



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 19417 OF 2024

WITH

INTERIM APPLICATION NO. 1171 OF 2025

M/s. AAKANSHA CONSTRUCTION COMPANY

Through its Proprietor,

Mr. Chandrakant Shripat Tambokar

] PETITIONER  
(Orig.Resp.No.6 & 6A)

: VERSUS :

1. The STATE OF MAHARASHTRA
2. The DISTRICT DEPUTY REGISTRAR,  
CO-OPERATIVE SOCIETY, MUMBAI CITY (4)
3. TORNA CO-OPERATIVE HOUSING SOCIETY LTD.
4. MR. SANTOSH DHARMA MOKAL
5. M/s. NUTAN REALTORS, PARTNERSHIP FIRM  
THROUGH MR. NASRI S. VASANI
6. MR. SACHIN SHANTILAL JOSHI, PARTNER OF  
M/s. NUTAN REALTORS, PARTNERSHIP FIRM
7. ARUN DAMJI GADA,  
PROPRIETOR OF M/s. DIVYA DEVELOPMENT
8. DIVYA PARSHVA TOWERS CO-OPERATIVE HOUSING  
SOCIETY LTD.

] RESPONDENTS  
(Orig. Respondents)

ALONGWITH

WRIT PETITION (St.) NO. 38 OF 2025

WITH

INTERIM APPLICATION NO. 4176 OF 2025

1. M/s. NUTAN REALTORS  
a partnership firm, duly registered  
the Indian Partnership Act.

2. MR. NARSHI S. VASANI

3. MR. SACHIN SHANTILAL JOSHI  
: VERSUS :

] ...PETITIONERS

1. STATE OF MAHARASHTRA

2. DISTRICT DEPUTY REGISTRAR,  
CO-OPERATIVE SOCIETIES, MUMBAI CITY-4  
COMPETENT AUTHORITY,

3. TORANA CO-OPERATIVE HOUSING  
SOCIETY LIMITED

4. MR. DAYANAND KASHINATH MALI

5. MRS. SHOBHA D. MALI ALIAS MHATRE

6. MR. YASHWANT KASHINATH MALI

7. MR. MADAN KASHINATH MALI

8. MR. SANTOSH DHARMA MOKAL

9. M/s. AKANKSHA CONSTRUCTION CO.

10. MR. CHANDRAKANT SHRIPAT TAMBOLKAR

11. MR. ARUN DAMJI GADA, PROPRIETOR  
OF M/s. DIVYA DEVELOPMENT

12. DIVYA PARSHWA TOWER CHSL

] ....RESPONDENTS

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**MR. ROHAN CAMA**, i/by. Mr. H.S. Pandey and Mr. Akhilesh Upadhyay for the  
Petitioners in Writ Petition No.19417/2024.

**MR. PRADEEP THORAT**, with Mr. Anish Karande, Mr. Anil R. Mishra and Mr.  
Rihan Mishra, for the Petitioner in Writ Petition (St.) No.38-2025 and for  
Respondent Nos.5 and 6 in Writ Petition No.19417-2024.

**MS. DHRUTI KAPADIA**, AGP for State.

**MR. GAURAJ SHAH**, Ai/by. Ms. Usha S. Agarwal, for Respondent No.7 in Writ  
Petition No.19417/2024 and for Respondent No.11 in Writ Petition (St.) No.  
38/2025.

**MR. MAYUR KHANDEPARKAR** with Mr. Santosh Pathak, Mr. Vikram Garewal i/by.  
Law Origin, for Respondent No.3 in WP-19417-2024.

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**MR. VINEET NAIK, SENIOR ADVOCATE** with Mr. Amogh Singh, Mr. Chirag Thakkar, Mr. Anuj Rawal, Ms. Priya Chaturvedi i/by. Law Origin for Respondent No.3 in WP(St.)-38-2025.

**MR. A.K. SINGH** with Mr. K.A. Singh and Mr. Piyush Singh, for the Applicant in IA-1171/2025 and IA-4176/2025.

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**CORAM :        SANDEEP V. MARNE, J.**

**JUDGMENT RESERVED ON : 22 APRIL 2025**

**JUDGMENT PRONOUNCED ON : 5 MAY 2025**

**JUDGMENT :**

1)            These two Petitions challenge order dated 14 November 2024 passed by the District Deputy Registrar, Co-operative Societies, Mumbai City (4) and Competent Authority issuing certificate of Deemed Conveyance of land admeasuring 2120.25 sq.mtrs. in favour of Respondent No.3-society. Writ Petition No.19417 of 2024 is filed by the original promoter, who has caused construction of buildings of Respondent No.3-society. Writ Petition (Stamp) No.38 of 2025 is filed by M/s. Nutan Realtors, who claims ownership in respect of land conveyed to Respondent No.3-society vide Indenture of conveyance dated 1 March 2012.

2)            Petitioner in Writ Petition No.19417 of 2024-M/s. Akanksha Constructions (**Akanksha**) claims right in respect of larger portion of land through Agreements for Sale dated 14 December 1979 and 9 January 1981 executed by original landowners. Akanksha proposed construction of building comprising of wings 'A' and 'B' in respect of land situated at CTS No.92 and 80 and accordingly submitted plans for sanction to the Municipal Corporation of Greater Mumbai. Though the

total area of land bearing CTS Nos.92 and 80 was 3491 sq.mts, it appears that Town Planning Scheme (TPS) was being implemented at the relevant time and the process of giving final plot number was underway. On account of pendency of implementation of TPS, Akanksha made FSI calculations on land admeasuring 1669.61 sq.mts and proposed construction of the building comprising of Wings 'A' and 'B' with total built up area of 2242.83 sq.mts. by consuming 0.95 FSI. Akanksha carried out construction of building with wings 'A' and 'B', but failed to obtain occupancy certificate in respect of the building. The flat purchasers formed Respondent No.3-Torna Co-operative Housing Society Ltd (**Torna CHS**) and registered the same on 8 February 1992. After implementation of the TPS, the land on which the building of Torna CHS was constructed was assigned Final Plot No.696. While it is the case of Torna CHS that the entire land bearing Final Plot No.696 admeasuring 2120.25 sq.mtrs. has been utilized for the construction of society's building, it is the contention of Akanksha that only some portion of land bearing Final Plot No.696 has been utilized for the construction of Society's building.

3) It appears that Divya Development (**Divya**) was claiming rights in respect of adjoining lands bearing Final Plot Nos.697, 698 and 699 and expressed willingness to secure occupancy certificate in respect of building of Torna CHS subject to the condition of amalgamation of lands bearing Final Plot Nos.697, 698 and 699. Accordingly, the Memorandum of Understanding dated 4 July 2011 was executed between Torna and Divya, under which Divya agreed to secure occupancy certificate in respect of the Society's building and also agreed to convey the land on which the Society's building was constructed. It appears that Divya Developments thereafter submitted plans for development of layout on amalgamated Final Plot Nos.696,

697, 698 and 699 and obtained occupancy certificate of Society's building on 13 April 2012. Divya thereafter got sanctioned plan for construction of additional building on the amalgamated portion of land bearing Final Plot Nos.696 to 699 on 8 April 2015 and accordingly constructed second building on the layout, flat purchasers of which have formed '*Divya Parshva CHS Ltd.*'.

4) An Indenture dated 1 March 2012 was executed by the original land owners, with the consent of Akanksha, in favour of M/s. Nutan Realtors thereby conveying the entire land bearing Final Plot No.696 admeasuring 2120.25 sq.mts. together with the two buildings of Torna CHS with the right to develop and utilize the balance and additional FSI. This is how Nutan Realtors now claims ownership in respect of the land bearing Final Plot No.696.

