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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13274 OF 2025

Swastik Chambers Owners' Cooperative

Society Limited, a cooperative society
duly registered under the provisions of
the Maharashtra Coop. Societies Act,
1960 bearing Registration No.BOM/
W-M/GNL/O/913-1993 dtd. 26.7.1993,
registered office at 316, 3rd Floor,
Swastik Chambers, C.S.T. Road,
Chembur, Mumbai 400 071

ATUL
GANESH
KULKARNI

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... Petitioner

Vs.

- 1. The Competent Authority & District
Deputy Registrar, Coop. Societies (II),**
Eastern Suburban, Office at Room
No.201, 2nd Floor, Konkan Bhavan,
CBD Belapur, Navi Mumbai 400 614
- 2. The Corporate Park Business Premises
Coop. Society Limited**, a cooperative
society duly registered under the
provisions of the Maharashtra Coop.
Societies Act, 1960 bearing Registration
No.MUM/DWM/M/GML/O/11406/
2016-17, dated 27.11.2016, registered
Office at "Corporate Park", V.N. Purav
Marg, Sion-Trombay Road, Chembur,
Mumbai 400 071.
- 3. Shree Corporate Park-II Premises Coop.
Society Limited**, a cooperative society
registered under the provisions of

the Maharashtra Coop. Societies Act, 1960 bearing Registration No.MUM/WM/GNL/O/11480/2016-17, office at Shree Corporate Park-II, VN. Purav Marg, Sion-Trombay Road, Chembur, Mumbai – 400 071

4. **Reliance Consultancy Services Pvt. Ltd.**, a company registered under Companies Act, office at Sion-Trombay Road, Chembur, Mumbai 400 071.
5. **Reliance Industries Limited**, a company registered under Companies Act, office at Sion-Trombay Road, Chembur, Mumbai 400 071
6. **Apte Amalgamations Ltd.**, a company registered under Companies Act, address at 24, B, Woodland, Peddar Road, Mumbai 400 026
7. **Loonkar Builders**, a partnership firm, through its partner Ramesh Shah, address at Sidhachal Darshan, Shop No.1, Seth Motisha Road, Byculla, Mumbai 400 017
8. **Summer-Villa Investments**, partnership firm, address at 201, Commerce House, 104, Nagindas Master Road, Fort, Mumbai 400 023
9. **The Sub-Registrar of Assurances (Class-II)**, Kurla (V), office at Ground Floor, New Administrative Building, R.C. Chemburkar Marg, Chembur, Mumbai – 400 071.
- 10 **The Executive Engineer**, Building Proposal, Eastern Suburban, Mumbai

Municipal Corporation, Office at
Vikhroli (East), Mumbai 400 083

11. Ambedkar Bhavan, Swastik Mill
Compound, Address at Sion-Trombay
Road, Chembur, Mumbai 400 071

12. Dr. Prashant Sonavane (Dr. P.S. Sonavane)
holding post of District Deputy
Registrar, Cooperative II, Eastern
Suburbs, Mumbai & Competent
Authority u/s. 5A of MOFA, 1963

... Respondents

Mr. Girish Godbole, Senior Advocate with Mr. N.N.
Bhadrashete, i/by Ms. Priyanka Bhadrashete for the
petitioner.

Mr. O.A. Chandurkar, Additional G.P. with Mr. Hamid
Mulla, AGP for respondent No.1-State.

Mr. Harish Pawar with Ms. Sonal Bhor for respondent
No.2.

Mr. D.R. Kawale for respondent No.10-MCGM.

Mr. Amrut Joshi i/by Mr. Santosh More for respondent
No.12.

CORAM : AMIT BORKAR, J.

RESERVED ON : MARCH 23, 2026.

PRONOUNCED ON : APRIL 1, 2026

JUDGMENT:

1. The present writ petition is filed under Articles 226 and 227 of the Constitution of India, whereby the petitioner seeks to challenge the order dated 28 February 2020 passed by respondent No.1 granting deemed conveyance in favour of respondent No.2,

as also the conveyance deed dated 27 June 2022 executed pursuant thereto.

