that large layouts are developed in phases and that delays or future plans are common. Yet it insists that completed societies should not be deprived of ownership rights. Conveyance must proceed on a proportionate basis, common areas must be protected, and technical or administrative difficulties must be resolved through practical measures.

38. Applying these principles to the present case, the position becomes clear. The project contains multiple buildings, several of which are complete and occupied. Societies have been formed. The petitioners seek conveyance of an area measured with reference to sanctioned plans and common amenities. The promoter's argument that future development prevents conveyance is inconsistent with the Government Resolution itself, which expressly permits conveyance of completed buildings with proportionate undivided rights even when other parts remain incomplete. The Resolution also supports inclusion of open spaces, common services, roads and amenities such as the club house in the conveyance, subject to proportionate undivided rights. These are components of the layout promised to purchasers. Excluding them would defeat the purpose of the Act.

On procedural defects and the architect's certificate.

39. The respondents have strongly argued that the petitioners did not strictly comply with the procedural requirements while filing the application for deemed conveyance. They point out that all sale agreements were not produced, certain documents under the MOFA Rules were missing, and the architect's certificate was not placed before the competent authority at the initial stage. According to them, these defects are serious enough to reject the claim altogether. This objection requires careful consideration because procedure does play an important role in deemed conveyance proceedings.

40. Procedural requirements under the MOFA Rules serve a real purpose. The competent authority must know the exact nature of the project, the number of flats sold, the area claimed, and the rights created in favour of purchasers. Documents such as agreements for sale, sanctioned plans and architect's certificates help the authority verify whether the area claimed corresponds with what was actually approved and constructed. These documents also protect third parties who may be affected by the order.

41. At the same time, the Court must distinguish between defects that go to the root of the matter and defects that are curable. The object of MOFA is to ensure transfer of ownership to flat purchasers. If every technical lapse is treated as fatal, the very purpose of deemed conveyance would be defeated. Promoters could easily avoid conveyance by pointing to minor omissions or

procedural irregularities. It is now well settled that procedural law is meant to advance justice, not to obstruct it. The real question is whether the defect has caused prejudice or whether it can be cured without affecting fairness.

42. The architect's certificate assumes special importance in this context. The certificate identifies the area of construction, open spaces, common amenities and the proportionate share claimed by the society. The competent authority relies on such certification because measurement and demarcation involve technical expertise beyond ordinary legal assessment. In the present case, the respondents argue that the certificate was produced late and therefore should not be considered. It is true that ideally such a certificate should have been filed with the application itself.

43. However, the delay in producing the certificate by itself does not make the claim invalid. The Court must see whether the document clarifies the record and assists in deciding the real controversy. Here, the architect's certificate provides basis for identifying the area claimed by the petitioners. The respondents have had the opportunity to challenge the contents of the certificate. They have not shown that the certificate is factually incorrect. Their objection is mainly procedural. In such circumstances, rejecting the claim solely because the certificate came at a later stage would amount to sacrificing substance for form.

44. Another important aspect is that measurement disputes are common in large layout projects. The Government Resolution

dated 22 June 2018 itself recognises that where difficulties arise, measurement through an architect based on approved plans is an accepted method. This shows that the law contemplates use of Architect Certificate to resolve such issues. Therefore, once an architect's certificate is placed on record and subjected to scrutiny, the authority must examine its merits instead of rejecting it merely on the ground of delay.

45. The Court must also consider the conduct of the parties. The promoter has retained ownership despite sale of flats and formation of societies. The purpose of deemed conveyance is to remedy such situations. If the promoter is allowed to defeat the proceedings by raising only procedural objections without disproving substantive entitlement, the statutory protection would become illusory. At the same time, the petitioners cannot be allowed to bypass procedure entirely. The correct balance lies in permitting cure of defects while ensuring fairness.

46. The architect's certificate, therefore, must be considered as a relevant piece of evidence. It does not automatically determine the issue, but it provides assistance in determining the extent of land and common areas. The authority must read it along with sanctioned plans, approvals and other documentary evidence. If any discrepancy is found, the authority is free to examine it and seek clarification. But outright rejection on procedural grounds alone would not be justified.

On non joinder of certain owners and purchasers.

47. The respondents have argued that the deemed conveyance

application suffers from a serious defect because certain owners of subdivided plots and some commercial unit purchasers were not made parties to the proceedings. According to them, any order granting conveyance would affect the rights of such persons and therefore the application itself ought to fail. This objection requires careful examination because the law does insist that persons whose rights may be affected should normally be given an opportunity of hearing.