5) Divya Developments has filed Suit No.153 of 2016 in this Court challenging the conveyance executed by landowners in favour of Nutan Realtors. In the above background, Torna CHS filed Application No.144 of 2019 before the Competent Authority seeking unilateral deemed conveyance of land admeasuring 2120.25 sq.mts at Final Plot No.696. The Competent Authority proceeded to reject the Application of Torna CHS vide order dated 13 January 2020 on twin grounds of pendency of Suit No.153 of 2016 as well as non-joinder of landowners. The Competent Authority however granted liberty to Torna CHS to file a fresh application for deemed conveyance. Torna CHS filed fresh application No.141 of 2020 before the Competent Authority once again seeking conveyance of land admeasuring 2120.25 Sq.mt and Final Plot No.696 by impleading the landowners as parties thereto. The Competent Authority once again rejected Society's second application

vide order dated 5 August 2021, referring to the pendency of Suit No.153 of 2016 as well as referring to transfer of the rights in respect of the land in favour of M/s Nutan Developers. The Competent Authority therefore held that since the title of the land was not clear and markable, it was not possible to grant conveyance at that stage.

6) Torna CHS filed third application for issuance of certificate of deemed conveyance bearing Application No. 193/2024 before the Competent Authority once again seeking conveyance of land admeasuring 2120.25 sq.mts on Final Plot No.696. By order dated 14 November 2024, the Competent Authority has proceeded to allow the said application and unilateral deemed conveyance is granted in favour of Torna CHS of land admeasuring 2120.25 sq.mts on Final Plot No.696. Akanksha is aggrieved by order dated 14 November 2024 passed by the Competent Authority and has filed Writ Petition No.19147 of 2024. Nutan Realtors is also aggrieved by the order dated 14 November 2024 and has filed Writ Petition (Lodging) No.38 of 2025.

7) Mr. Cama, the learned counsel appearing for the Petitioner-Akanksha, would submit that the Competent Authority has erred in entertaining the third application for deemed conveyance preferred by Torna CHS, ignoring the rejection of previous similar applications. That though liberty was granted to file a fresh application for deemed conveyance vide first order dated 13 January 2020, no such liberty was granted while rejecting second application vide order dated 5 August 2021. That order dated 5 August 2021 rejecting application of Torna CHS for deemed conveyance has attained finality. That therefore Torna CHS could not have filed third application for the very same prayer which was rejected by order dated 5 August 2021. He would submit that the third application for unilateral deemed conveyance was clearly barred

by the principles of *res judicata*. In support of his contention, Mr. Cama would rely upon judgment of the Apex Court in *M/s. Faime Makers Private Ltd Vs. District Deputy Registrar Co-op Societys (3), Mumbai And Ors*<sup>1</sup>. He would also rely upon judgments in *Satyendra Kumar And Ors. Vs. Raj Nath Dubey And Ors*<sup>2</sup> and *Abdul Kuddus Vs Union of India And Ors*<sup>3</sup>.

8) Without prejudice to the contention of third application being barred by principles of *res-judicata*, Mr. Cama would further submit that the Competent Authority had otherwise granted conveyance of land admeasuring 2120.25 sq.mts. of Final Plot No.696 ignoring the position that the plans were sanctioned by the Planning Authority for construction of building of Torna CHS in respect of land admeasuring 1669.61 sq.mts. He would submit that there is absolutely no material on record to indicate society's entitlement for conveyance of entire portion of land bearing Final Plot No.696. That flat purchase agreement under Section 4 of the MOFA does not contain any obligation on the part of Akanksha to convey land admeasuring 2120.25 sq.mtrs. in favour of the society. Even the sanctioned plan does not reflect any such obligation for conveyance of land admeasuring 2120.25 sq. mts on the part of Akanksha. That the Competent Authority has directed conveyance of land admeasuring 2120.25 sq. mts. merely because the said area of land is included in Final Plot No.696. He would submit that Final Plot No.696 was assigned in respect of original Plot No. 675 and 676 and that construction of the building of Torna CHS was carried out only in respect of land covered by Original Plot Nos. 675 and 676. He would take me through sanctioned plan dated 6 September 1984 to demonstrate that land admeasuring 1669.61 sq.mtrs. was taken up for

<sup>1</sup> SLP (CIVIL) 26654 OF 2023 DECIDED ON 1 APRIL 2025.

<sup>2</sup> 2016 14 SCC 49

<sup>3</sup> 2019 6 SCC 604



development. He would therefore submit that it was impermissible for the Competent Authority to convey land in excess of what was taken up for development under the sanctioned plans. He would submit that mere built-up area utilized in Society's building cannot be a basis for conveyance of land when 40% incentive FSI on land admeasuring 1669.61 sq.mts. was sanctioned by the Planning Authority. Mr. Cama would further submit that original plans of 1984 were subsequently amended at the time of issuance of occupancy certificate to the Society's building. The plan sanctioned at the time of issuance of Occupancy Certificate on 13 April 2012 was in respect of demarcated layout comprising Final Plot Nos.696, 697, 698 and 699. He would rely upon certificate of Architect dated 24 March 2025 to demonstrate that Torna CHS is entitled to land admeasuring 1397.67 sq.mts after proportionately dividing the land corresponding to the built up area utilized for construction of its building. He would submit that distribution of land corresponding to the built up area used for construction of building is an acceptable norm in the various juridical pronouncements as well as per the GR dated 22 June 2018. He would therefore submit that conveyance of land in excess of 1397.67 sq.mtrs. in favour of Torna CHS is *ex-facie* illegal and liable to be set aside. Mr. Cama would therefore pray for setting aside the order dated 14 November 2024 passed by the Competent Authority.

9) Mr. Thorat, the learned counsel appearing for Petitioner-M/s Nutan Realtors would adopt the submissions of Mr. Cama. Additionally, he would submit that the first agreement executed with flat purchasers was in respect of land admeasuring 900 sq.mtrs, which was increased to 1866.50 sq.mts. in the second set of agreements. That therefore the Competent Authority could not have conveyed land in excess of 1866.50 sq.mts. in favour of Torna CHS. He would submit that



Nutan Realtors is absolute owner of entire land admeasuring 2120.25 sq.mts. on Final Plot No.696. That construction of buildings of Torna CHS did not cover entire land forming Final Plot No.696, and that there is balance land which Nutan Realtors is entitled to develop. He would invite my attention to Indenture of Conveyance executed by the land owners with consent of Akanksha in favour of Nutan Realtors to demonstrate that Nutan Realtors is entitled to construct 'C' wing building with balance built-up area of 550 sq.mts in addition to exploiting the additional available FSI. He would submit that order of deemed conveyance would affect the right of Nutan Realtors to construct 'C' wing building and that therefore, the same is liable to be set aside.

10) Mr. Gauraj Shah, the learned counsel appearing for Respondent No.7-Divya Developments in Writ Petition No.19417 of 2024 and Writ Petition (stamp) No.38 of 2025 would support both the Petitioners. He would submit that under the MoU dated 4 July 2011 executed in favour of Divya Developments in support of his contention that Torna CHS is entitled to conveyance of land forming part of only the plinth area of its building. That M/s.Divya Developments is entitled to develop the layout in respect of amalgamated lands forming part of Final Plot Nos. 696, 697, 698 and 699 by exploiting the entire available FSI potential in respect of such layout. He would submit that the impugned order passed by the Competent Authority is based on certificate of Architect, which has been subsequently withdrawn. That on account of withdrawal of certificate of Architect, impugned order of the Competent Authority is also liable to be set aside.

