

Shabnoor

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

WRIT PETITION NO.13685 OF 2022

Ganesh Krupa CHS Ltd

Through Its Chairman

Sandeep V. Chitre

Having its Office at M5,

Kashish Park, LBS Marg Mulund Check Naka

Thane (W) 400604 (Maharashtra)

... Petitioner

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Vs.

1. State of Maharashtra

Through its Secretary

Ministry of Co-operation

Mantralaya, Mumbai- 400032.

2. District Deputy Registrar and Company

Authority, Cooperative Societies, Thane

having his address at 1st Floor,

Gaondevi Market Building, Gaondevi

Maindan, Gokhale Road,

Thane – 400602 (Maharashtra)

3. Kashish Park Realty Pvt Ltd

Through its Director Having its

Regd. Office at Kashish Park FGP Ltd.

Complex LBS Marg Mulund Check Naka,

Thane (W)- 400604 (Maharashtra)

4. FGP Ltd

Through its Director Office at 9,

Wallace Street, Fort, Mumbai- 400001

5. Ladam Homes Pvt Ltd (Marketing Agency)

Having its office at Ladam House, M Road,
Wagle Industrial Estate

Thane- 4000604 (Maharashtra)

6. Residency Cooperative Housing Society Ltd

Through its Secretary Office at

LBS Marg Near Kashish Park

Mulund Check Naka

Thane- 4000604 (Maharashtra)

7. Bombay Burmah Trading Corporation Ltd,

through its Secretary Having office at

Commercial Union House, Wallace Street,

Azad Maidan, Fort, Mumbai-400001.

.... Respondents

WITH

WRIT PETITION NO. 15129 OF 2022

Siddhivinayak CHS Ltd

Through its Chairman, Nandkumar Manohar

Gosavi, Having its office at M3, Kashish Park,

LBS Marg Mulund Check Naka, Thane (W)-

400604 (Maharashtra)

... Petitioner

Vs.

1. State of Maharashtra

Through its Secretary

Ministry of Co-operation

Mantralaya, Mumbai- 400032.

2. District Deputy Registrar and Company

Authority, Cooperative Societies, Thane

having his address at 1st Floor,

Gaondevi Market Building, Gaondevi

Maindan, Gokhale Road,
Thane – 400602 (Maharashtra)

3. Kashish Park Realty Pvt Ltd

Through its Director Having its
Regd. Office at Kashish Park FGP Ltd.
Complex LBS Marg Mulund Check Naka,
Thane (W)- 400604 (Maharashtra)

4. FGP Ltd

Through its Director Office at 9,
Wallace Street, Fort, Mumbai- 400001

5. Ladam Homes Pvt Ltd (Marketing Agency)

Having its office at Ladam House, M Road,
Wagle Industrial Estate
Thane- 4000604 (Maharashtra)

6. Residency Cooperative Housing Society Ltd

Through its Secretary Office at
LBS Marg Near Kashish Park
Mulund Check Naka
Thane- 4000604 (Maharashtra)

7. Bombay Burmah Trading Corporation Ltd,

through its Secretary Having office at
Commercial Union House, Wallace Street,
Azad Maidan, Fort, Mumbai-400001.

....Respondents

**WITH
WRIT PETITION NO. 15131 OF 2022**

Chintamani CHS Ltd,

Through its Secretary, Shri. Kishore
Harishchandra Nanche, Having its office at
M8, Kashish Park, LBS Marg Mulund Check
Naka, Thane (W)- 400604 (Maharashtra)

... Petitioner

Vs.

1. State of Maharashtra

Through its Secretary
Ministry of Co-operation
Mantralaya, Mumbai- 400032.

2. District Deputy Registrar and Company

Authority, Cooperative Societies, Thane
having his address at 1st Floor,
Gaondevi Market Building, Gaondevi
Maindan, Gokhale Road,
Thane – 400602 (Maharashtra)

3. Kashish Park Realty Pvt Ltd

Through its Director Having its
Regd. Office at Kashish Park FGP Ltd.
Complex LBS Marg Mulund Check Naka,
Thane (W)- 400604 (Maharashtra)

4. FGP Ltd

Through its Director Office at 9,
Wallace Street, Fort, Mumbai- 400001

5. Ladam Homes Pvt Ltd (Marketing Agency)

Having its office at Ladam House, M Road,
Wagle Industrial Estate
Thane- 4000604 (Maharashtra)

6. Residency Cooperative Housing Society Ltd

Through its Secretary Office at
LBS Marg Near Kashish Park
Mulund Check Naka
Thane- 4000604 (Maharashtra)

7. Bombay Burmah Trading Corporation Ltd,

through its Secretary Having office at
Commercial Union House, Wallace Street,

Azad Maidan, Fort, Mumbai-400001.

.... Respondents

**WITH
WRIT PETITION NO. 15218 OF 2022**

Om Ved CHS Ltd

Through its Chairman Ashish S. Pendharkar,
Having its office at M4, Kashish Park,
LBS Marg Mulund Check Naka,
Thane (W)- 400604 (Maharashtra)

... Petitioner

Vs.

1. State of Maharashtra

Through its Secretary
Ministry of Co-operation
Mantralaya, Mumbai- 400032.