48. The basic principle behind joinder of parties is fairness. No order should be passed behind the back of a person whose legal rights are directly involved. In deemed conveyance proceedings, the competent authority examines the entitlement of a society to obtain transfer of land and common areas from the promoter. If some third parties have independent and recognised rights in the same property, their presence becomes relevant so that the authority can understand the complete picture before passing an order. Therefore, the objection raised by the respondents cannot be brushed aside as insignificant.

49. However, the law also makes a clear distinction between necessary parties and proper parties. A necessary party is one without whom no effective order can be passed. A proper party is one whose presence may help the authority but whose absence does not make the proceedings invalid. This distinction becomes important in large housing projects where numerous purchasers and different categories of occupants may exist. If every possible person is treated as a necessary party, deemed conveyance proceedings would never reach finality. The process would become

unworkable, which is contrary to the object of MOFA.

50. In the present case, the petitioners seek conveyance in respect of land and common areas attached to the buildings represented by their societies. The core dispute is between the promoter and the flat purchasers regarding transfer of title. The promoter, who is the person legally bound to execute conveyance, is already before the authority. The main issue therefore can be decided even in the absence of certain other purchasers, provided their independent rights, if any, are not extinguished without hearing.

51. It is also necessary to see whether the alleged non joined parties have rights that are clearly established and directly conflicting with the claim of the petitioners. The respondents have generally stated that owners of subdivided plots and commercial unit purchasers may be affected. But a broad assertion is not enough. The authority must examine whether those persons have separate conveyances, distinct title documents, or legally demarcated interests that would be directly affected by the proposed conveyance. If their rights are already carved out or protected by sanctioned plans, then granting conveyance to the petitioners in respect of their proportionate share does not automatically prejudice those persons.

52. Another important aspect is the nature of deemed conveyance itself. The process does not create new rights. It only transfers to the society the rights which the promoter was already bound to convey under law and under agreements with flat

purchasers. Therefore, if any third party has a valid independent title, that title does not vanish merely because deemed conveyance is granted. Such persons remain free to assert their rights before an appropriate forum including civil court.

53. The respondents' argument, if accepted in absolute terms, would create an impossible situation. In large township projects, there may be hundreds of purchasers, future allottees, or persons claiming some interest. Making all of them mandatory parties would paralyse the statutory remedy under Section 11. The law does not intend such a result. The purpose of deemed conveyance is to provide a effective mechanism for transfer of ownership, not to create procedural obstacles.

54. Therefore, the correct legal position is that non joinder of certain owners or purchasers does not automatically invalidate the deemed conveyance proceedings. The authority must assess whether their rights are directly and substantially affected. Where required, notices can be issued and objections considered. But the substantive right of the society to seek conveyance cannot be defeated solely on this ground.

On concurrent proceedings.

55. Another objection raised by the respondents relates to the pendency of the civil suit filed by the petitioners. It is argued that since the petitioners had already approached the Civil Court, they should not have simultaneously pursued the remedy of deemed conveyance before the competent authority. According to the respondents, both proceedings relate to the same subject and

therefore the present claim should not be entertained. It is necessary to look at what exactly was claimed in the civil suit. Prayer clause 8(e) in the suit merely sought a declaration that the promoter is legally bound to execute conveyance in favour of the society. The suit did not ask the Civil Court to issue a mandatory direction compelling the promoter to immediately execute the conveyance. A declaration only clarifies the legal position. A mandatory direction actually compels a party to perform an act. Since the suit did not seek a mandatory direction for execution of conveyance, the relief claimed there is not identical to the statutory remedy of deemed conveyance under MOFA.

56. The plaintiffs in the civil suit, namely plaintiffs Nos.1 to 3 and 5, have filed a pursis before the Civil Court stating that they are not pressing prayer clause 8(e). A pursis is a formal statement made before the Court indicating that a particular relief is being given up or not pursued further. By filing such a pursis, the plaintiffs have chosen not to pursue the declaratory relief in the suit relating to conveyance.

57. For these reasons, the existence of the civil suit does not create any legal bar to the present proceedings. The competent authority and this Court are fully justified in examining the claim for deemed conveyance on its own merits. The objection raised by the respondents on this ground must therefore be rejected.

On quantum of area and common areas.

58. The main dispute between the parties ultimately comes down to the extent of land that should be conveyed and the

treatment of common areas. The petitioners claim entitlement to a larger area, including open spaces and the club house, while the respondents argue that only the land directly beneath the buildings or limited plinth area should be conveyed. This issue cannot be decided merely by comparing figures. It requires understanding the legal nature of rights created under MOFA and the structure of the sanctioned layout.