11) Mr. Khandeparkar, the learned counsel appearing for Respondent No.3 in Writ Petition No.19417 of 2024 would oppose the

petition submitting that no interference is warranted in the order granting deemed conveyance of land in favour of society. He would submit that the society's application was not barred by principles of *res judicata*. That the first application was rejected by the Competent Authority mainly on account of non-impleadment of all the land owners, granting liberty to the society to file a fresh application. That fresh application so filed was rejected only on account of pendency of a suit between the two developers. That subsequent to the rejection of second application, this Court held in *New Manoday Co-Op Housing Society Ltd Vs. Uday Madhavrao Jagtap And Ors*<sup>4</sup> that pendency of suit between promoter and landowner cannot be a ground for refusal to exercise jurisdiction by the Competent Authority under Section 11 of MOFA. That the Competent Authority has taken into consideration the law enunciated by this Court post rejection of the second application. That the cause of action for seeking conveyance of land is continuous in nature and with a change of law declared by this Court, society was entitled to invoke the jurisdiction of Competent Authority once again. That the Competent Authority rightly exercised jurisdiction under Section 11 of MOFA once it noted that the law enunciated by this Court in *New Manoday* about pendency of civil suit not affecting right of society to seek deemed conveyance of land. He would distinguish the judgment of the Apex Court in *M/s Faime Makers* (supra) by contending that the society in that case had failed to provide any explanation for filing successive application for deemed conveyance. That in the present case, Torna CHS had valid reason for filing fresh application for deemed conveyance. That there was no adjudication of prayers made by Torna CHS in previous application for deemed conveyance. That the principle of *res judicata* becomes applicable only when the issue has been raised and adjudicated. He would rely upon

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<sup>4</sup> WP No. 1421 OF 2024 DECIDED ON 30 APRIL 2024

judgment of Apex Court in *Hope Plantations Ltd. Vs. Taluk Land Owner Board, Peermade And Another*<sup>5</sup> in support of his contention that principle of res judicata are not applicable when cause of action is of continuous nature or where the law has changed or has been interpreted differently by a higher forum. He would also rely upon judgment of the Apex Court in *Nand Ram (dead) And Ors. vs. Jagdish Prasad (dead)*<sup>6</sup> in support of his contention that only previous decision on merits operates as res judicata. That since there is no decision on merits of the previous application, the same cannot come in the way of petitioner filing fresh application for deemed conveyance. He would rely upon judgment of division bench of this Court in *Hasmukh Narrotamdas Malkan vs. The District Deputy Registrar co-op Societies, Mumbai City-3 and Anr*<sup>7</sup> in support of his contention that withdrawal of suit seeking conveyance cannot come in the way of society applying under Section 11 of MOFA.

12) Mr. Khandeparkar would further submit that sanctioned plan for construction of building of Torna would indicate that the society is in fact entitled to land proportionate 2242.83 sq.mts. That since FSI 1.00 is utilised Torna could have asked for conveyance of land admeasuring 2242.83 sq.mtrs. However, the society has been conveyed the area of land forming part of Final Plot No.696 admeasuring 2120.25 sq.mts. He would submit that since building of Trona is constructed by utilizing land at CTS No.92 and 80, which subsequently formed part of Final Plot No.696, entire plot of land at Final Plot No.696 must be conveyed to the society. That Akanksha did not exclude any portion of land for carrying out any additional construction nor plans for construction of any additional building was sanctioned in the year 1984.

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<sup>5</sup> (1995) 5 SCC 590

<sup>6</sup> 2020 9 SCC 393

<sup>7</sup> WP (L) 23026 OF 2021 DECIDED ON 8 JUNE 2023

He would submit that Akanksha has attempted to take undue benefit of the fact that TPS was in transition at the time of sanction of development permission in the year 1984. He would submit that Akanksha indicated land admeasuring 1669.61 sq.mts. for sanctioning development permission in the year 1984 only for the purpose of FSI calculation. That though lesser portion of land was indicated for calculating FSI, the entire portion of land which subsequently formed part of Final Plot No.696, was liable to be conveyed to Torna CHS. He would submit that construction of building of Torna CHS is ultimately completed with FSI 1.00 as is clear from plan sanctioned at the time of issuance of OC on 13 April 2012 as well as later plan dated 8 April 2015. That as per the last approved plan dated 8 April 2015, the total built up area in respect of building of Torna CHS is 2242.83 sq.mts. and with utilization of FSI 1.00, the Society is actually entitled to conveyance of land admeasuring 2242.83 sq. mts. However, Torna CHS is content with conveyance of land admeasuring 2120.25 sq. mts which forms part of Final Plot No.696. Mr. Khandeparkar would submit that Akanksha is actually left with no possible interest in land bearing Final Plot No.696, having consented for execution of Indenture dated 1 March 2012. That Akanksha has failed in respect of its obligation to complete the development by securing OC in respect of the building of Torna CHS. That the society was required to enter into MoU with adjoining developer and to opt for amalgamation with a view to ensure that OC is issued in respect of its buildings. That having failed to comply with its obligation of completion of development for last 30 long years, Akanksha cannot be permitted to question conveyance of land in favour of Torna CHS. That conduct of Akanksha is such that this Court would be loath in entertaining its petition challenging order of the Competent Authority, which merely results in conveyance of land in respect of which building of Torna CHS has been constructed. Lastly, he would

rely on recent judgment of the Apex Court in *Arunkumar H. Shah HUF Vs. Avon Arcade Premises Co-operative Society Limited and others*<sup>8</sup> in support of his contention that this Court need not interfere with the impugned order of deemed conveyance in absence of a manifest illegality. He would accordingly pray for dismissal of the Petitions filed by Akanksha.

13) Mr. Naik, senior advocate appearing for Torna CHS in WP(ST) No.38 of 2025 would adopt the submission of Mr. Khandeparkar. He would additionally submit that Nutan Realtors has entered the scene much later by executing Indenture in its favour in respect of 2120.25 sq.mts, which Akanksha was under statutory obligation to convey to Torna CHS. That the Indenture executed between landowners, Akanksha and Nutan Realtors is premised on false recitals regarding proposed construction of wing 'C' and availability of balance FSI of 550 sq. mts. That original sanctioned plan of 1984 did not indicate construction of 'C' wing building, nor it reserved any built-up area for construction of any additional building. Mr. Naik would submit that the Competent Authority had grossly erred on earlier occasions in rejecting applications for deemed conveyance by referring to pendency of suit between the rival developers. He would submit that suits filed between M/s. Divya Developments challenging conveyance in favour of Nutan Realtors has nothing to do with the right of the society to seek conveyance of land on which its building is constructed. He would submit that Akanksha has also filed Suit No. 2282 of 2023 seeking declaration that the Indenture of conveyance executed in favour of Nutan Realtors does not bind Akanksha. He would submit that another suit bearing Suit No. 20245 of 2024 is filed by Nutan Realtors against Torna CHS for stalling the redevelopment

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<sup>8</sup> (CIVIL APPEAL NO. 5377 OF 2025 DECIDED ON 21 APRIL 2025)

process. He would submit that the execution of conveyance in favour of Torna CHS would not come in the way of developers pursuing their suits before the civil court. Pendency of such suits cannot come in the way of the competent authority exercising jurisdiction under Section 11 of MOFA. Mr. Naik would submit that Torna has been deprived of right of conveyance for the last more than 30 years and that the impugned order merely results in the society securing title in respect of the land on which its buildings are constructed. He would submit that justice is on the side of Torna CHS and that therefore this Court would be loath in interfering with the order passed by the Competent Authority, even if it notices any technical error in the impugned order passed by the competent authority. In support of his contention, he would rely on judgment of the Apex court in *Central Council for Research in Ayurvedic Sciences and Anr. Vs. Bikarta Das and Others*<sup>9</sup> and judgment of this Court in *M/s. Sushanku Builders Ltd. Vs. Apex Grievance Redressal and Ors.*<sup>10</sup> Mr. Naik would pray for dismissal of the Petitions.

14) In rejoinder Mr. Cama would submit that this Court has not enunciated any new law in its judgment in *Manodaya CHS* and has merely reiterated the settled position. That therefore judgment of Apex Court in *Hope Plantation* would have no application to the present case. He would therefore submit that judgment of the Apex Court in *M/s. Faime Makers* would squarely apply to the facts of the present case. He would pray for setting aside the order passed by the Competent Authority.