2. District Deputy Registrar and Company

Authority, Cooperative Societies, Thane
having his address at 1st Floor,
Gaondevi Market Building, Gaondevi
Maindan, Gokhale Road,
Thane – 400602 (Maharashtra)

3. Kashish Park Realty Pvt Ltd

Through its Director Having its
Regd. Office at Kashish Park FGP Ltd.
Complex LBS Marg Mulund Check Naka,
Thane (W)- 400604 (Maharashtra)

4. FGP Ltd

Through its Director Office at 9,
Wallace Street, Fort, Mumbai- 400001

5. Ladam Homes Pvt Ltd (Marketing Agency)

Having its office at Ladam House, M Road,

Wagle Industrial Estate
Thane- 4000604 (Maharashtra)

6. Residency Cooperative Housing Society

Ltd., Through its Secretary Office at
LBS Marg Near Kashish Park
Mulund Check Naka
Thane- 4000604 (Maharashtra)

7. Bombay Burmah Trading Corporation Ltd,

through its Secretary Having office at
Commercial Union House, Wallace Street,
Azad Maidan, Fort, Mumbai-400001.

....Respondents

WITH
WRIT PETITION NO. 15220 OF 2022

Rajmata Bldng. No. M-7 CHS Ltd

Through its Secretary Mr. Ajay Pednekar
Having its office at M7, Kashish Park, LBS
Marg, Mulund Check Naka, Thane (W)-
400604 (Maharashtra)

... Petitioner

Vs.

1. State of Maharashtra

Through its Secretary
Ministry of Co-operation
Mantralaya, Mumbai- 400032.

2. District Deputy Registrar and Company

Authority, Cooperative Societies Thane
Having his address at 1st Floor,
Gaondevi Market Building, Gaondevi
Maindan, Gokhale Road, Thane –
400602 (Maharashtra)

3. Kashish Park Realty Pvt Ltd

Through its Director Having its Regd.
Office at Kashish Park FGP Ltd. Complex
LBS Marg Mulund Check Naka Thane
(W)- 400604 (Maharashtra)

4. FGP Ltd

Through its Director Office at 9, Wallace
Street, Fort, Mumbai- 400001

5. Ladam Homes Pvt Ltd

(Marketing Agency) Having its office at
Ladam House, M Road, Wagle Industrial
Estate Thane- 4000604 (Maharashtra)

**6. Residency Cooperative Housing Society
Ltd** Through its Secretary Office at LBS
Marg Near Kashish Park Mulund Check
Naka Thane- 4000604 (Maharashtra)

**7. Bombay Burmah Trading Corporation
Ltd**, through its Secretary Having office
at Commercial Union House, Wallace
Street, Azad Maidan, Fort, Mumbai-
400001.

....Respondents

**WITH
WRIT PETITION NO. 15127 OF 2022**

Om Shree CHS Ltd

Through its Secretary Shri. Dashrath Genbhau
Gulve, Having its office at M1, Kashish Park,
LBS Marg Mulund Check Naka Thane (W)-
400604 (Maharashtra)

... Petitioner

Vs.

1. State of Maharashtra

Through its Secretary
Ministry of Co-operation
Mantralaya, Mumbai- 400032.

2. **District Deputy Registrar and Company Authority**, Cooperative Societies Thane
Having his address at 1st Floor,
Gaondevi Market Building, Gaondevi
Maindan, Gokhale Road, Thane –
400602 (Maharashtra)
3. **Kashish Park Realty Pvt Ltd**
Through its Director Having its Regd.
Office at Kashish Park FGP Ltd. Complex
LBS Marg Mulund Check Naka Thane
(W)- 400604 (Maharashtra)
4. **FGP Ltd**
Through its Director Office at 9, Wallace
Street, Fort, Mumbai- 400001
5. **Ladam Homes Pvt Ltd**
(Marketing Agency) Having its office at
Ladam House, M Road, Wagle Industrial
Estate Thane- 4000604 (Maharashtra)
6. **Residency Cooperative Housing Society Ltd** Through its Secretary Office at LBS
Marg Near Kashish Park Mulund Check
Naka Thane- 4000604 (Maharashtra)
7. **Bombay Burmah Trading Corporation Ltd**, through its Secretary Having office
at Commercial Union House, Wallace
Street, Azad Maidan, Fort, Mumbai-
400001.

....Respondents

WITH
WRIT PETITION NO. 15128 OF 2022

Sai Chhaya CHS Ltd

Through its Authorised Signatory
Shri. Sanjay Dattatray Gurav,
Having its office at M2, Kashish Park,
LBS Marg Mulund Check Naka
Thane (W)- 400604 (Maharashtra)

... Petitioner

Vs.

- 1. State of Maharashtra**
Through its Secretary
Ministry of Co-operation
Mantralaya, Mumbai- 400032.
- 2. District Deputy Registrar and Company Authority,** Cooperative Societies Thane
Having his address at 1st Floor,
Gaondevi Market Building, Gaondevi
Maindan, Gokhale Road, Thane –
400602 (Maharashtra)
- 3. Kashish Park Realty Pvt Ltd**
Through its Director Having its Regd.
Office at Kashish Park FGP Ltd. Complex
LBS Marg Mulund Check Naka Thane
(W)- 400604 (Maharashtra)
- 4. FGP Ltd**
Through its Director Office at 9, Wallace
Street, Fort, Mumbai- 400001
- 5. Ladam Homes Pvt Ltd**
(Marketing Agency) Having its office at
Ladam House, M Road, Wagle Industrial
Estate Thane- 4000604 (Maharashtra)
- 6. Residency Cooperative Housing Society Ltd** Through its Secretary Office at LBS

Marg Near Kashish Park Mulund Check
Naka Thane- 4000604 (Maharashtra)

7. **Bombay Burmah Trading Corporation Ltd**, through its Secretary Having office at Commercial Union House, Wallace Street, Azad Maidan, Fort, Mumbai-400001.

