

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1739 OF 2022

1. Gerald Michael Misquitta,
(as one of the beneficiaries and also as
an Executor and Trustee under the Will
dated 16th August, 1993 of The
deceased Mr. Michael John Misquitta
having address at 72/AA, Misquitta
House, Old Police Station Road, Vile
Parle (West), Mumbai 400 056 **...Petitioner**

Versus

1. State of Maharashtra through its
Chief Secretary and represented by
Office of Public Prosecutor having its
Place of business at High Court
Premises
Hon'ble High Court at Bombay, Fort
Mumbai-400 001
2. District Deputy Registrar,
Co-operative Societies (3)
Mumbai being the Competent
Authority under Section 5(A) of the
Maharashtra Ownership of Flats
(Regulation of the Promotion of
Construction, Sale, Management and
Transfer) Act, 1963 having his Office at
Grihnirman Bhavan, Ground Floor,
Room No.69, Bandra (East), Mumbai-
400 051
3. Priya Co-operative Housing Society
Limited,
A Society registered under the
provisions of the Maharashtra Co-

- operative Societies Act, 1960 under registration No. BOM/K[W]/HSG[TC]/2821/86-87 Having its office at 282, Juhu Cross Lane, Andheri [West], Mumbai – 400 058.
4. M/s. A.K. Associates,
A registered partnership firm,
Through its Partner, Mohammed Umar Khatri
Having office at 628, Khatri House,
13th Road, Behind Khar Telephone Exchange, Khar (West), Mumbai-400 052
5. (a). Chandru Lachmandas Raheja
(b). Suresh Lachmandas Raheja
were partners of M/s. C.S.Enterprises having address at Raheja Centre Point, 294/CST Road, Near Kalina University, Santacruz (East), Mumbai-400 098
6. (a) Manuel Anthony Misquitta
(b) Royce Anthony Misquitta
(c) Roger Anthony Misquitta
(d) Ronnie Anthony Misquitta
(e) Kunal Rajiv Patel
(f) Nikita Rajiv Patel
(e) and (f) legal heirs of late Mrs. Pearl Rajiv Patel
(All being heirs and legal representatives of late Anthony John Misquitta
All having address at- 67, Misquitta House, Old Police Station Road, Vile Parle (West), Mumbai 400 056
7. (a). Kenneth Michael Misquitta
(b). Oscar Michael Misquitta
(both being the beneficiaries along with the Petitioner herein having address at

- 72/AA, Misquitta House, Old Police Station Road, Vile Parle West, Mumbai-400 056.
8. (a) Nancy Philip Misquitta
(b) Clive Philip Misquitta
(c) Regina Mark Texeira
(d) Louella Christopher Farro
(e) Rufina Roy Baptista
(f) Rovina Leroy Gonsalves
(All being heirs and legal representatives of late Philip Lawrence (Dominic) Misquitta, all having address at – 72/AA, Misquitta House, Old Police Station Road, Vile Parle (West), Mumbai-400 056.
 9. (a) Blanche John Misquitta
(b) Blamario John Misquitta
(c) Sobers John Misquitta
(d) Deonne Darwin D’Souza
(All being heirs and legal representatives of late John Alex (Dominic) Misquitta
All having address at – 72/AA, Misquitta House, Old Police Station Road, Vile Parle (West), Mumbai 400 056.
 10. Leslie Dominic Misquitta
having address at- 72/AA, Misquitta House, Old Police Station Road, Vile Parle (West), Mumbai 400 056
 11. Nelson Dominic Misquitta
having address at – 72/AA, Misquitta House, Old Police Station Road, Vile Parle (West), Mumbai 400 056.
 12. Arjun Singh Rathod
Prop of Rasal Builders and Developers
having address at Rajveer Royal, 1st Floor, Dr. Charat Singh Colony Road,

Chakala, Andheri (East), Mumbai 400
099

...Respondents

Mr. Rohaan Cama, Rajan Thakkar, Gaurav Gupte, Ken Misquitta i/b Jeetendra Ranawat, for the Petitioner.
Ms. Vrushali Kabre, AGP for the Respondent Nos.1 and 2.
Mr. Mayur Khandeparkar a/w Udayasankar Samudrala, for Respondent No.3.
Mr. Jatin Sheth, for Respondent Nos.6(b), 6(c), 6(d), 6(e) and 6(f).
Mr. Rushabh Thacker, for Respondent Nos. 7 to 11.
Mr. Gauraj Shah a/w Yatin R. Shah, for Respondent No. 12.