15) Rival contentions of the parties now fall for my consideration

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<sup>9</sup> 2023 16 SCC 462

<sup>10</sup> WP 8931 OF 2024 DECIDED ON 27 MARCH 2025



16) Maintainability of Application No.193/2024 filed by Torna CHS for deemed conveyance of land is seriously disputed by the Petitioners. It is contended that Application No.193/2024 was barred by the principles of *res-judicata* as previously filed application was rejected by the Competent Authority and that therefore the Competent Authority could not have entertained and decided subsequently filed application based on same cause of action and for same relief. To consider the objection of *res-judicata*, it would be necessary to consider previously filed applications by Torna CHS and decisions thereof by the Competent Authority.

17) Torna CHS filed its first Application No. 144/2019 before the Competent Authority for deemed conveyance, para-7 of which reads thus :

7. Accordingly, this Competent Authority be pleased to issue a certificate of entitlement of unilateral conveyance of land Final Plot No. 696 (Old FP No. 675, 676), TPS (ii), Village-Borivali (Village Shimpoli as per 7/12 Card), Borivali Taluka, Sub-District Mumbai Suburban and Registration District Mumbai City, admeasuring 2120.25 sq.meters as specifically set out in (the Property Registration Card) along with building known as Torana Co-op. Hsg. Soc. Ltd. in favour of the Applicant as the same falls within the jurisdiction of this Hon'ble Competent Authority.

18) Application No.144/2019 came to be rejected by the Competent Authority by recording following findings:

10. It is observed that the Opponent No. 7 has filed the Suit bearing No. 153 of 2016 before the Hon'ble High Court, Bombay wherein the Final Plot No. 696 is claimed to have been acquired by Opponent No. 7 vide Agreement dated 18/05/2006 executed between Opponent No. 1a and Opponent No. 7. That the Applicant, Opponent No. 1, 1a and this opponent are the party to the said suit and the suit is pending before the Hon'ble High Court, Bombay and hence the Application is hit by section 10 Code of Civil Procedure, 1908 in view of pending litigation before the Hon'ble Bombay High Court and



Applicant has not submitted the current status of the said suit. Therefore the application filed by the Applicant Society is liable to reject. This contention of the Opponent No. 8 is valid as the title of the property is in question due to the pendency of Suit No. 153 of 2016 and therefore the matter is sub judice and can not be decided at this stage.

11. It is observed that the Applicant Society has claimed the area from Final Plot No. 696 which is in the name of Shri Dharma Kasjinath Mali, Shri Yashwant K. Mali, Shri Madan K. Mali, Smt. Mathurabai Dharma Mokhal and Smt. Vithabai Kashinath Mali. That the Applicant has failed to make party to Shri Yashwant K. Mali, Shri Madan K. Mali in the present Application. Therefore, due to non joinder of the parties the present application filed by the Applicant Society is liable to be rejected.

12. Therefore I am of the opinion that application filed by the Applicant Society is liable to be rejected for compliance. All the contentions are kept open. Hence I pass the following order.

**:- ORDER :-**

In exercise of the powers conferred upon me U/s. 5(A) of the Maharashtra Ownership Flats Act, 1963, I Dr. Kishor Mande, the Competent Authority & District Deputy Registrar, Co-operative Societies, Mumbai City (4), hereby reject the Application No.144/2019 of Unilateral Deemed Conveyance filed by the Applicant 'Torana Co-operative Housing Society Limited' situated at R.M. Bhatt Road, Near Kalpana Chawla Chowk, Borivali (West), Mumbai-92 for the reasons recorded herein above with liberty to file fresh application.

19) Thus, Application No.144/2019 was essentially rejected on the twin grounds of pending litigation in the form of Suit No.153/2016 and non-impleadment of the land owners to the application. The Competent Authority however granted liberty to Torna CHSL to file fresh application by order dated 13 January 2020.

20) In pursuance of liberty granted in the first rejection order dated 13 January 2020, Torna CHS filed second application for deemed conveyance which was numbered as Application No.141/2020. This time, it impleaded the land owners as party Respondents to the application. The Society once again prayed for conveyance of land

admeasuring 2120.25 sq.mtrs forming part of Final Plot No.696, (Old F.P. Nos.675, 676) T.P.S. III, Village-Borivali and Shimpoli, Taluka-Borivali, Mumbai Suburban District.

21) The second application for deemed conveyance (*Application No.141/2020*) was entertained by the Competent Authority but by order dated 5 August 2021, the same came to be rejected by recording following findings :

17. On perusal of the above submissions and documents submitted by the applicants, it is observed that:

a. The Applicant society claimed the right, title and interest in respect of the plot of land admeasuring 2120.25 sq. mtrs. bearing Final Plot No. 696 (Old F P. No. 675, 676), TPS III in the Revenue Village Borivali, Taluka Borivali along with buildings situated thereon.

b. Opp. No. 01, by agreement dated 14.12.1979, acquired the Mali's property bearing F.P. No. 696 and by agreement dt. 01.07.1982 acquired Parikh property i.e. FP. No. 697, 698 and 699.

c. Opp. No.01 constructed the building of A and B wing of applicant society on final plot no. 696.

d. As per the Consent Terms in the suit filed before the Bombay City Civil Court bearing Suit no. 356 of 1991, it is agreed that the Shri. Dharma Kashinath Mali and four others are the owners of the said Plot of land/Property and opp. no.-1 and 1a were entitle to the develop the said property.

e. In the year 1994-95, Opponent No.1a wanted to construct another building on plots bearing CTS Nos. 697, 698 and 699 out of the larger property. Opponent No.1a applied to MCGM for amalgamation of Plot Nos. 696, 697, 698 and 699 i.e. larger property and sanction of plans for construction of building on Final Plot Nos.697, 698 and 699. That under letter dated 9.03.1995 the MCGM approved amalgamation of Final Plot Nos. 696, 697, 698 and 699 and approved the plan and issued I.O.D. under reference No.BB/CE/9264/BS/AR of 1995 and Commencement Certificate dated:4.04.1996 for development of building No. 2.

f. Opponent No.1a formed a partnership firm under the name and style of M/s. Manek Developers with Shri Bhaskar R. Pandya and Mr. Moiz F. Pancha, for construction of the building No.2 but could not complete the construction of building No.2. Due to inability of Opponent No. 1a and said Manek Developers, the construction of building No.2 has been stalled.

g. Thereafter, by registered agreement dated 18.05.2006 Opponent No.1a, and Manek Developers, assigned rights including development rights in the larger Property in favour of opp. no. 9 and authorized the opp no. 9 to carry out further construction of remaining balance work in respect of Manek Tower which is standing on amalgamated Plot no. 696, 697, 698 and 699.

h. As per contention of opp. No.1a, the letter dated 14.12.1993 issued by the Additional Collector and Competent Authority (Urban Land Ceiling) shows that F.P. No. 696 is not a part of amalgamation with Plot no. 697, 698 and 699 TPS III. Borivali (W). Mumbai. But the Opp. No. 09 has produced letter dated 9.03.1995 which shows the amalgamation of Final Plot Nos, 696, 697, 698 and 699 and on the basis of which the plans are approved and the I.O.D. is issued under reference No.BB/CE/9264/BS/AR of 1995 and Commencement Certificate dated: 4.04.1996 for development of building No. 2.

i. Opp. No. 09 have completed and constructed one wing of the Building No.2 on larger layout, which is known as "Divya Parshwa" of 14 floors building however, still pending for construction of another wing at the said Building No.2 which shows that the development of layout is not fully completed. The observation of Hon'ble High Court in Writ Petition No. 11802 of 2013 titled Marathon Next Gen Realty Limited Mumbai & Anr. Vs. Competent Authority, DDR of Co-operative Societies and ors. are squarely applicable to the present case as the same reiterates the settled legal position in respect of section 11 of MOFA which is also upheld by the Hon'ble Supreme Court in SLP (C) No. 33811 of 2015 and thus, the same is followed by this authority as the correct legal position of the law.

j. The Opponent no.9 filed a Suit bearing No. S/153/2016 before Hon'ble High Court of Judicature at Bombay, Original Side, which is converted into Commercial Suit bearing No. COMS/ 377/2016, in respect of the subject property including Applicant Society/Plot of land which is pending before Hon'ble Bombay High Court.