....Respondents

**WITH
WRRIT PETITION NO. 5946 OF 2023**

Neelkanth CHS Ltd., Through Vice President
Bhikaji Shantaram Salgaonkar
Having its office at M9, Kashish Park
LBS Marg Mulund Check Naka
Thane (W) 400604 (Maharashtra)

... Petitioner

Vs.

1. **State of Maharashtra**
Through its Secretary
Ministry of Co-operation
Mantralaya, Mumbai- 400032.
2. **District Deputy Registrar and Company Authority**, Cooperative Societies Thane
Having his address at 1st Floor,
Gaondevi Market Building, Gaondevi
Maindan, Gokhale Road, Thane –
400602 (Maharashtra)
3. **Kashish Park Realty Pvt Ltd**
Through its Director Having its Regd.
Office at Kashish Park FGP Ltd. Complex
LBS Marg Mulund Check Naka Thane
(W)- 400604 (Maharashtra)

4. FGP Ltd

Through its Director Office at 9, Wallace Street, Fort, Mumbai- 400001

5. Ladam Homes Pvt Ltd

(Marketing Agency) Having its office at Ladam House, M Road, Wagle Industrial Estate Thane- 4000604 (Maharashtra)

6. Residency Cooperative Housing Society Ltd

Through its Secretary Office at LBS Marg Near Kashish Park Mulund Check Naka Thane- 4000604 (Maharashtra)

7. Bombay Burmah Trading Corporation Ltd

, through its Secretary Having office at Commercial Union House, Wallace Street, Azad Maidan, Fort, Mumbai- 400001.

....Respondents

WITH

WRIT PETITION NO. 15130 OF 2022

Shree Swami Samarth CHS Ltd

Through Its Authorised Signatory Shri. Vilas Krishna Ranade, Having its office at M10, Kashish Park, LBS Marg Mulund Check Naka, Thane (W)- 400604 (Maharashtra)

... Petitioner

Vs.

1. State of Maharashtra

Through its Secretary
Ministry of Co-operation
Mantralaya, Mumbai- 400032.

2. District Deputy Registrar and Company Authority, Cooperative Societies Thane

Having his address at 1st Floor,
Gaondevi Market Building, Gaondevi
Maindan, Gokhale Road, Thane –
400602 (Maharashtra)

3. Kashish Park Realty Pvt Ltd

Through its Director Having its Regd.
Office at Kashish Park FGP Ltd. Complex
LBS Marg Mulund Check Naka Thane
(W)- 400604 (Maharashtra)

4. FGP Ltd

Through its Director Office at 9, Wallace
Street, Fort, Mumbai- 400001

5. Ladam Homes Pvt Ltd

(Marketing Agency) Having its office at
Ladam House, M Road, Wagle Industrial
Estate Thane- 4000604 (Maharashtra)

6. Residency Cooperative Housing Society

Ltd Through its Secretary Office at LBS
Marg Near Kashish Park Mulund Check
Naka Thane- 4000604 (Maharashtra)

7. Bombay Burmah Trading Corporation

Ltd, through its Secretary Having office
at Commercial Union House, Wallace
Street, Azad Maidan, Fort, Mumbai-
400001.

.... Respondents

**WITH
WRIT PETITION NO. 15219 OF 2022**

Sudarshan CHS Ltd

Through its Chairman

Maruti Y. Parab,

Having its office at M6, Kashish Park, LBS
Marg Mulund Check Naka, Thane (W)-
400604 (Maharashtra)

... Petitioner

Vs.

1. **State of Maharashtra**
Through its Secretary
Ministry of Co-operation
Mantralaya, Mumbai- 400032.
2. **District Deputy Registrar and Company Authority**, Cooperative Societies Thane
Having his address at 1st Floor,
Gaondevi Market Building, Gaondevi
Maindan, Gokhale Road, Thane –
400602 (Maharashtra)
3. **Kashish Park Realty Pvt Ltd**
Through its Director Having its Regd.
Office at Kashish Park FGP Ltd. Complex
LBS Marg Mulund Check Naka Thane
(W)- 400604 (Maharashtra)
4. **FGP Ltd**
Through its Director Office at 9, Wallace
Street, Fort, Mumbai- 400001
5. **Ladam Homes Pvt Ltd**
(Marketing Agency) Having its office at
Ladam House, M Road, Wagle Industrial
Estate Thane- 4000604 (Maharashtra)
6. **Residency Cooperative Housing Society Ltd** Through its Secretary Office at LBS
Marg Near Kashish Park Mulund Check
Naka Thane- 4000604 (Maharashtra)
7. **Bombay Burmah Trading Corporation Ltd**, through its Secretary Having office
at Commercial Union House, Wallace
Street, Azad Maidan, Fort, Mumbai-
400001.

.... Respondents

Mr. Ramchandra S. Apte, Senior Advocate i/b Mr. Saurabh Oka, for petitioner in all WPs.

Mr. Pradeep Thorat with Mr. Kartikay Kaushik i/b M/s. Narayanan and Narayanan, for respondent No. 3 in Writ Petition No.13685/2022

Ms. K. N. Solunkhe, Additonal GP, for State-respondent nos. 1 and 2 in writ petition No.13685/2022.

