

AGK

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

WRIT PETITION NO.16950 OF 2025

Cecil Kinny alias Cecil Nazareth Coutinho ... Petitioner

V/s.

Sterling Apartment Cooperative Housing
Society Limited & Others ... Respondents

WITH

WRIT PETITION NO.15952 OF 2025

Shakil Mir Ahmed Khan ... Petitioner

V/s.

State of Maharashtra & Others ... Respondents

WITH

WRIT PETITION NO.17855 OF 2025

M/s. K.K. & Company & Others ... Petitioners

V/s.

State of Maharashtra & Others ... Respondents

Mr. Ranjit A. Thorat, Senior Advocate with Mr. Aniesh Jadhav i/by Mr. Shyam K. Singh for the petitioner in WP/16950/2025.

Mr. Hasan Sayed with Mr. R.A. Shaikh for the petitioner in WP/15952/2025.

Mr. Pradeep J. Thorat with Ms. Aditi S. Naikare for the petitioner in WP/17855/2025.

Mr. Dhruv S. Malhotra with Ms. Chandrakala Singh for respondent No.1 in WP/16950/2025, for respondent No.3 in WP/15952/2025 and WP/17855/2025.

Ms. Jessy Paune i/by Payne & Associates for respondent Nos.4a, 4d, 4e, and 4f in WP/15952/2025 & WP/17855/2025 & for respondent nOs.2a, 2d, 2e, and 2f in WP/16950/2025.

Mrs. V.S. Nimbalkar, AGP for respondent No.27-State.

Ms. Tanaya D. Goswami for SRA (through V.C.)

CORAM : AMIT BORKAR, J.

DATED : MARCH 16, 2026

P.C.:

1. Since all these writ petitions arise from the same background and raise an identical question of law and fact, it is convenient to consider them together.
2. For deciding the present controversy, it is not necessary to recount every factual detail placed on record by the parties. The question is whether the matter had already been finally decided in earlier proceedings and therefore cannot be reopened again. For that reason, only those facts which have direct bearing on this legal question are being stated here.
3. The petitioners before this Court claim their rights through the original owners of the property. They have approached this Court as heirs and legal representatives of those owners. Their case is that the property in question belonged to their predecessors and that the rights flowing from such ownership now stand vested in them. Apart from this, the petitioner in Writ Petition No.17855 of 2025 has placed reliance on certain consent terms which were recorded in earlier proceedings. Those consent terms are annexed along with the order dated 4 July 2016. According to that petitioner, the consent terms recognise and protect his interest in the property and therefore he claims entitlement to challenge the present order. Thus the petitioners assert their locus on the basis of succession as well as contractual arrangements which have been placed on record.

4. Certain facts are not disputed between the parties. The record shows that respondent No.1, which is the housing society, had earlier approached the Competent Authority seeking conferment of unilateral deemed conveyance. That application was numbered as Application No.60 of 2015. The Competent Authority considered the said application and by order dated 28 March 2016 rejected it. The reason for rejection was clearly recorded. The authority found that the land bearing CTS Nos.6519 to 6523 had already been acquired by the Slum Rehabilitation Authority. It was also declared as a slum area. In view of such declaration and acquisition, the Competent Authority came to the conclusion that unilateral deemed conveyance in respect of that area could not be granted. Thus the earlier application was adjudicated upon and rejected after considering the relevant circumstances.

5. After the rejection of the earlier application, it appears from the record that respondent No.1 subsequently filed another application before the Competent Authority seeking conferment of deemed conveyance. While filing this subsequent application, the fact that an earlier application had been rejected was not disclosed before the authority. The Competent Authority proceeded to consider the fresh application and ultimately passed the impugned order. It is this order which has given rise to the present batch of writ petitions. The petitioners contend that the subsequent application itself could not have been entertained in view of the earlier rejection and therefore the impugned order suffers from legal error.

6. Learned advocates appearing for the parties have addressed the Court mainly on the question whether the doctrine of res judicata would apply to proceedings under Section 11 of the Maharashtra Ownership Flats Act, 1960. In support of their submissions, reliance has been placed upon the decision of the Supreme Court in *Faime Makers (P) Ltd. v. Cooperative Societies*, reported in (2025) 5 SCC 772. According to the learned advocates, the Supreme Court has recognised that the principle of res judicata applies even to proceedings of this nature. They submitted that when a matter has been finally decided by a competent authority on merits, the same issue cannot be reopened by filing another application. In the present case, according to them, the earlier order dated 28 March 2016 was a decision on merits. Therefore the Competent Authority could not have entertained another application seeking the same relief.

7. On the other hand, the learned advocate appearing for respondent No.1 opposed these submissions. He argued that the principle of res judicata would not apply in the present situation. According to him, the parties involved in the earlier application were different from those in the present proceedings. It was submitted that the original owner had subsequently created third party rights in favour of the petitioner in Writ Petition No.17855 of 2025. Because of this change in the parties, it was contended that the earlier decision cannot operate as a bar. In essence, the submission of respondent No.1 is that the presence of new parties and creation of subsequent rights has altered the nature of the proceedings and therefore the doctrine of res judicata cannot be

invoked.

8. In reply to these arguments, the learned advocate for the petitioners clarified the factual position. He pointed out that the agreement to sell in favour of the petitioner in Writ Petition No.17855 of 2025 was executed even before the earlier application for deemed conveyance was rejected. In other words, the rights of the said petitioner had already come into existence prior to the earlier decision dated 28 March 2016. Therefore, according to him, the legal position is that the transferee steps into the shoes of the transferor. Once such transfer takes place, the transferee inherits both the rights as well as the liabilities of the transferor. On this basis it was submitted that merely adding the petitioner as a party in the later proceedings does not change the legal position. The earlier decision would still bind the parties claiming through the original owners.

9. After carefully examining the rival submissions and the material placed on record, this Court finds substance in the contention raised by the petitioners. The record clearly shows that the earlier application filed by respondent No.1 was rejected by a reasoned order dated 28 March 2016. That order was a decision rendered after examining the status of the land and the legal consequences flowing from its acquisition by the Slum Rehabilitation Authority. The developer and the owners were parties to that proceeding. Thus the matter had been finally adjudicated between the concerned parties.

10. The argument that the principle of res judicata would not apply because certain agreements to sell were executed earlier cannot be accepted. When a person derives title from another, he necessarily takes the property subject to the legal consequences which already exist. The petitioner in Writ Petition No.17855 of 2025 claims through the original owners who were parties to the earlier proceeding. Therefore he cannot assert a position better than that of the persons through whom he claims. Once the issue regarding grant of deemed conveyance had already been decided, the same issue could not have been reopened through another application. The addition of new parties who derive their rights from the original parties does not remove the binding effect of the earlier decision. For these reasons, the impugned order cannot be sustained and it is liable to be quashed and set aside.

11. In view of the above discussion, the rule is made absolute in terms of prayer clauses (a) and (b) in each of the writ petitions.

12. At the same time, it is necessary to clarify that the present decision does not take away any independent remedy which may be available to the petitioner. If the petitioner seeks enforcement of his statutory rights under Section 11 of the Maharashtra Ownership Flats Act, it will remain open for him to institute appropriate civil proceedings in accordance with law. The observations made in this judgment are confined to the issue which has arisen in the present writ petitions.

(AMIT BORKAR, J.)