k. After construction of A and B wing of applicant society, opp. No. 5, 2a, 4 and 1a have transferred the said property with balance area for the further Construction of C Wing by utilizing additional FSI in the form of TDR to Opp. no. 10 vide Conveyance Deed dated 01/03/2012. It is further observed that due to non payment of full and final consideration to the opponents,

the said Opponent No.1 and 1a had challenged the said transaction in the proper court and is under process.

l. It is observed that opp. No.1 who constructed the building was having development rights of the suit property and he has assigned all his rights in the layout in favour of Opp. No. 09. Therefore the Opponent No.1, as a Promoter is incapable of transferring any right, title and/or interest onto the Applicant's society.

m. Some of the landowners also transferred the property in favour of Opp. No. 10 and created third party interest in the suit land. Therefore there is dispute between the parties regarding the title of the suit property which is pending in the Court.

n. Opp. No. 9 has filed the Suit bearing No. 155 of 2016 before the Hon'ble High Court, Bombay wherein the Final Plot No. 696 is claimed to have been acquired by Opponent No. 9 vide Agreement dated 8/05/2006 executed between Opponent No.1a and Opponent No. 9. The Applicant, Opponent No. 1, 1a and opponent No.10 are the party to the said suit and the suit is pending before the Hon'ble High Court, Bombay.

o. Though the applicant submitted that the Section 10 of the Civil Procedure Code 1908 is not applicable in this case, since the matter related to suit property is pending before the Hon'ble High Court, and the application of the applicant is for deemed conveyance of the suit property it is not proper to decide the application at this stage.

p. There is dispute regarding the title of the land which is claimed by the applicant for the deemed conveyance. The title of the said property is not clear and marketable and hence cannot be decided at this stage so to avoid multiplicity of litigations, it is not advisable to decide the matter at this stage. The application filed by the Applicant Society is liable to be rejected.

18. Therefore, as per the above observations and after going through all the documents submitted by all the concerned parties and after relying on all the documents and submissions made by them, I am of the opinion that the application filed by the "Torana Co-operative Housing Society Ltd." cannot be decided at this stage and liable to be rejected.

22) The Competent Authority rejected second application of Torna CHS by passing following order:

**ORDER**

In exercise of the powers conferred upon me U/s. 5A of the Maharashtra Ownership Flats Act, 1963, I Dr. Kishor Mande, the Competent Authority & District Deputy Registrar, Co-operative Societies, Mumbai City (4), hereby reject the application No.141/2020 filed by the Applicant "Torana Co-operative Housing Society Ltd." situated at Final Plot No.696, (Old Plot

Nos.675, 676) Ram Nagar, R.M. Bhattad Road, Near Kalpana Chawla Chowk,  
Borivali (West), Mumbai 400 092 for the reasons recorded hereinabove.

23) Thus, by order dated 5 August 2021, the Competent Authority held that title of the land of which conveyance was sought by Torna CHS was not clear and marketable and that therefore the application could not be decided at that stage to avoid multiplicity of litigation. The main reason why the Competent Authority held that title in respect of the land was not clear and marketable was pendency of Suit No. 153/2016 filed by Divya Developers in this Court which is converted into Commercial Suit No. COMS/377/2016. The Competent Authority also cited the reason of non-completion of construction of another wing of Bldg. No.2 (*Divya Parshva*) by Divya Developers and non-completion of full development of the layout. The Competent Authority also took note of the challenge set up by Akanksha to the conveyance executed in favour of Nutan Realtors on account of non-payment of consideration flowing out of Indenture dated 1 March 2012. The Competent Authority also observed that Akanksha Developers, on account of assigning of all its rights in favour of Nutan Realtors, was incapable of transferring its right, title and interest in the land in favour of the Society. The Competent Authority also took note of transfer of rights in the land by the original landowners in favour of Nutan Realtors and observed that there was dispute between the parties regarding title of the land. For above broad reasons, particularly the reason of pendency of Suit No.153/2016 before this Court, the Competent Authority held that it was imprudent to decide Society's application for deemed conveyance at that stage.

24) Since the Competent Authority rejected Torna CHS's application for grant of unilateral deemed conveyance by order dated 5

August 2021, Torna CHS was advised to file Suit No.119/2024 in this Court in which following prayers were made:

(a) that this Hon'ble Court be pleased to declare that the Plaintiff is entitled for Conveyance in respect of the property described in Exhibit "A" hereto and the Defendant No.1 to 6 and/or any person or persons claiming through be directed to execute the same with the Registering Authority, failure on the part of the Defendant No.1 to 6 and/or their agent/servants, the Prothonotary & Senior Master, High Court, Bombay to be directed to sign and execute all the things, deeds and acts in respect the said property;

(b) that this Hon'ble Court be pleased to declare that the Deed of Conveyance dated 1st March 2012, annexed at Exhibit "O" hereto is illegal and null and void;

(c) that this Hon'ble Court be pleased to pass an order thereby cancelling the Deed of Conveyance dated 1 March 2012 annexed at Exhibit "O" hereto;

(d) that this Hon'ble Court be pleased to declare that the Agreement dated 26th May, 2010, between Defendant No.1 and Defendant Nos.7 and 8 is illegal, null and void;

(e) that this Hon'ble Court be pleased to direct Defendant Nos. 7 and 8 to deposit the original agreement dated 26.05.2010 being Exhibit 'T' hereto in this Hon'ble Court;

(f) that this Hon'ble Court be pleased to cancel the Agreement dated 26.05.2010 being Exhibit "T" hereto;

(g) The Defendant Nos. 1 to 6 be jointly and severally be ordered and decreed to pay to the Plaintiff a sum of Rs.21,00,00,000/- towards compensation for the damages suffered by the Plaintiff, with further interest thereon at the rate of 18% per annum from the date of the suit, till payment and/or realization;

(h) that this Hon'ble Court be pleased to pass permanent mandatory injunction against Defendants, their agents, servants, nominees and assign from in any manner:

(h-1) selling, alienating, assigning and/or creating any third-party rights in respect of the suit property and/or any part thereof and/or FSI arising therefrom and/or any benefits by way of TDR or any rights arising out of the suit property;

(h-2) constructing on the suit property and/or in any part thereof;



(h-3) putting up any construction by using, utilizing or consuming the FSI, TDR and/or any right arising out of suit property;

(i) the Defendants be directed to disclose on oath the contracts agreements and/or arrangement executed by them inter-se and/or with third parties with respect to the suit property and/or any rights and/or interest and/or benefits arising, out of the same;

(j) pending the hearing and final disposal of present suit, the Defendants, their servants, agents, nominees and assigns be restrained from temporary injunction from in any manner;

(k) selling, alienating, assigning and/or creating any third-party rights in respect of the suit property and/or any part thereof and/or FSI arising therefrom and/or any benefits by way of TDR or any rights arising out of the suit property;

(i) constructing on the suit property and/or in any part thereof;

(ii) putting up any construction by using utilizing or consuming the FSI, TDR and/or any right arising out suit property.

(l) Pending the hearing and final disposal of the present suit, the Defendants be directed to disclose on oath the contracts, agreements and/or arrangement executed by them interse and/or with third parties with respect to the suit property and/or any rights and/or interest and/or benefits arising out of the same.

(m) Ad-interim reliefs in terms of prayer clause (h & i) above;

(n) for costs;

(o) for such further and other reliefs as the nature and circumstances of the case may require.

25) The Suit was filed in January 2024. However, after filing of the Suit seeking conveyance of the very same portion of land, the Society filed third application for unilateral deemed conveyance of the very same land bearing FP No.696 admeasuring 2120.25 sq.mtrs on 19 August 2024. Torna CHS disclosed filing of first and second application for deemed conveyance in paras-14 and 15 of Application No.193/2024. Thereafter, Torna CHS made following averments in para-16 of its application:



(16) The Applicant States that the on-going disputes between the original Land owner and other claimants does not affect the original entitlement of the society as promised under MOFA agreement for sale entered between Flat purchasers and the developer as decided by the Hon'ble High Court in various land mark judgments which shall be produced before the Hon'ble authority as and when called for.