2. The facts giving rise to the present petition, as set out by the petitioner, may be stated in brief. Respondent No.6 was the owner of a larger parcel of land admeasuring approximately 34,454 square meters. By an agreement dated 19 September 1983, respondent No.6 granted development rights in favour of respondent No.7 in respect of a portion of land admeasuring 5536.65 square meters. Further, by a decree dated 23 December 1983 passed in Suit No.2394 of 1983, respondent No.6 conferred development rights to utilize 1,60,000 square feet FSI forming part of the said larger property. Pursuant thereto, respondent No.7 constructed a building by utilizing the said FSI, disposed of the units therein, and the petitioner society came to be registered on 26 July 1983. It is further the case of the petitioner that on 21 November 2016, respondent No.6 granted development rights in favour of respondent No.8 to utilize 1,27,000 square feet FSI from the larger plot. Respondent No.8 thereafter undertook construction of buildings, sold units therein, and respondent No.2 society came to be registered. Additionally, by utilizing TDR FSI admeasuring 5853 square meters, a building known as “Shree Corporate Park” was constructed, in respect of which respondent No.3 society was registered during the year 2016–2017. The petitioner asserts that several other structures also exist on the said larger property, belonging to respondent Nos.4, 5, and 11.

3. Respondent No.2 initially filed Application No. DC/1004342/2018 on 7 March 2018 seeking deemed conveyance.

The petitioner was not impleaded as a party to the said proceedings. The record indicates that the application was heard and was closed for orders on 8 August 2018. Subsequently, respondent No.2 withdrew the said application on 3 October 2018. Thereafter, on 14 November 2018, respondent No.2 preferred a fresh application for deemed conveyance bearing No. DC/1005457/2018, claiming entitlement over an area admeasuring 17,449.75 square meters. Respondent No.1 issued notice dated 30 November 2018 to the concerned parties; however, no notice was served upon the petitioner. The Roznama reflects that the matter was heard on 14 December 2018 and 24 December 2018, and the proceedings were closed for orders on 27 December 2018. It is further stated that respondent No.1 passed an order dated 7 February 2019 granting deemed conveyance in respect of an area admeasuring 9,274.23 square meters. The petitioner contends that upon obtaining copies of the proceedings under the Right to Information Act, it was revealed that, without any fresh application or proceedings, respondent No.1 proceeded to pass another order dated 28 February 2020, thereby granting conveyance in respect of 17,449.75 square meters. The record further indicates that, upon submission of the conveyance deed by respondent No.2, respondent No.1 caused the same to be registered on 27 June 2022 before respondent No.9. It is alleged that respondent No.9 registered the said conveyance deed without issuance of summons or notice. The petitioner states that it received the relevant documents under the Right to Information Act on 12 March 2025, pursuant to which the present writ petition

has been filed.

4. The petitioner has impleaded respondent No.12 in his individual capacity, alleging abuse of official position and deliberate manipulation of the record. It is contended that respondent No.12 passed the impugned order dated 28 February 2020 without even adverting to the earlier order dated 7 February 2019. According to the petitioner, the impugned order stands vitiated by legal malice as well as personal mala fides attributable to respondent No.12. It is further alleged that the impugned action amounts to a clear case of fraud and manipulation of official record by a statutory authority, who is an officer of the State. On this premise, the petitioner seeks quashing of the impugned order and further prays for issuance of appropriate directions to the Secretary, Ministry of Cooperation, Government of Maharashtra, to initiate departmental proceedings against respondent No.12, in line with the principles enunciated in *Harish Arora vs. Deputy Registrar of Cooperative Societies and others*, 2025 SCC OnLine Bombay 2833, following the law laid down by the Supreme Court in *Union of India vs. K.K. Dhawan*, (1993) 2 SCC 256.

5. Mr. Godbole, learned Senior Advocate appearing on behalf of the petitioner, invited attention to the impugned order and submitted that, despite respondent No.12 having earlier granted deemed conveyance in respect of an area admeasuring 9,274.23 square meters, he subsequently entertained another architect's certificate certifying the entitlement of respondent No.2 society to an area admeasuring 18,784.75 square meters. It was contended that the order dated 7 February 2019 had finally concluded the