59. Under MOFA, a flat purchaser does not buy only a flat. Along with the flat comes a proportionate and undivided interest in the land and in common facilities necessary for enjoyment of the property. Roads, internal open spaces, recreation areas, amenities and structures like a club house are not independent assets retained permanently by the promoter. They form part of the overall scheme sold to purchasers. Therefore, while determining the quantum of area to be conveyed, the authority must look beyond the plinth area of buildings and consider the entire layout as approved and represented to purchasers.

60. The respondents' argument that only the area beneath the buildings should be conveyed cannot be accepted in such a narrow form. If conveyance is restricted only to plinth area, flat purchasers would be left without legal rights in access roads, open spaces or amenities that were part of the project promise. Such an interpretation would defeat the very purpose of collective ownership under MOFA. The law intends that societies receive an undivided share in the land necessary for proper enjoyment and maintenance of the project.

61. At the same time, the Court must ensure that the claim made by the petitioners corresponds with sanctioned plans and approved construction. The quantum of area must be supported by technical material such as sanctioned layouts, approved plans and architect's certification. In the present case, the petitioners rely on an architect's certificate identifying an area of 57,063 square metres inclusive of common spaces and the club house. This certificate provides a basis for measurement and links the claim to the approved layout.

62. The respondents contend that this figure is excessive because the built up area of the buildings is much smaller. This argument overlooks the concept of undivided share. The land conveyed is not calculated merely by measuring the land below buildings. Common areas, circulation spaces, amenities and open spaces form part of the overall land attached to the project. Purchasers contribute consideration not only for their individual flats but also for these shared facilities. Therefore, the comparison between plinth area and total claimed area does not by itself is not unreasonable.

63. Another important aspect is the role of the sanctioned plan. The sanctioned plan is the most reliable document for determining what constitutes common areas and what remains available for future development. If an area is shown as road, open space, amenity area or club house in the approved plan, it acquires the character of common area. The promoter cannot later argue that such spaces are private or reserved for future exclusive development unless the sanctioned plan itself clearly provides so.

The rights of purchasers arise from the approved layout as represented at the time of sale.

64. The dispute also touches upon future development. The respondents say certain open spaces are needed for proposed development and therefore cannot be conveyed now. This argument must be examined with care. Future development is not prohibited, but it cannot come at the cost of existing rights. Areas earmarked as common in the sanctioned plan must remain common. Future construction, if lawfully permissible, can proceed only on portions specifically reserved for that purpose. The promoter cannot alter common areas under the pretext of future plans after flats have already been sold.

65. The concept of proportionate undivided share provides a balance. Each society receives rights in common areas in proportion to its construction and occupancy. This approach ensures that existing societies obtain ownership and control over amenities necessary for their use while leaving scope for lawful development on clearly identified residual land, if any. The Government Resolution dated 22 June 2018 also follows this principle by directing that open spaces, roads and common facilities should be included while granting deemed conveyance of completed buildings.

66. The Court must also bear in mind the practical consequences. If common areas are excluded from conveyance, societies will face constant uncertainty regarding maintenance, access and use of amenities. The promoter would continue to

control these spaces, leading to disputes and imbalance in rights. MOFA was enacted precisely to prevent such situations. Conveyance must therefore include those areas which are integral to the functioning of the residential scheme.

67. In the present case, the material on record shows that the project was conceived as a composite layout with shared amenities. The club house and open spaces were part of the common facilities. The petitioners' claim for inclusion of these areas is therefore consistent with the statutory scheme and the sanctioned plan. The respondents have not produced any approved plan conclusively showing that these areas were excluded from common use or reserved exclusively for future independent development.

68. For these reasons, the petition deserves to be allowed. The impugned order cannot stand. The petitioners are entitled to issuance of certificate under Section 11(4) of MOFA.

69. Accordingly, the following order is passed:

- a) The impugned order dated 22 February 2024 is quashed and set aside.
- b) Respondent No.4 is directed to issue a certificate under Section 11(4) of the Maharashtra Ownership Flats Act, 1963 in favour of the petitioners in respect of area admeasuring 57,063 square metres inclusive of common spaces and the club house, in accordance with the sanctioned plan.

c) It is clarified that all common areas shown in the sanctioned plan including roads, internal open spaces, amenities and the club house shall remain common areas for the benefit of all flat purchasers and societies.

d) Respondent No.4 shall complete issuance of the certificate within four weeks from the date of receipt of this order. Necessary consequential steps for execution and registration of deemed conveyance shall follow in accordance with law.

70. The writ petition is allowed in the above terms. No order as to costs.

(AMIT BORKAR, J.)