26) Thus, the only justification offered by Torna CHS for filing fresh application for unilateral deemed conveyance was entitlement of Society not being affected on account of ongoing dispute between the original land owners and other claimants. In fact Torna CHS did not disclose filing of Suit No.119/2024 in this Court seeking conveyance of land in its Application No.193/2024.

27) The third application filed by Torna CHS has been allowed by the Competent Authority by order dated 14 November 2024. The said application was opposed by the Petitioners before the Competent Authority by raising objection of *res-judicata*. The objection of *res-judicata* is however repelled by the Competent Authority by recording following findings:

vii. Pertaining to the other disputes, the contention of the opponents is that the subject matter in the said dispute involves the said land for which deemed conveyance application is filed. The contention is not accepted since the building of the applicant society was constructed in 1983 or thereafter. It is about 35+ years since the society came to be registered and still have not been granted any rights on the said plot. As such the applicant societies cannot be made to suffer on account of disputes between the owners, developers and other opponents. The Hon'ble High Court of Bombay in the case of *New Manoday Cooperative Housing Society Limited and Ors* held that Society deemed conveyance cannot be stalled on the grounds of pending disputes pertaining to the title of land. At various instances the Hon'ble High Courts have advised to convey to the society which the promoters ought to have conveyed as per agreements executed under section 4 of the MOFA Act. Also, the Applicant Society shall be bound by any Orders that may be issued by the Competent Court in future as held by the

Hon'ble Bombay High Court in New Manoday Co-operative Housing  
Society Limited and Ors in Writ Petition No.1421 of 2024.

28) Thus, the Competent Authority, which had held in its second rejection order dated 5 August 2021 that application of Torna CHS for deemed conveyance could not be decided on account of pendency of Suit No.153/2016, changed its mind and held in the impugned order dated 14 November 2024 that pendency of such suit cannot come in the way of deciding Society's application for deemed conveyance. The Competent Authority thus took diametrically opposite views in the second rejection order dated 5 August 2021 and impugned order dated 14 November 2024.

29) The issue for consideration is whether the Competent Authority could sit in Appeal over its own decision dated 5 August 2021 by entertaining third application for deemed conveyance of the land? Petitioners have strenuously relied upon judgment of the Apex Court in *M/s.Faime Makers* (supra) in which the fact situation was almost similar. In case before the Apex Court, first application of the Society was rejected by the Competent Authority holding that there were legal complications in the case and it was not possible to convey the leasehold rights in the name of the Society unless the complications were settled. The Society was granted liberty to reapply for deemed conveyance of leasehold rights after settlement of the complications. The Society filed second application for deemed conveyance which was entertained by the Competent Authority and the same was allowed. This Court upheld the order of the Competent Authority. In Appeal, the Apex Court has set aside the order passed by this Court and has held as under :

7. Having considered these submissions and having perused the order dated 22.02.2021, we have no hesitation to hold that there was no unconditional liberty granted to respondent No.2-Society to apply for the unilateral assignment of leasehold rights. The order dated 22.02.2021 is very clear that complications had arisen because of various transactions inter se parties at different points of time. The relevant facts have already been noted in the earlier part of this judgment.

8. The relevant extract of the order dated 22.02.2021, whereby the application was dismissed for the reasons given therein, with liberty to apply afresh after sorting out the issues, is reproduced hereunder:

*"... Therefore, the petitioner has to appeal to the appropriate court in this regard. As there is a legal complication in this case, the authority will not be able to make a human transfer in the name of the applicant society. Due to this, the applicant society should only demand assignment of leasehold claim and also the competent court should resolve the legal issues related to the transfer of the name of the respondent No.3 of the rate of income.*

*It is not possible to transfer the leasehold right of the said property in the name of the applicant Society unless these matters are settled. Therefore, I am convinced that after the settlement of these matters, the applicant should be allowed to re-apply for the human transfer of the leasehold rights of the said property and the application submitted by the applicant Society should be rejected."*

9. A plain reading of the above findings of the Competent Authority in its order dated 22.02.2021 leaves no manner of doubt that respondent No.2-Society could approach the Competent Authority afresh for the unilateral assignment of leasehold rights only after getting the complications sorted out before the appropriate Court. The order clearly indicates that the competent authority could not grant leasehold rights under the existing set of facts until and unless the complications were sorted out.

10. There is no explanation from the side of respondent No.2-Society with respect to the above findings of the Competent Authority recorded in the order dated 22.02.2021, as to why the same was not challenged before a superior forum. Once the said order has been accepted by the parties and has attained finality, the Competent Authority would not have jurisdiction to entertain a second application contrary to the findings and directions given by the Competent Authority in the first order.

11. It has been settled by this Court that the principle of res judicata applies to and binds quasi-judicial authorities. This Court in Ujjam Bai vs. State of U.P. 1962 SCC Online SC 8 has taken the view that principles of res judicata equally apply to quasi-judicial bodies. Whenever a judicial or quasi-judicial tribunal gives a finding on law or fact, its findings cannot be impeached collaterally or in a second round and are binding until reversed in appeal or revision or by way of writ proceedings. The characteristic attribute of a judicial act or decision is that it binds, whether right or wrong. Thus, any error, either of fact or

law, committed by such bodies cannot be controverted otherwise by way of an appeal or revision or a writ unless the erroneous determination relates to the jurisdictional matter of that body.

12. This position has been further reinforced in *Abdul Kuddus vs. Union of India and others* (2019) 6 SCC 604 which relies upon *Ujjam Bai* (supra). In *Abdul Kuddus* (supra), this Court held that the opinion by the Foreigners Tribunal is a quasi-judicial order. Therefore, it would be correct to hold that the opinion of the Tribunal and/or the consequential order passed by the Registering Authority would not operate as *res judicata*. Further, it was established that any quasi-judicial Authority would not ordinarily have the power to unilaterally take a contrary view taken by a coordinate or predecessor authority at any early point in time.

13. From the foregoing discussion, it is evident that once a Competent Authority (quasi-judicial in nature) settles an issue, that determination attains finality unless it is set aside in accordance with law.

30) In *Faime Makers Pvt. Ltd.* the Apex Court has referred to its decision in *Ujjam Bai Vs. State of U.P.*<sup>11</sup> in which it is held that principles of *res-judicata* equally apply to quasi-judicial bodies and that whenever a judicial or quasi-judicial tribunal gives a finding on law or on fact, its findings cannot be impeached collaterally or in a second round and are binding until reversed in appeal or revision or by way of writ proceedings. It further held that the characteristic attribute of a judicial act or decision is that it binds, whether right or wrong. The Apex Court has also referred to its decision in *Abdul Kuddus* (supra) in which it has held in para-24 as under :

24. The opinion/order of the Tribunal, or the order passed by the Registering Authority based upon the opinion of the Foreigners Tribunal, as the case may be, can be challenged by way of writ proceedings. Thus, it would be incorrect to hold that the opinion of the Foreigners Tribunal and/or the consequential order passed by the Registering Authority would not operate as *res judicata*. Both the opinion of the Tribunal and the order of the Registering Authority result in determination of rights/status under the statute and by an authority after a contest on the merits which would necessarily operate as a bar to subsequent proceedings before the same authority for redetermination of the same issue/question. This Court in *Ujjam Bai v. State of UP*<sup>4</sup> has held that the principles of *res judicata* equally

<sup>11</sup> 1962 SCC ONLINE SC 8

apply to quasi-judicial bodies. Whenever a judicial or quasi-judicial tribunal gives a finding on law or fact, its findings cannot be impeached collaterally or in a second round and are binding until reversed in appeal or by way of writ proceedings. The characteristic attribute of a judicial act or decision is that it binds, whether right or wrong. Thus, any error, either of fact or law, committed by such bodies cannot be controverted otherwise by way of an appeal or a writ unless the erroneous determination relates to the jurisdictional matter of that body

31) In my view, the judgment of the Apex Court in *Faime Makers Pvt. Ltd.* would squarely apply to the facts of the present case. If Torna CHS believed that the second rejection order of the Competent Authority passed on 5 August 2021 was erroneous, the same ought to have been challenged before higher forum and mere error of Competent Authority in refusing to decide application for deemed conveyance on account of pendency of suit could not have been a reason for entertaining fresh application for deemed conveyance.