CORAM	DR. NEELA GOKHALE, J.
RESERVED ON:	18th FEBRUARY 2026
PRONOUNCED ON:	25th FEBRUARY 2026

JUDGMENT: -

1. Rule. Rule made returnable forthwith. With consent of the parties, the Petition is taken up for final hearing.
2. The Petitioner assails Order dated 28th May 2014 passed by the Respondent No. 2 - District Deputy Registrar of Co-operative Societies (3), Mumbai, ('Competent Authority') whereby the Deputy Registrar issued a Certificate, certifying the case of the Respondent No. 3 - Society, to be fit for enforcing the unilateral execution of a conveyance deed in its

favour. The Deputy Registrar further directed the Society to submit a draft of transfer document of the subject property to the Competent Authority, in terms of the Certificate and further directed the Sub-Registrar of Assurances to transfer the right, title and interest of the Promoter, in the subject property in favour of the Society, after ascertaining the necessary stamp-duty to be paid, from the Collector of Stamps. The Petitioner has also sought cancellation of the Deed of Assignment and Transfer dated 5th July 2014 registered in the office of the Sub-Registrar of Assurances, Andheri No. 3 under Serial No. BDR-9/5261 of 2014 dated 10th July 2014.

3. The facts of the case, in brief, are as follows:

3.1 All that piece and parcel of land admeasuring approximately 677.90 sq.mtrs. of area, bearing Survey No.286, Hissa No.1 (Part), CTS No.521/2 of Village: Vile Parle (hereinbelow referred as 'said property') was owned by Misquitta Family. The Petitioner is one of the beneficiaries of a

share in the said property. The Respondent Nos. 6 to 11 also have their respective shares in the said property. The Petitioner and the Respondent Nos. 6 to 11 are thus, co-owners of the said property. The Respondent No. 2 is the Competent Authority under Section 11(3) of the Maharashtra Ownership Flats Act (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ('MOFA'). The Respondent No. 3 is the Society, who sought the Unilateral Deemed Conveyance Certificate. The Respondent No. 4 is a partnership firm, which claims to have been assigned a sub-lease by the Respondent No. 5(b). The Respondent Nos. 5(a) and 5(b) were partners of the partnership firm namely, M/s C.S. Enterprises, which was assigned the leasehold rights in the said property by the Petitioners. The Respondent No. 12 is the proprietor of a firm, with whom the Society has executed re-development agreement of the property. He is alleged to have connived with the Society in obtaining the impugned order.

3.2 By a registered lease deed dated 20th June 1974, the Original Owners of the said property leased the said property in favour of the Respondent Nos. 5(a) and 5(b), who were at that time partners in the M/s. C.S. Enterprises. The lease was for a term of 98 years commencing from 1st June 1974 but determinable and renewable, as provided in the lease deed. The lease rent was agreed to be Rs.1,000/- per month. Clause 4(a) of the lease deed declared the rights of the lessee to assign, mortgage, sub-lease and/or sub-divide the said property and their interest therein. It was specifically declared that no further consent was required of the lessors for the aforesaid. The owners however, retained reversionary rights in the property.

3.3 The Respondent No. 4 is alleged to have procured a sub-lease from the Respondent No. 5(b) after dissolution of the partnership between Respondent Nos. 5(a) and 5(b), which in turn developed the said property by constructing a building thereon. The Respondent No. 4 sold the flats in the said

building on ownership basis to various flat purchasers by executing respective flat booking agreements in their favour. The Respondent No. 3- Society of the said flat purchasers was registered on 15th March 1994 with the Competent Authority. Since the Respondent No. 4 failed to perform its statutory obligation of conveying the land and building in favour of the Society, the Respondent No. 3-Society applied to the Respondent No. 2-Authority for the same under the provisions of Section 11(3) of the MOFA. Only six members of the Misquitta Family were made parties to the Application and arrayed as Opponents- 'heirs and legal representatives of Original Owner, Mr. Anthony John Misquitta'. The Respondent No. 4 herein was also arrayed as the Opponent.