Mr. S. L. Babar, AGP, for State-respondent Nos. 1 and 2 in writ petition No.15131/2022.

Ms. A.A. Nadkarni, AGP, for State-respondent Nos. 1 and 2 in writ petition No.15128/2022.

Smt. M.S. Shrivastav, AGP, for State-respondent Nos. 1 and 2 in writ petition No.15127/2022.

Mr. Y.D. Patil, AGP, for State-respondent Nos. 1 and 2 in writ petition No.15219/2022.

Ms. S.S. Jadhav, AGP, for State-respondent Nos. 1 and 2 in writ petition No.15129/2022.

Smt. A.A. Purav, AGP, for State-respondent Nos. 1 and 2 in writ petition No.15130/2022.

Mr. A.A. Alaspurkar, AGP, for State-respondent Nos. 1 and 2 in writ petition No.15220/2022.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 07, 2026.

PRONOUNCED ON : APRIL 21, 2026

JUDGMENT:

1. By the present writ petitions instituted under Articles 226 and 227 of the Constitution of India, the petitioner has assailed the legality, correctness and propriety of the order dated 22 July 2020 passed by respondent No. 2, namely the District Deputy Registrar, whereby the application preferred under Section 11(3) of the Maharashtra Ownership Flats Act, 1963, came to be partly allowed. The challenge is essentially founded on the contention that the Competent Authority failed to exercise jurisdiction in accordance with the statutory mandate governing grant of deemed conveyance.

2. The facts giving rise to the present writ petitions, in brief, are thus. By the impugned order, respondent No. 2 granted deemed conveyance only in respect of the building structure and declined to include the underlying land, the appurtenant portion adjoining the building, and the proportionate undivided interest in the common open spaces and amenities, aggregating to 1219.525 square meters. According to the petitioner, such course is contrary to the scheme and object of the MOFA Act, 1963, and also inconsistent with the registered agreements executed under Section 4 thereof. It is the petitioner's case that respondent No. 4 was the absolute owner of land admeasuring 58,267.79 square meters situated at C.S. Nos. 2 to 21, 37, 38, 39 and 40 (Part), Village Naupada, Taluka and District Thane, Maharashtra, and that respondent No. 4 had entered into a development arrangement with respondent No. 3 for construction upon the said larger

property. It is stated that respondent No. 3 thereafter constructed the building in which the petitioner society is situated upon a plot admeasuring 1219.525 square meters. The said building consists of ground floor plus seven upper floors containing 32 flats. Adjacent thereto, there exist approximately ten other buildings, of which five stand upon plots admeasuring 1219.525 square meters each, while the remaining five are situated on plots admeasuring 751.006 square meters each. The members of the petitioner society entered into agreements for sale with respondent No. 3 developer for purchase of respective flats, one such agreement being dated 28 March 2006. According to the petitioner, such agreements, being registered under Section 4 of MOFA, carry statutory force and bind the parties. It is further asserted that the contents of the agreement clearly disclose an obligation on the part of respondent No. 3 to convey the land component on which the building stands together with the structure in favour of the society. Since such agreements are expressly subject to the provisions of MOFA, all parties thereto are bound by the statutory obligations arising therefrom.

3. The petitioner further states that initially, as eleven adjoining buildings formed part of one composite layout, a single cooperative society had been constituted. However, with passage of time, disputes and practical difficulties arose, whereupon the occupants of all eleven buildings resolved to form separate societies for each building. Consequently, eleven independent cooperative housing societies came to be registered. The petitioner

society was registered on 23 February 2012. It is contended that upon such registration, respondent No. 3 incurred a statutory obligation under Section 11(1) of MOFA read with Rule 9 of the Maharashtra Ownership Flats Rules, 1972, to execute conveyance in favour of the society within four months. Despite lapse of several years, respondent No. 3 failed to convey either the building or the proportionate share in land. According to the petitioner, such inaction was deliberate and motivated by the desire to retain developmental benefits arising from increased FSI, thereby depriving flat purchasers of their lawful rights. It is further the case of the petitioner that through its Advocate's notice dated 22 August 2019, respondent No. 3 was called upon to execute conveyance of the subject property within fourteen days. In response, respondent No. 3 by letter dated 09 September 2019 forwarded a draft deed of conveyance. However, the proposed draft did not contemplate transfer of any land in favour of the society. The petitioner contends that the draft deed was contrary both to the agreement dated 28 March 2006 and to the provisions of MOFA. It is alleged that respondent No. 3 was intentionally avoiding transfer of land so as to continue deriving benefits therefrom. Thereafter, by letter dated 21 September 2019, the petitioner sought several clarifications. Respondent No. 3, by communication dated 07 October 2019, furnished what is described as vague and evasive replies. Since respondent No. 3 did not agree to execute conveyance of the land component, allegedly in breach of Section 11 of MOFA, the petitioner approached

respondent No. 2, the Competent Authority, by filing an application under Section 11(3) of MOFA on 09 March 2020 seeking deemed conveyance of the land and building.