32) Mr. Khandeparkar has relied upon judgment of the Hon'ble Apex Court in *Hope Plantations Ltd.* (supra) in which it is held as under:

31. Law on res judicata and estoppel is well understood in India and there are ample authoritative pronouncements by various courts on these subjects. As noted above, the plea of res judicata, though technical, is based on public policy in order to put an end to litigation. It is, however, different if an issue which had been decided in an earlier litigation again arises for determination between the same parties in a suit based on a fresh cause of action or where there is continuous cause of action. **The parties then may not be bound by the determination made earlier if in the meanwhile, law has changed or has been interpreted differently by a higher forum.** But that situation does not exist here. Principles of constructive res judicata apply with full force. It is the subsequent stage of the same proceedings. If we refer to Order XLVII of the Code (Explanation to Rule 1) review is not permissible on the ground

"that the decision on a question of law on which the judgment of the Court is based has been reversed or modified by the

subsequent decision of a superior court in any other case, shall  
not be a ground for the review of such judgment”

(emphasis added)

33) It is sought to be contended that the law has been interpreted differently by this Court in *New Manoday CHS* after passing of second rejection order dated 5 August 2021 and that therefore the principles of res-judicata would not apply for deciding third application for deemed conveyance. In *New Manoday CHS*, this Court has merely reiterated settled principles of law that pendency of disputes between landowners and promoter cannot be a ground for Competent Authority not exercising jurisdiction under Section 11 of MOFA. This Court has referred to its past decisions in *Om Shakuntal Co-op. Hsg. Society Ltd. Vs.. Patel Wood Works & Timber Mart & Anr.*<sup>12</sup> and *Vasundhara Dhananjay Dongre Vs. State of Maharashtra*<sup>13</sup>, in which also it was held that mere pendency of disputes between promoter and landowners cannot be a ground for avoiding performance of statutory duties by the Competent Authority under Section 11(3) of MOFA.

34) In my view the judgment in *New Manoday CHSL* merely reiterates or restates the law which was already expounded by this Court earlier. The judgment in *New Manoday CHS* cannot be construed to mean as if the law has been interpreted differently by a higher forum for applying the exception recognised by the Hon’ble Apex Court in *Hope Plantations Ltd.* This is not a case where there was a different interpretation of law prior to delivery of judgment in *New Manoday CHS* and that the higher forum delivered different interpretation of law. In my view, therefore the judgment of Hon’ble

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<sup>12</sup> (WP-2578/2020) DECIDED ON 18 MARCH 2024

<sup>13</sup> (WP(L.)23095/2021) DECIDED ON 12 MARCH 2024



Apex Court in *Hope Plantations Ltd.* would not assist the case of Torna CHSL in getting over the objection of *res-judicata*.

35) Reliance is placed on the judgment of the Hon'ble Apex Court in *Nand Ram* (supra) in which the Hon'ble Apex Court has referred to its judgment in *Mathura Prasad Bajoo Jaiswal Versus. Dossibai N.B. Jeejeebhoy*<sup>14</sup> and has held in para-26 as under:

26. In another judgment in *Mathura Prasad Bajoo Jaiswal v. Dossibai N.B. Jeejeebhoy*, a three-Judge Bench of this Court held that the previous decision on a matter in issue alone is *res judicata*, the reasons for such decision are not *res judicata*. This Court held as under: (SCC p. 617, para 5)

"5. A decision of a competent court on a matter in issue may be *res judicata* in another proceeding between the same parties: the "matter in issue" may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a competent court is finally determined between the parties and cannot be reopened between them in another proceeding. The previous decision on a matter in issue alone is *res judicata*: the reasons for the decision are not *res judicata*. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is *res judicata*, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is *res judicata*. A previous decision on a matter in issue is a composite decision: the decision on law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as *res judicata* in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different. nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law.

(emphasis added)

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<sup>14</sup> (1970) 1 SCC 613



36) By relying on the judgment in *Nand Ram*, it is sought to be contended that a 'prevision decision' on a matter in issue alone is *res-judicata* and that the 'reasons' for such decision are not *res-judicata*. It is sought to be contended that there is no adjudication of previous application and there is no '*decision*' of the previous application and that therefore the principle of *res-judicata* would not apply. I am unable to agree. The Competent Authority did render a decision in order dated 5 August 2021 by rejecting Society's Application No.141/2020. In *Faime Makers Pvt. Ltd* also there was no adjudication of previous application for deemed conveyance and the Competent Authority had granted liberty to the Society to file fresh application after resolution of complications. The Hon'ble Apex Court still held that there was no unconditional liberty to file fresh application for deemed conveyance and that second application for deemed conveyance was barred by *res-judicata*. In the present case, as against the liberty granted while rejecting first application by order dated 13 January 2020, no such liberty was granted while rejecting second application by order dated 5 August 2021. The case thus stands on worse footing than that of *Faime Makers Pvt Ltd*. In my view therefore Society's third application for deemed conveyance was clearly barred by *res-judicata*.

37) It is strenuously contended by Mr. Khandeparkar and Mr. Naik that the Competent Authority had refused to adjudicate Society's second application for deemed conveyance by citing the pretext of pendency of suit filed by Divya Developers (*Suit No.153/2016*) which has nothing to do with promoter's obligation to convey right, title and interest under Section 11 of MOFA. It is contended that Torna CHS is not even a party to the said suit. It is contended that in addition to Suit No.153/2016 filed by Divya challenging conveyance executed in favour of Nutan Realtors, two more suits have been filed. Suit No.2282/2023 is

filed by Akansha Constructions on 5 June 2023 seeking a declaration that the conveyance executed in favour of Nutan Realtors does not bind Akansha Constructions. It is contended that both the suits involve issue of competing claims of different developers for exploiting rights flowing out of land and that it has nothing to do with conveyance of land in favour of Torna CHS. While this contention may be correct and mere pendency of the said suits could not have been a ground for the Competent Authority not to decide application of Torna CHS for grant of unilateral deemed conveyance under Section 11 of MOFA, the act of Competent Authority in refusing to adjudicate Society's second application vide order dated 5 August 2021 would constitute an error of law as held by this Court in *New Manoday CHS*. The issue is whether the Competent Authority itself can correct its own error committed in order dated 5 August 2021? The answer to the question would be emphatically in the negative. It is the only higher forum which would be in a position to correct the error committed by the Competent Authority in the order dated 5 August 2021. As held by the Hon'ble Apex Court in *Ujjam Bai* and *M/s. Faime Makers Pvt. Ltd.* the characteristic attribute of a judicial or quasi judicial order is that it binds, whether right or wrong. Therefore even if it is assumed that the order dated 5 August 2021 is erroneous, the same would still bind parties unless, set aside by higher forum. If Torna CHS felt that mere pendency of suit between different developers could not have been a ground for refusing to adjudicate its application for deemed conveyance under Section 11 of MOFA, it ought to have challenged the order dated 5 August 2021 by filing a Writ Petition in this Court. It could not have filed fresh application for deemed conveyance by contending that the Competent Authority had committed an error in order dated 5 August 2021 by refusing to adjudicate the application for deemed conveyance on the pretext of pendency of suits between the developers.