proceedings under Section 11 of the Maharashtra Ownership Flats Act, 1963. Once such proceedings stood concluded, respondent No.12 had no jurisdiction to consider any fresh architect's certificate or to pass a further order of deemed conveyance in continuation of the same proceedings. It was further submitted that even after the production of the architect's certificate dated 26 August 2019, no notice was served upon the petitioner, and yet respondent No.12 proceeded to issue a certificate in favour of respondent No.2. Learned Senior Advocate further invited attention to the recitals contained in the orders dated 7 February 2019 and 28 February 2020. It was submitted that a substantial portion of the factual narration, the submissions of the parties, as well as the observations and conclusions, are identical in both the orders. However, in the latter order, while recording the observations and conclusions, reference is made to the architect's certificate dated 19 July 2019 issued by Aniket Mathavkar and the architect's certificate dated 26 August 2019 issued by Vaishali Bhavsar, and on that basis, the area admeasuring 17,449.75 square meters came to be granted in favour of respondent No.2.

6. It was further submitted that the impugned order is vitiated by malice in law. According to the petitioner, respondent No.12 has committed a blatant fraud on the statute. The case, it is urged, is a clear instance of manipulation of official record by a statutory authority who has abused his position. It was submitted that notwithstanding the fact that respondent No.12 has superannuated, appropriate penal action is still warranted. A direction is therefore sought against the State Government to

examine the material on record and to take a decision, within a stipulated period, as to whether a case is made out for initiation of departmental proceedings under Rule 27(2)(b) of the Maharashtra Civil Services (Pension) Rules, 1982. In support of the aforesaid submissions, reliance was placed on the judgment of this Court in *Harish Arora vs. Deputy Registrar of Cooperative Societies and others*, 2025 SCC OnLine Bombay 2833, as well as on the judgment of the Supreme Court in *Union of India vs. K.K. Dhawan*, (1993) 2 SCC 256.

7. Learned Senior Advocate further relied upon the judgment of the Division Bench of this Court in *Jagshi Jethabhai Chheda and Another vs. District Deputy Registrar of Cooperative Societies, Mumbai and Others* in Writ Petition No.12627 of 2024, decided on 3 December 2024, to contend that an order passed under Section 11(5) of the MOFA without issuance of notice to the concerned society is unsustainable in law.

8. Per contra, Mr. Joshi, learned Advocate appearing on behalf of respondent No.12, invited attention to the affidavit-in-reply filed by respondent No.12, wherein an unconditional apology has been tendered for the inadvertent error committed. It was submitted that the petitioner never appeared before the authority despite service of notice. According to respondent No.12, notice dated 30 November 2018 was issued to the petitioner by speed post, and the matter was listed for hearing on 24 December 2018 and 27 December 2018, and thereafter closed for orders on 27 December 2018. It was further submitted that after the order dated 7 February 2019 granting deemed conveyance in respect of 9,274.23

square meters, respondent No.2 submitted a fresh architect's certificate, and upon consideration thereof, the impugned order came to be passed in accordance with the entitlement of respondent No.2. It was contended that non-reference to the earlier order dated 7 February 2019 in the impugned order dated 28 February 2020 was purely inadvertent, for which an apology is tendered.

9. Mr. Pawar, learned Advocate appearing on behalf of respondent No.2, supported the impugned order and submitted that the same is in accordance with law, inasmuch as the entitlement of respondent No.2 has been correctly determined on the basis of the subsequent architect's certificate.

10. Mr. Chandurkar, learned Additional Government Pleader, placed on record the original file and pointed out that the roznama of the proceedings has been maintained at two different places. It was submitted that the petitioner failed to remain present before respondent No.12 despite issuance of notice. It was therefore submitted that appropriate orders be passed in accordance with law.

REASONS AND ANALYSIS:

11. I have considered the rival submissions and I have also gone through the material placed on record. The real issue is whether, after passing the order dated 7 February 2019 in the deemed conveyance proceedings, respondent No.12 could again enter into the very same matter, consider a further architect's certificate, and pass another order dated 28 February 2020 granting a larger area

in favour of respondent No.2. In my view, once the matter was finally decided on 7 February 2019, the authority had no power to reopen it in the same proceedings and alter the result in a substantial manner, unless the law specifically permitted it.