4. Upon service of notice, respondent No. 3 appeared before the Competent Authority and filed its written statement in July 2020. The principal defence raised was that until the entire development of the larger parcel admeasuring more than 50,000 square meters was completed, no conveyance of land could be executed in favour of the petitioner society. According to the petitioner, such stand was taken only to avoid transfer of proportionate land and to retain advantages arising from residual development potential. Thereafter, by order dated 22 July 2020, the Competent Authority directed execution of conveyance only in respect of the building and declined to include the land beneath the structure or the adjoining area on the reasoning that other buildings remained under construction or were yet to be constructed, and that only upon completion of the full layout development would it be proper to transfer the land beneath the building together with proportionate interest in open spaces and facilities admeasuring 1219.525 square meters. The petitioner contends that the Competent Authority was bound to act in accordance with the registered agreements and the provisions of MOFA, and being a statutory authority, could not restrict conveyance to the superstructure alone while excluding the land component. The petitioner submits that a building cannot, in law or in fact, exist independent of the land on which it stands. It is

urged that the proportionate land reasonably necessary for support, access and enjoyment of the structure is required to vest in the society. The right of conveyance, it is contended, cannot be postponed indefinitely on the ground that construction in other portions of the larger property is incomplete. According to the petitioner, the interpretation adopted by the Competent Authority defeats the very object of MOFA, which was enacted to protect flat purchasers and to ensure timely transfer of title in favour of cooperative societies. It is thus alleged that the Competent Authority acted in excess of jurisdiction and contrary to the statutory scheme.

5. The record further indicates that after the order dated 22 July 2020, the petitioner society submitted an application/representation dated 30 July 2020 before the Competent Authority pointing out what it described as an apparent legal error in the said order. Thereafter, respondent No. 2 issued a corrigendum dated 06 August 2020 directing conveyance of both the land and the building in favour of the petitioner. Pursuant thereto, a deed of conveyance came to be executed by the Competent Authority in favour of the petitioner society and was duly registered before the Sub Registrar of Assurances. Being aggrieved by the corrigendum dated 06 August 2020, respondent No. 3 approached this Court by filing writ petitions seeking, inter alia, quashing of the said corrigendum, the conveyance deed and its registration. The petitioner society opposed the said proceedings by filing a detailed reply asserting breach of

contractual and statutory obligations on the part of the contesting respondents. This Court, by order dated 11 December 2020, allowed the writ petition filed by respondent No. 3 and set aside the corrigendum dated 06 August 2020. It was held that the Competent Authority had no power of review and therefore lacked jurisdiction to alter its earlier order by issuing a corrigendum. It was further held that no notice regarding the proposed corrigendum had been given to respondent No. 3. Aggrieved thereby, the petitioner society preferred a Special Leave Petition before the Hon'ble Supreme Court on 12 March 2021. After hearing learned Counsel for the petitioner, the Hon'ble Supreme Court granted liberty to challenge the original order dated 22 July 2020 before this Court. On such liberty being granted, the petitioner sought permission to withdraw the Special Leave Petition. Accordingly, by order dated 09 April 2021, the Hon'ble Supreme Court permitted withdrawal of the Special Leave Petition with liberty to challenge the legality of the original order dated 22 July 2020. It is in these circumstances that the present writ petitions have been instituted.

6. Mr. Apte, learned Senior Advocate appearing on behalf of the petitioners, submits that by the present writ petition the petitioners have called in question the order dated 22 July 2020 passed by respondent No. 2, whereby the application preferred under Section 11(3) of the Maharashtra Ownership of Flats Act, 1963 has been partly allowed. Learned Senior Counsel submits that under the impugned order, respondent No. 2 has granted deemed

conveyance only in respect of the superstructure and has failed to direct conveyance of the land beneath the building together with the proportionate undivided share in the open spaces, common amenities and appurtenant facilities.

7. Learned Senior Counsel further submits that respondent No. 4 was the absolute owner of land admeasuring 58,267.79 square meters situated at C.S. Nos. 2 to 21, 37, 38, 39 and 40 (Part), Village Naupada, Taluka and District Thane, and had entered into a development arrangement with respondent No. 3 for carrying out construction upon the said larger parcel. It is submitted that pursuant thereto respondent No. 3 constructed buildings bearing Nos. M1 to M5, each having built-up area of 1219.525 square meters, and buildings bearing Nos. M6 to M10, each having built-up area of 751.006 square meters.

8. Learned Senior Counsel submits that the members of the petitioner societies entered into Agreements for Sale with respondent No. 3, one such agreement being dated 28 March 2006. The said agreements are duly registered and, by virtue of Section 4 of MOFA, possess statutory recognition and binding force. It is submitted that the parties are governed not only by the contractual terms contained therein but also by the mandatory provisions of MOFA. He further submits that though initially one cooperative society had been constituted, subsequently separate societies for each building came to be registered on 23 February 2012.

9. It is next submitted that respondent No. 3 was under a statutory obligation to execute conveyance in favour of the respective societies within four months from their registration, as contemplated under Section 11(1) of MOFA read with Rule 9 of the Maharashtra Ownership Flats Rules, 1972. However, respondent No. 3 failed to discharge the said obligation for several years, allegedly with a view to retain residual development rights and to derive advantage from enhanced FSI potential. Learned Senior Counsel submits that in such circumstances the petitioners were constrained to institute proceedings under Section 11(3) of MOFA before respondent No. 2 on 9 March 2020 seeking deemed conveyance of both land and building.

10. Learned Senior Counsel submits that respondent No. 3 appeared before the Competent Authority and opposed the said application by filing its reply. It is submitted that respondent No. 2, by the impugned order, has erroneously granted deemed conveyance only in respect of the building structure while refusing conveyance of the land component and the petitioners' proportionate undivided share therein.