3.4 The Respondent No. 2 - Competent Authority granted a certificate of Unilateral Certificate of Deemed Conveyance, in favor of the Society, vide order dated 28th May 2024. It is this order, which is impugned in the present Writ Petition.

3.5 Pursuant to the impugned order, a Deed of Assignment and Transfer dated 5th July 2014 was registered at the office of Sub-Registrar, Andheri-3 on 10th July 2014. The same was executed by the Respondent No. 2 in favour of the Respondent No. 3-Society. This Deed of Assignment and Transfer is also assailed in the present Petition.

4. Mr. Rohaan Cama, learned counsel appeared for the Petitioner; Ms. Vrushali Kabre, learned AGP represented the Respondent Nos. 1 and 2; Mr. Mayur Khandeparkar, learned counsel, represented the Respondent No. 3; Mr. Jatin Sheth, learned counsel appeared for the Respondent Nos. 6(a), 6(b), 6(e) and 6(f) and the Respondent Nos. 7 to 11 and Mr. Gauraj Shah, learned counsel represented the Respondent No. 12. All the parties have submitted their written notes of arguments.

5. Submissions of Mr. Cama:

(i) Despite the Petitioner and Respondent Nos. 6 to 11, being owners of the said property, except for legal heirs of

Anthony Misquitta, none were made parties to the application for Deemed Conveyance.

(ii) The Deed of Assignment purporting to be only an assignment of leasehold rights, is relied upon by the Respondent Nos. 3, 4 and 12 as assignment of ownership rights, without the actual owners being given an opportunity of being heard by making them parties in the Deemed Conveyance application.

(iii) Mr. Cama set out the legal position on the right of Owners to be heard. He submitted that it is settled law that an Owner and/or Promoter is required to be heard at the time of grant of Deemed Conveyance. Equal and fair opportunity must be given to all persons concerned including the owner, builder, Promoter, etc. at the time of hearing.

(iv) The scheme of the MOFA contemplates that the Competent Authority is required to hear all concerned including owner, Promoter, builder and purchaser of the said

property in question. Form VII under the MOFA requires a Promoter or an opponent to be made a party in an application for Deemed Conveyance.

(v) Prejudice, whether caused or otherwise, to the Owner is not a criterion for the Competent Authority to deny the Owners a right to be heard.

(vi) The contention of the contesting Respondents that no notice is required to be given to the Owner as the assignment is only of leasehold rights in the land and the Petitioner's rights are not affected is completely misconceived.

(vii) Clause (4) of the Lease Deed conferring leasehold rights on the Respondent Nos. 5(a) and 5(b) was a limited right given only to them (Rahejas), and there is nothing further in the Lease Deed, which allows a sub-lessee (in this case, Respondent No. 4) to further assign or sub-let the land without consent of the original lessors, i.e., the Petitioners and other co-owners.

(viii) The Respondent No. 4 itself does not have leasehold rights, as such rights were assigned and vested only in the Rahejas. The Deed of Assignment impugned herein does not even name Respondent No. 5-Rahejas. The existence of any such sub-lease in favour of the Respondent No. 4 is also suspect as despite repeated directions given by this Court, no such deed was placed on record. Even the impugned order and the impugned Deed of Assignment mention that it 'appears' that there may have been a sub-lease executed in favour of Respondent No. 4 and no such document was placed even before the Competent Authority.

(ix) A right to re-develop the said property in perpetuity was not even vested in Respondent No. 5-Rahejas and they only had a one-time right to construct on the property. No such right was allowed to be assigned to a sub-lessee.

(x) Whether the Petitioner will fail or succeed in opposing Deemed Conveyance Application is immaterial. The very

status of the Petitioner as owner of the said property makes it mandatory for him to be made a party to the Application.

(xi) Even Index II of the property pursuant to purported conveyance uses the word 'Abhihastantaran', which means transfer. The said Index II indicates that the transfer was acquired from the legal heirs of Mr. Anthony Misquitta and not only from Respondent No. 4.