12. The submission of Mr. Godbole, learned Senior Advocate for the petitioner, goes to the root of the matter. He has pointed out that the first order dated 7 February 2019 had already granted deemed conveyance in respect of 9,274.23 square meters. This submission cannot be brushed aside lightly. The comparison between the two orders is also important. From the material placed before the Court, it appears that the recitals in the order dated 7 February 2019 and the order dated 28 February 2020 are largely the same. The factual background, the submissions, and even the reasoning are substantially similar. Yet, in the later order, a different architect's certificate dated 26 August 2019 has been relied upon and the area has been enlarged. This shows that the later order was not an independent order passed in a fresh and lawful proceeding. It is more in the nature of modified version of the earlier order. Such a course creates serious doubt about the propriety of the exercise. A statutory authority cannot keep modifying the judgment of a concluded proceeding by merely changing the supporting certificate.

13. Mr. Joshi, learned Advocate for respondent No.12, has stated that respondent No.12 has tendered an unconditional apology for the inadvertent mistake. That submission cannot cure the legal defect. An apology may be relevant on the question of personal conduct, but it does not validate an order that is passed without

jurisdiction or without following the required procedure. If the first order had already finally disposed of the proceedings, then the later order cannot survive only because the officer accepts that he made a mistake. Such exercise of power is still an exercise without authority if the law did not permit it in the first place.

14. The explanation that the petitioner never remained present also does not answer the main objection. Even if the petitioner had remained absent at some stages, the authority was still bound to follow the law. Absence of a party does not give power to a statutory officer to pass two different final judgments in the same proceeding, especially when the second order substantially changes the extent of conveyance. The larger question is about the very competence of respondent No.12 to pass the second judgment after the first judgment had already concluded the matter. On that point, the explanation offered by the respondents does not carry the matter any further.

15. The submission of Mr. Pawar, learned Advocate for respondent No.2, that the later architect's certificate reflects the correct entitlement of respondent No.2, also cannot be accepted in the manner suggested. Even if the later certificate showed a different entitlement, the authority still had to act within the limits of law. The correctness of the entitlement cannot by itself confer jurisdiction. Therefore, the argument that the later certificate justified the later order is not enough. The real question is not whether respondent No.2 believed it was entitled to a larger area. The question is whether the authority could legally reopen and enlarge the earlier grant without a fresh and lawful proceeding.

The answer must be in the negative.

16. The reliance placed on the judgment in *Jagshi Jethabhai Chheda* also supports the petitioner on the issue of notice. Where the statute requires notice to the concerned society or affected party, the authority must show strict compliance. A proceeding that results in deemed conveyance directly affects title and possession. It is a necessary part of fair decision-making. The Court cannot close its eyes to such a defect merely because the other side says the petitioner did not appear.

17. At this stage, it becomes necessary to deal with the question whether the conduct attributed to respondent No.12 is of such a nature that it requires further action by the Government under the Maharashtra Civil Services (Pension) Rules, 1982. The issue is whether the material on record is serious enough to require the Government to examine it and take a proper decision. In this context, the law laid down by the Supreme Court in *Union of India v. K.K. Dhawan* assumes importance. The Supreme Court has made it clear that even when an officer exercises quasi judicial powers, he does not get full protection from disciplinary action. The argument that once an order is quasi judicial, it can only be challenged in appeal and no action can be taken against the officer, has been clearly rejected. The Court has explained that what is examined in disciplinary proceedings is not the correctness of the order. It is the conduct of the officer while passing that order. This distinction is very important and cannot be ignored. If an officer passes an order honestly, after applying mind, and even if that order is wrong, then ordinarily no disciplinary action is required.

But if the manner in which the order is passed shows something more, such as clear disregard of law, lack of good faith, or conduct which raises doubt about integrity, then the matter does not remain a simple legal error. It becomes an issue of conduct. In such a case, the Government is not helpless. It can examine the conduct and take action.

18. Applying these principles to the present case, what is seen is not merely a wrong order. From the original file placed before the Court, it is seen that the roznama of the proceedings has been maintained at two different places. The roznama is the basic record of what happened in the proceedings on each date. It shows who appeared, what was argued, and what steps were taken. When such an important record is found in two separate sets, it creates suspicion. It becomes difficult to understand which record is correct. In a matter involving transfer of property rights, such confusion in official record naturally gives rise to doubt about the manner in which the proceedings were conducted.