11. At the outset, learned Senior Counsel submits that a building cannot exist as an independent legal entity divorced from the land on which it stands. The petitioners, according to him, are entitled to conveyance of such proportionate land as is necessary for proper and beneficial enjoyment of the building, and such right cannot be defeated merely on the ground that development upon other portions of the larger layout is yet to be completed. It is

submitted that the impugned order creates an anomalous position whereby the petitioners are left with ownership of the structure without any corresponding right, title or interest in the land, which position is legally unsustainable and contrary to settled principles.

12. Learned Senior Counsel further submits that as per the sanctioned layout of the year 2006, the balance plot area admeasures 46,404.96 square meters. Since the built-up area of buildings M1 to M5 is 1219.525 square meters each, every such building would be entitled, according to the petitioners, to a proportionate share of 2.74 percent, equivalent to 1142.01 square meters. It is similarly submitted that buildings M6 to M10, each having built-up area of 751.006 square meters, would be entitled to a proportionate share of 1.52 percent, equivalent to 703.27 square meters for each building.

13. Learned Senior Counsel submits that the contention of the developer that land cannot be conveyed because multiple buildings exist upon the larger layout is misconceived. According to him, the petitioners do not seek physical partition or demarcation of separate parcels, but only claim an undivided proportionate interest in the land.

14. In support of the aforesaid submissions, reliance is placed upon the judgment of this Court in *Lok Housing & Construction Ltd. v. State of Maharashtra & Ors. in Writ Petition No. 6418 of 2017*, particularly paragraph 38 thereof. It is submitted that the said decision holds that the rights of flat purchasers and of the

society representing them crystallize on the basis of sanctioned plans and layout disclosed at the time of execution of the Agreements for Sale, and that entitlement to conveyance of proportionate land and undivided share in common areas must be determined with reference to such approved layout.

15. Further reliance is placed upon the judgment of the Bombay High Court in *Gala Complex Premises Co-operative Society Ltd. v. Gala Wood Works & Ors. in Writ Petition No. 9353 of 2024*, wherein it has been held that where FSI of a larger plot has been utilized for construction of a particular building or society, such society would be entitled to conveyance of proportionate undivided share in the land corresponding to the construction raised thereon. Learned Senior Counsel submits that the aforesaid judgments squarely govern the controversy in hand, inasmuch as construction of the petitioners' buildings has admittedly been carried out by utilizing FSI available on the larger plot. Consequently, according to the petitioners, they are entitled to conveyance of proportionate undivided share in the land.

16. In view of the aforesaid submissions, learned Senior Counsel contends that the impugned order dated 22 July 2020, insofar as it denies conveyance of proportionate undivided share in the land, is illegal, arbitrary, and contrary to the provisions of MOFA as well as the law laid down in binding precedents, and therefore deserves to be set aside.

17. Per contra, Mr. Thorat, learned Advocate appearing on behalf of respondent No. 3, opposes the present petitions and submits that the same are liable to be dismissed at the threshold on the ground of non-joinder of necessary parties. Learned Counsel submits that the subject development forms part of a larger layout admeasuring 58,267.79 square meters, out of which an area of 11,324.83 square meters has already been handed over to the Thane Municipal Corporation. It is submitted that within the layout there are 42 completed buildings which have obtained Occupation Certificates, and three further buildings are under construction. According to respondent No. 3, the present petitions have been filed only by a few societies, whereas occupants or societies of the remaining 35 buildings have not been impleaded. It is further submitted that respondent No. 3 represents only three such buildings. In these circumstances, any relief granted in the present petitions would seriously prejudice and adversely affect the rights of the remaining 32 buildings or societies, who are therefore necessary and proper parties.

18. Without prejudice to the preliminary objection, learned Counsel submits that even assuming the petitioners' claim for proportionate land is to be examined, the total land that can be allocated collectively to all petitioners would be 2542.715 square meters, being plinth area together with appurtenant land, along with protected FSI of 9852.655 square meters, while preserving their undivided right to use and enjoy common recreational grounds, internal roads and open spaces within the larger layout.

It is submitted that the aforesaid position is in consonance with Clause C(vi)(2) of the Government Resolution dated 22 June 2018 issued by the Housing Department.

19. Learned Counsel further submits that during the course of hearing, respondent No. 3 has tendered a chart indicating the areas demanded by the petitioners, the areas which according to respondent No. 3 can legally be granted, and a physical feasibility analysis in support thereof. It is submitted that the said analysis clearly demonstrates that if the petitioners are granted area of 1219.525 square meters each for five societies and 751.006 square meters each for the remaining five societies, such allocation would result in complete overlapping with plinth areas of other buildings including Buildings MN-1 to MN-5, L1 and L2, as also internal roads, driveways and recreational grounds, and in certain cases would even travel beyond the layout boundary.

20. Learned Counsel submits that the said analysis demonstrates the practical impossibility and inherent absurdity of the petitioners' demand. It is therefore contended that the disputes raised in the present petitions involve complex and disputed questions of fact incapable of satisfactory adjudication in writ jurisdiction, and the petitioners ought to be relegated to an appropriate civil suit. It is further submitted that there exists no legal basis either under statute or under the Agreements for Sale to determine entitlement of the petitioner societies to land by equating the same with their built-up area or by placing reliance upon the layout plan of the year 2012. According to respondent No. 3, such methodology is

arbitrary and unsustainable.

21. Learned Counsel submits that all constructions carried out on the subject property are duly authorized and strictly in accordance with sanctioned plans. It is contended that no society has any vested right to claim conveyance of land equivalent to its constructed or built-up area. He further submits that under the applicable Development Control Regulations and the Unified Development Control and Promotion Regulations, additional construction is permissible by utilization of Transferable Development Rights and other permissible loadings on plot potential, obtained upon payment of substantial premia and charges to public authorities.