38) Mr. Khandeparkar has relied on recent judgment of Hon'ble Apex Court in *Arunkumar H. Shah HUF* (supra) in which it has held as under:

35. The MOFA is a beneficial legislation enacted to protect home buyers, considering the ever-increasing housing shortage in urban areas. The Legislature has noted the increasing malpractices by the developers. The provisions of Section 11 are for the benefit of the flat purchasers. In writ jurisdiction, the Court should not interfere with the order granting deemed conveyance under Section 11 (4), unless the order is manifestly illegal. The writ court should generally be slow in interfering with such orders. The reason is that, notwithstanding the order under Section 11(4), the remedy of aggrieved parties to file a civil suit remains open. In this case, substantial justice has been done by protecting the appellant's rights as a perpetual lessee with a right to develop the Arun plot. Therefore, interference in writ jurisdiction was not warranted.

37. Our conclusions on the interpretation of sub-sections (4) and (5) of Section 11 of the MOFA are as under:

i. It is no doubt true that quasi-judicial powers have been conferred on the competent authority while dealing with applications under Section 11(3) of the MOFA. However, proceedings before the competent authority under Section 11(3) are of a summary nature, as can be seen from the MOFA Rules. Therefore, the competent authority, while passing the final order, must record reasons;

ii. The competent authority, while following the summary procedure, cannot conclusively and finally decide the question of title. Therefore, notwithstanding the order under sub-section (4) of Section 11, the aggrieved parties can always maintain a civil suit for establishing their rights;

iii. The provisions of Section 11 are for the benefit of the flat purchasers. In writ jurisdiction, the Court should not interfere with the order granting deemed conveyance unless the same is manifestly illegal. The writ court should generally be slow in interfering with such orders. The reason is that, notwithstanding the order under Section 11(4), the remedy of aggrieved parties to file a civil suit remains open; and

iv. The registering officer has no power to sit in appeal over the order of the competent authority while exercising the power under Section 11(5). He can refuse registration only on the grounds indicated in paragraph 23 above and not beyond. Thus, the scope of the powers conferred on the registering officer is limited.

39) Thus, in *Arunkumar H. Shah HUF* the Apex Court has held that High Court cannot interfere with the order granting unilateral deemed conveyance under Section 11(4) in writ jurisdiction unless the order is manifestly illegal. It has held that writ court must generally be slow in interfering with such order particularly when substantial justice has been done. However in the present case, the objection of res-judicata goes to the very root of jurisdiction of the Competent Authority to decide third application filed by Torna CHS. If there a jurisdictional error in passing the order of deemed conveyance, the order would suffer from manifest error of law and would be susceptible to challenge in writ jurisdiction of this Court. In *Faime Makers Pvt. Ltd.* the Hon'ble Apex Court has held that Competent Authority cannot entertain or decide fresh application for deemed conveyance in the light of rejection of earlier application and that the law enunciated in the said judgment would apply with full force to the present case. If the present case was to involve only the dispute relating to the area of land conveyed (*which is also the major bone of contention between the parties*) and if there was no objection of *res-judicata*, the judgment of the Hon'ble Apex Court in *Arunkumar H. Shah HUF* would clearly apply and this Court would have been slow in interfering in the order of deemed conveyance only on the ground of existence of dispute about area of land to be conveyed. In *Faime Makers Pvt. Ltd.* also, there was dispute between the parties about the area of land to be conveyed. However, once the Apex Court noticed inherent jurisdictional error on account of application of principles of *res-judicata*, the Hon'ble Apex Court has set aside the order of the Competent Authority. In my view therefore the impugned order passed by the Competent Authority suffers from serious jurisdictional error and cannot be sustained.

40) This Court is in fact at pains to set aside an order granting deemed conveyance of land and building in favour of an association formed by home buyers. As held by the Hon'ble Apex Court in *Arunkumar H. Shah HUF*, MOFA is a beneficial legislation for protecting the interests of home buyers. It has been enacted and amended from time to time to prevent the mischief where the promoters and developers were deliberately not conveying land in favour of association of home buyers even after exploitation of the rights in the land under the greed of further FSI being made available. This is a reason why courts need to be slow in interfering with orders granting deemed conveyance in favour of societies as held by the Hon'ble Apex Court. The Competent Authority is a Tribunal of limited jurisdiction, which adjudicates the application of a society for conveyance of land and building after hearing promoter and in some cases, even owners. A summary and speedy remedy is made available to societies to have land and building conveyed in their names. Competent Authorities therefore need to exercise jurisdiction under Section 11 of MOFA by keeping in mind the legislative objective. Any complicated issue sought to be raised by promoters can be left to be agitated before Civil Court as the promoter always has liberty of filing a suit for asserting his rights in the conveyed land. In the present case, it is not that the Petitioners seek to deny any portion of land in favour of Torna CHS. The dispute is mainly about the area of land to be conveyed. Ordinarily this area dispute could well have been left to be adjudicated before Civil Court at the instance of Petitioners. However, erroneous exercise of jurisdiction by the Competent Authority has left no choice for this Court but to set aside its order. Some discipline needs to be exercised by the Competent Authorities. They are not clothed with power of review. They cannot correct their own mistakes, nor can they sit in appeal over their own decisions. In the present case, the

Competent Authority had shut its doors for the society while passing order dated 5 August 2021 by not granting any liberty to it to file fresh application. It however sat in appeal over its own decision and felt that it had erroneously rejected second application for deemed conveyance and that the judgment of this Court in *New Manoday CHS* empowered it to grant conveyance notwithstanding pendency of suits between different developers. Attempt to correct its own error by entertaining fresh application for deemed conveyance is a serious jurisdictional error, which leaves no option for this Court but to set aside the impugned order, particularly on account of recent decision of the Hon'ble Apex Court in a similar case in *Faime Makers Pvt. Ltd.*

41) Since this Court has held that the Competent Authority could not have decided Application No.193/2024 on account of application of principles of *res-judicata*, the further dispute between the parties about the exact area of land to be conveyed in favour of Torna CHS need not be gone into. All contentions of parties on the said issue are expressly kept open. Therefore, I am not burdening this judgment any further by dealing with contentious issue about area of land to be conveyed in favour of Torna CHS.

42) Having held that the impugned order passed by the Competent Authority on 14 November 2024 is unsustainable, the next issue is about the remedy open to Torna CHS in respect of its statutory right of conveyance of land. As observed above, the society ought to have challenged the Order dated 5 August 2021, if it believed that the same is erroneous rather than filing a fresh application for deemed conveyance. Torna CHS had filed suit seeking conveyance of land, which has been withdrawn on account of filing of third application for deemed conveyance. Therefore, if liberty is not granted to Torna CHS to



challenge the order dated 5 August 2021, it would be rendered remediless in respect of its right of having the land conveyed in its favour. Therefore, while setting aside the impugned order dated 14 November 2024, the society deserves to be granted liberty to challenge the order dated 5 August 2021. Society's second application for deemed conveyance is not adjudicated on merits and the decision of the competent authority refusing to adjudicate the same on merits must be permitted to be challenged by the Society. There is a statutory right in favour of Torna CHS to apply for deemed conveyance of the land and the building. The Competent Authority has however held in the second rejection order dated 5 August 2021 that it cannot adjudicate Society's application on merits in the light of pendency of litigation between various parties. Whether the said decision of the Competent Authority is valid or not must necessarily be permitted to be tested by the Society. In my view therefore liberty needs to be granted to Torna CHS to challenge the order dated 5 August 2021.

**43)** The petitions accordingly succeed, and I proceed to pass the following order:

- (i) Order dated 14 November 2024 passed by the Competent Authority in Application No.193/2024 is set aside.
- (ii) Torna CHS would however be at liberty to challenge order dated 5 August 2021 passed by the Competent Authority and such challenge would be decided on its own merits. All rights and contentions of parties on merits are expressly left open.



44) With the above directions, the petitions are **allowed**. There shall be no order as to costs.

45) With disposal of the petitions, Interim Application Nos.1171/2025 and 4176/2025 taken out for intervention become infructuous and do not survive. The same also stand disposed of.

[SANDEEP V. MARNE, J.]

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