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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8600 OF 2025

Harshada A Villa Coop. Housing
Society Limited, through it's
Chairman / Secretary ... Petitioner

V/s.

ATUL
GANESH
KULKARNI

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The State of Maharashtra & Others ... Respondents

Mr. Milind Prabhune for the petitioner.

Ms. Snehal S. Jadhav, AGP for respondent Nos.1 and 2-
State.

Mr. Viral Rathod with Mr. Vishwatej Jadhav and Mr.
Mangesh Nalavade for respondent Nos.3 to 5.

CORAM : AMIT BORKAR, J.

DATED : MARCH 24, 2026

P.C.:

1. **Rule.** Rule is made returnable forthwith.
2. The present writ petition arises from a challenge to an order passed by the Competent Authority under Section 11(3) of the MOFA. By that order, the Authority has issued what is called a corrigendum. But this corrigendum increases the area which was already granted earlier. In other words, what was once decided and fixed has now been enlarged by passing another order. This is the core issue which the petitioner is questioning.

3. According to the petitioner, once an area is granted after due consideration, it cannot be changed later in this manner, unless the law clearly allows such change. Therefore, the dispute is about whether the Authority has power to alter its own final decision in a substantial way.

4. The background shows that there was earlier litigation between the parties. In that earlier round, respondent Nos.3 to 5 had applied under Section 11(3) of the MOFA. Their application was considered and allowed by respondent No.2 by order dated 11 April 2023. By that order, a specific area of 3397.80 sq. mtrs. constructed building area was granted out of the total land admeasuring 5,460 sq. mtrs. This was a final determination after considering the material placed on record. Once such determination is made, it normally attains finality, unless it is set aside in appeal or modified by a competent court. This earlier order therefore becomes very important, because it defines the rights of the parties at that stage.

5. After obtaining this order, respondent Nos.3 to 5 again approached the Competent Authority by filing a second application on 17 July 2023. In this second application, they asked for more area than what was already granted earlier. The Competent Authority entertained this second request and by order dated 18 January 2024 granted a much larger area of 5,014.54 sq. mtrs. by way of unilateral deemed conveyance. This has the effect of substantially increasing the benefit earlier granted. The petitioner, who is an adjoining society, has challenged this later order. The main ground raised is that such increase is not a simple correction

but a fresh grant. The petitioner relies on the decision in *Kashish Park Reality Pvt. Ltd. v. State of Maharashtra*, (2021) 3 Mah LJ 778, where it is held that the Competent Authority has no power to review its own order in such manner. Therefore, according to the petitioner, the impugned order is without authority of law.

6. On the other hand, learned Advocate for respondent Nos.3 to 5 has supported the impugned order. It is argued that the corrigendum is only procedural in nature. According to him, it merely corrects clerical or arithmetical mistakes. It is submitted that such corrections are always permitted, even if there is no express power of review. He further submits that during pendency of this writ petition, the petitioner has already filed a Regular Civil Suit No.16 of 2025. In that suit, the petitioner has challenged the conveyance executed on 16 January 2025, which is based on the impugned order. Therefore, it is argued that the matter is already before a civil court. Since disputed questions of fact are involved, this Court should not exercise its writ jurisdiction. The petitioner, having chosen civil remedy, should pursue that remedy fully.

7. After hearing both sides, I find that the main issue which requires determination is very clear. It is whether the Competent Authority has power to issue a corrigendum which effectively increases the area already granted earlier. This goes to the root of the jurisdiction of the Authority. If such power does not exist, then the entire impugned order becomes invalid. Therefore, the case turns on the nature and extent of power available to the Authority under the statute.

8. In my view, this issue is directly covered by the judgment in *Kashish Park Reality Private Limited*. In that case, this Court has examined similar situation and after considering earlier decisions, it has clearly held that the Competent Authority does not have power of substantive review. It means that the Authority cannot reopen its own concluded decision and grant additional or different relief. The Court has also clarified that issuing a corrigendum which results in grant of excess area is not a procedural correction. It is in substance a fresh decision. Such action is beyond jurisdiction. Applying this principle, it becomes clear that the impugned order cannot be treated as an arithmetical correction. It is an enlargement of rights, which is not permitted in absence of express power.

9. The argument of respondent Nos.3 to 5 that the corrigendum is only for correcting clerical or arithmetical error does not appear acceptable. When I look at the earlier order dated 11 April 2023, I do not find any finding or discussion which shows that respondent Nos.3 to 5 were entitled to 5,014.54 sq. mtrs. The earlier order specifically grants only 3397.80 sq. mtrs. If there was already a finding granting larger area, but due to mistake it was not reflected in the operative part, then it could be treated as clerical error. But here, there is no such prior adjudication. The second application has led to a fresh consideration and a fresh grant. This cannot be called arithmetical correction. It is in effect a second round of adjudication on the same issue, which is not permissible.

10. For these reasons, I am of the opinion that the impugned order dated 18 January 2024 granting excess area to respondent

Nos.3 to 5 is without jurisdiction and cannot be sustained in law. It travels beyond the powers conferred on the Competent Authority and therefore deserves to be set aside.

11. Coming to the objection regarding the civil suit, I have examined the plaint filed by the petitioner. The relief claimed in the suit is mainly for declaration regarding the conveyance executed under Section 11(5) of the MOFA. Such relief can be granted only by a civil court, as it involves cancellation or setting aside of a registered document. This right flows from Section 31 of the Specific Relief Act, 1963. Therefore, the filing of the suit is for a different purpose. It is to challenge the effect of the conveyance, not the legality of the order under Section 11(3).

12. On careful reading of the plaint, I do not find any specific challenge to the order passed under Section 11(3), which is the subject matter of the present writ petition. The reference to the writ petition in the plaint is only for background facts. It does not form the basis of cause of action in the suit. The suit is confined to the validity of the conveyance and the order under Section 11(5). Therefore, both proceedings operate in different fields. The writ petition questions the jurisdiction of the Authority in granting excess area, while the suit deals with the validity of the document executed thereafter. Hence, the objection raised by respondent Nos.3 to 5 on this ground does not hold good.

13. In my opinion, therefore, the petitioner deserves to succeed in the present writ petition.

14. Accordingly, rule is made absolute in terms of prayer clauses (b) and (c).

15. There shall be no order as to costs.

(AMIT BORKAR, J.)