22. It is submitted that such lawful utilization of TDR and loading of FSI permanently enhances the development potential of the land. Consequently, any claim for conveyance must be considered with reference to such expanded plot potential. Learned Counsel further submits that keeping in view the limitations arising under Sections 11(3) to 11(5) of MOFA, the Housing Department has issued the Government Resolution dated 22 June 2018 to guide the Competent Authority in such matters. It is lastly submitted that under Clause C(vi)(2) of the said Government Resolution, where TDR has been utilized, conveyance may be confined to the plinth area and land appurtenant thereto, while preserving rights of the societies to use common areas within the larger layout. On the strength of the aforesaid submissions, learned Counsel contends that the present petitions are devoid of

merit, suffer from non-joinder of necessary parties, involve seriously disputed questions of fact, and are therefore liable to be dismissed.

REASONS AND ANALYSIS:

23. I have carefully considered the submissions advanced by the learned Senior Advocate appearing for the petitioners, the learned Advocate appearing for respondent No.3, and the entire material produced on record by both sides. I have also examined in detail the certificates issued by Articulate 360 dated 03.04.2026, together with the two certificates issued by 10 Folds Architects & Consultants dated 02.03.2026 concerning Buildings M1 to M5 and M6 to M10. The real issue is whether the project in question was developed by utilizing TDR or some additional development potential, and if such additional benefit was in fact used, then what is the correct area required to be conveyed in favour of the petitioner societies while granting deemed conveyance.

24. The petitioners contend that respondent No.3 has delayed conveyance for years and has failed to transfer the land together with the structures, though such obligation arises both under the agreements for sale and under the provisions of MOFA. Petitioners rely upon the larger layout, the construction plans, and the architect's certificate to contend that several buildings were raised as part of one scheme. Therefore the land beneath the buildings, the appurtenant portions attached to each structure, and the common open spaces and amenities are required to be conveyed in

a proportionate manner. They are parts of that development. Hence, their rights must be determined with regard to the layout and the common facilities.

25. Respondent No.3 submits that the layout consists of numerous buildings, some completed and some still under construction, and therefore any conveyance in favour of the petitioners may prejudice the rights of other societies and future occupants. It is urged that if the claim of the petitioners is accepted, it may overlap with existing structures, internal roads, driveways, recreation grounds and utility spaces. This submission cannot be brushed aside because the record do show a layout having phased development. However, this argument establishes that the Court should not direct a partition destructive of the remaining layout. It does not answer the material question, namely what undivided rights the petitioner societies are entitled to receive under MOFA read with the Government Resolution.

26. The important document relied upon by the petitioners is the Architect certificate issued by Articulate 360. That certificate shows the original plot area of 58,267.79 sq. mtrs. It deducts road setbacks, portions not in possession, and areas earmarked or handed over for reservation and amenity purposes. After these deductions, the net plot area is shown as 56,296.16 sq. mtrs. The certificate then takes into account area required to be handed over for TDR permission, recreational ground and amenity obligations, and arrives at a balance area of 46,303.96 sq. mtrs. It thereafter mentions total area considered for FSI as 50,427.82 sq. mtrs. and

total proposed built up area as 49,687.105 sq. mtrs. These figures indicate a project involving deductions, reservations, amenities, layout obligations, and enhancement of development loading. On plain reading, it appears that the project availed additional development potential beyond land coverage. Hence, the submission that TDR or some equivalent additional FSI component was utilized gets support.

27. The same certificate works out the proportionate share of the ten petitioner buildings. It states that the share in BUA area of the other building groups comes to 39,834.45 sq. mtrs., representing 80.17 percent, whereas the conveyable share of Buildings M1 to M10 comes to 9,852.655 sq. mtrs., representing 19.83 percent. The petitioners rely upon this percentage to claim proportionate rights in the balance plot area and common areas. This computation proceeds from built up area ratio within the sanctioned layout. Once the Government Resolution provides a rule for TDR cases, the BUA ratio can assist in determining common undivided share, but cannot convert itself into a demarcated parcel of land.

28. The two certificates issued by 10 Folds Architects also deserve attention. One pertains to Building M1 to M5 and the other to Building M6 to M10. In the certificate for M1 to M5, the plinth area is shown as 141.545 sq. mtrs. and the appurtenant area as 137.635 sq. mtrs. It is mentioned that such appurtenant area excludes roads, driveways, parking spaces, recreational grounds and other common areas. In the certificate for M6 to M10, the

plinth area is stated as 141.060 sq. mtrs. and the appurtenant area as 86.630 sq. mtrs., excluding common portions. These certificates identify plinth and adjoining usable area for the representative building types in the petitioner group. They provide a basis for determining conveyable area where the Government Resolution mandates plinth and appurtenant method.

29. Having regard to Clause 2(C) of the Government Resolution dated 22 June 2018, the legal position becomes clearer. Clause 2(C)(vi)(2) states that where TDR is utilized in a layout, deemed conveyance should be made according to plinth and appurtenant area. Clause 2(C)(6) further provides that while mentioning common easements in the deemed conveyance order and certificate, it should be recorded that the applicant society has undivided rights in common easements in proportion to the construction of the building of such society. These two clauses must be read together. Harmonious reading requires that in a TDR case, the society receives two components. First, plinth plus appurtenant area. Second, undivided proportionate rights in common roads, services, open spaces and easements.