19. The situation becomes more serious when this aspect is seen along with the manner in which the second order has been passed. The second judgment, dated 28 February 2020, contains in many places the very same sentences, word for word, as found in the earlier order dated 7 February 2019. The narration of facts, the submissions of parties, and even the reasoning appear to have been reproduced almost entirely. This gives a clear impression that the second order is not an independently written decision after fresh application of mind, but is largely a repetition of the earlier one with certain changes in the operative part.

20. What is more important is that, despite such reproduction, the second order does not even mention that an earlier order had already been passed and that the proceedings had come to an end. There is no discussion as to why the earlier order was insufficient, or under what provision the matter was being reconsidered. There is also no indication that fresh proceedings were formally initiated. The absence of such reference strikes at the root of the decision making process. The second order proceeds in a manner as if the authority was deciding the matter for the first time. It reads like an original order passed in fresh proceedings, without any past history. When a matter has already been decided, any further action must clearly show the basis for reconsidering it. The order must disclose reasons for such course. This manner of passing the second order creates a serious doubt. It gives an impression that the earlier order has been practically set aside. The authority has granted a larger conveyance by reusing the earlier reasoning and inserting reliance on new certificates, without restarting the process in a lawful manner.

21. When these factors are taken together, namely the existence of two separate roznama records, the verbatim reproduction of the earlier order, and the complete absence of reference to the earlier final decision, the overall picture ceates doubts about the conduct of officer.

22. The explanation given by respondent No.12 is that it was an inadvertent mistake. An apology has also been tendered. This Court takes note of the same. However, merely calling it a mistake does not close the matter. The nature of the act must be seen.

Passing two final orders in the same proceedings is an act which shows lack of due care in exercise of statutory power.

23. Applying above principles to the present case, it is evident that respondent No.12 acted in a manner which at least shows recklessness in the discharge of statutory duty. Passing a second substantive order after final disposal of proceedings affects valuable property rights. The manner of action clearly falls within the category where an officer has failed to observe the prescribed legal limits while exercising statutory power.

24. However, there is one important limitation which cannot be ignored. Under Rule 27(2)(b)(i) of the Maharashtra Civil Services (Pension) Rules, 1982, departmental proceedings against a retired officer are required to be initiated within a prescribed period. In the present case, it is not in dispute that the period of four years from the date of the alleged act has already expired. Therefore, even if this Court forms an opinion that the conduct of respondent No.12 deserves departmental scrutiny, such proceedings cannot now be directed in view of the statutory bar. The Court cannot issue a direction which the law itself does not permit to be carried out.

25. This, however, does not mean that the conduct should go without any consequence. A Court exercising jurisdiction under Article 226 is not powerless in such a situation. When a public officer has acted in a manner which results in unlawful orders and causes prejudice to a party, the Court can mould the relief to ensure that some accountability is fixed. The petitioner has been

compelled to approach this Court and undergo litigation because of an order which has been found to be without authority of law. In these circumstances, directing payment of costs becomes appropriate. Costs serve as a reminder that statutory powers must be exercised with responsibility. When an officer, even by negligence or carelessness, passes orders beyond his jurisdiction and causes hardship to parties, he cannot be completely insulated from the consequences.

26. Considering the nature of the lapse, the position held by respondent No.12, and the fact that departmental proceedings are now barred by limitation, this Court is of the view that ends of justice would be met by directing respondent No.12 to personally pay costs quantified at Rs.50,000/- to the petitioner. This amount reflects disapproval of the conduct, while also taking into account that the officer has since retired.

27. In view of the aforesaid discussion and reasons recorded hereinabove, I proceed to pass the following order:

- (a) The writ petition is allowed;
- (b) The impugned order dated 28 February 2020 passed by respondent No.1 granting deemed conveyance in favour of respondent No.2 is quashed and set aside;
- (c) The conveyance deed dated 27 June 2022 executed pursuant to the said impugned order is also quashed and set aside;

- (d) It is declared that the order dated 7 February 2019 shall stand unaffected by the present judgment;
- (e) Respondent No.12 shall pay costs of Rs.50,000/- to the petitioner within a period of eight weeks from today;
- (f) In the event of failure to pay the said amount within the stipulated period, the amount shall carry simple interest at the rate of 6 percent per annum from the expiry of eight weeks till realization;
- (g) Rule is made absolute in the aforesaid terms.
- (h) No order as to further costs.

(AMIT BORKAR, J.)