30. Proceeding on that basis, the computation can be made. For each M1 type building, the conveyable area is the total of plinth area 141.545 sq. mtrs. and appurtenant area 137.635 sq. mtrs., aggregating 279.180 sq. mtrs. There are five such buildings, namely M1 to M5. Hence, the total for M1 to M5 comes to 1,395.900 sq. mtrs. For each M6 type building, the plinth area is 141.060 sq. mtrs. and the appurtenant area is 86.630 sq. mtrs.,

aggregating 227.690 sq. mtrs. There are five such buildings, namely M6 to M10. Hence, the total for M6 to M10 comes to 1,138.450 sq. mtrs. Thus, the conveyable area for all ten petitioner societies works out to 2,534.350 sq. mtrs.

31. The undivided common share must be separately determined. The petitioners' architect has worked out the share of the ten petitioner buildings as 9,852.655 sq. mtrs. out of total BUA of 49,687.105 sq. mtrs. This gives a proportion of 19.8296 percent, rounded as 19.83 percent. This ratio is derived from construction figures and there is no contrary computation placed on record. If the recreational ground area is taken at 6,945.59 sq. mtrs., the petitioner societies' undivided share therein comes to 1,377.268 sq. mtrs. If the balance plot area after deductions is taken at 39,358.37 sq. mtrs., their undivided proportion works out to 7,804.53 sq. mtrs. It must be understood that these are not exclusive portions. They represent proportionate title and user rights in common layout land and facilities.

32. The submission of respondent No.3 that the petitioners cannot claim anything beyond plinth area cannot be accepted. If that contention is accepted absolutely, Clause 2(C)(6) would become meaningless. A cooperative society cannot be left owning only a footprint of construction while having no access to roads, passages, services or common open areas. At the same time, the petitioners cannot insist on a carving out of separate plots in disregard of other buildings and common facilities. The balance lies in granting plinth plus appurtenant area and undivided

proportionate rights in common amenities.

33. For all these reasons, I hold that the project involved use of additional development potential and therefore falls within Clause 2(C)(vi)(2) and Clause 2(C)(6) of the Government Resolution dated 22 June 2018. Consequently, deemed conveyance in favour of the petitioner societies must be worked out on the basis of plinth area plus appurtenant area, and not merely on bare built up area formula. The exact exclusive conveyable area comes to 2,534.350 sq. mtrs., consisting of 1,395.900 sq. mtrs. for Buildings M1 to M5 and 1,138.450 sq. mtrs. for Buildings M6 to M10. In addition thereto, the petitioner societies are entitled to undivided common share of 19.8296 percent in common areas, open spaces, internal roads, amenities, easements and related facilities of the larger layout, including corresponding proportionate share in recreational ground and other common portions as already worked out. In my view, this gives full and fair effect to the documentary record, the statutory framework and the Government Resolution, and no contrary computation survives on the facts of the present matter.

34. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

- (a) The writ petitions succeed in part;
- (b) It is declared that the petitioner societies are entitled to deemed conveyance in terms of Clause 2(C)(vi)(2) and Clause 2(C)(6) of the Government Resolution dated 22 June

2018;

(c) The impugned order, to the extent it denies conveyance of land appurtenant to the buildings and proportionate undivided rights in common areas, stands modified accordingly;

(d) Respondent No.2, Competent Authority, shall within a period of eight weeks from the date of uploading of this order, issue fresh deemed conveyance certificate and execute / cause execution of conveyance deed in favour of the following societies with exclusive area and corresponding undivided common rights as set out hereinbelow;

Exclusive Conveyable Area

M1. Om Shri CHS

279.180 sq. mtrs.

M2. Sai Chaya CHS

279.180 sq. mtrs.

M3. Siddhivinayak CHS

279.180 sq. mtrs.

M4. Om Ved CHS

279.180 sq. mtrs.

M5. Ganesh Krupa CHS

279.180 sq. mtrs.

M6. Sudarshan CHS

227.690 sq. mtrs.

M7. Rajmata CHS

227.690 sq. mtrs.

M8. Chintamani CHS

227.690 sq. mtrs.

M9. Nilkanth CHS

227.690 sq. mtrs.

M10. Shree Swami Samarth CHS

227.690 sq. mtrs.

(e) In addition to the above exclusive area, each of the aforesaid societies shall have undivided right, title and interest in the common roads, internal passages, open spaces, recreational grounds, common amenities, services, easements, and facilities in the larger layout;

(f) The undivided common share of the ten petitioner societies collectively is fixed at 19.8296 percent of the common layout areas and facilities;

(g) For administrative convenience, the inter se proportion of common rights amongst the petitioner societies shall be as follows:

(i) M1 to M5 societies. Each society shall hold 2.7938 percent undivided share in the common layout;

(ii) M6 to M10 societies. Each society shall hold

1.1721 percent undivided share in the common layout;

(h) The conveyance deed shall specifically record that:

(i) exclusive area mentioned in clause (d) is by plinth plus appurtenant basis;

(ii) common rights mentioned in clauses (e), (f) and (g) are undivided and not by physical partition;

(iii) rights of access, ingress, egress, user of roads, open spaces, amenities and utilities shall remain available in accordance with sanctioned layout plans.

(i) Mutation entries, if required, shall be carried out by the concerned authority on the basis of the conveyance deed and certificate issued pursuant to this order.

(j) Rule is made absolute in the above terms. No order as to costs.

(AMIT BORKAR, J.)