(xii) Mr. Cama places reliance on the following judgments of this Court: -

(1) Sarika R. Bagve v. New Ashish Co-operative Housing Society Limited¹

(2) Tushar Jivram Chauhan & Anr. v. State of Maharashtra & Ors.²

(3) A.H. Wadia Trust & Ors. v. State of Maharashtra & Ors.³

1 Writ Petition No. 8528 of 2021 decided on July 19, 2024.

2 2015(3) Bom.C.R. 623

3 2023 SCC OnLine Bom 1441

*(4) Jagshi Jethabhai Chheda & Anr. v. District Deputy Registrar of Co-operative Societies & Ors.*⁴

*(5) Kashish Park Reality Pvt. Ltd. & Anr. v. State of Maharashtra & Ors.*⁵

6. Submissions of Mr. Mayur Khandeparkar:

(i) The Society was compelled to apply for Deemed Conveyance as the Respondent No. 4 failed to perform his statutory obligations.

(ii) The Society had the details of only one branch of the Original Owners and hence, only joined that branch in the Application. One branch of Co-owner was represented, and it binds all co-owners and no prejudice is caused to the other co-owners not being joined in the proceedings. According to Mr. Khandeparkar, non-joinder of other co-owners makes no difference.

(iii) The Application made by the Society was for unilateral assignment of leasehold rights and since the Registrar granted

4 2024 SCC OnLine Bom 3758

5 2021(3) Mh.L.J. 778

only leasehold rights to the Society, there is no prejudice caused to the owners as their ownership rights remain unaffected.

(iv) The Original Owners, who were made parties to the proceedings never objected to the Application and thus, the Society not being able to trace the details of other legal owners, the Petitioner cannot take advantage of this position.

(v) The Society has only received the rights vested in the Respondent No. 4, which are only leasehold rights. Hence, the Owners are not divested of their ownership rights. The Petitioner and the co-owners even today continue to be the owners of the said property, and their reversionary rights remain intact. Hence, there is no prejudice to the Petitioner.

(vi) In any case, the Development Control and Promotion Regulations (DCPR) for Greater Mumbai, 2034 recognize the rights of the lessees. The lessees are also entitled to rights of

TDR akin to owners. Hence, the Owners cannot claim exclusive rights separate from the rights of lessees.

(vii) It is settled law that disputes regarding the property to be conveyed/transferred by the Competent Authority, cannot be gone into in a Writ Petition. Such dispute lies within the jurisdiction of the Civil Court.

(viii) This Court has clearly held that unilateral conveyance only grants rights vested in the Promoter and does not bar a suit to be filed by the co-owners to claim their substantive rights.

(ix) The Supreme Court in its decision in the case of *Arunkumar H. Shah HUF v. Avon Arcade Premises Co-operative Society Limited & Ors.*⁶ has clearly laid down that the Competent Authority does not decide the question of title and the same is to be decided in a civil suit. The Writ Court

6 2025 INSC 524

must not interfere with the order granting Deemed Conveyance unless the same is manifestly illegal.

(x) The Supreme Court in another decision has held that unless serious prejudice is shown, an order cannot be set aside.

(xi) Mr. Khandeparkar has placed reliance on the following decisions:

(1) *Zainul Abedin Yusufali Massawawala & Ors. v. Competent Authority District Deputy Registrar of Co-operative Housing Societies, Mumbai, and Ors.*⁷

(2) *Farhat Co-op. Housing Society Ltd., Mumbai v. Malkani Enterprises, Mumbai & Ors.*⁸

(3) *Shanti Prakash Realty & Infrastructure LLP formerly M/s. Shanti Prakash Realty & Infrastructure Private Limited & Anr. v. District Deputy Registrar, Cooperative Societies & Ors.*⁹

(4) *Blue Heaven Co-op Housing Society Limited, Through Its Secretary/Chairman Aman Chandulal Patel*

7 2016 SCC OnLine Bom 6028

8 2014 (6) Mh.L.J. 358

9 (2024) 2 High Court Cases (Bom) 191

v. Punit Construction Company Private Limited and Others¹⁰

(5) *A.H. Wadia Trust & Ors. (Supra)*

(6) *Haresh Vijaysinh Bhatia & Ors. v. District Deputy Registrar & Ors.¹¹*

(7) *Arunkumar H. Shah HUF (Supra)*

(8) *State of Uttar Pradesh v. Sudhir Kumar Singh¹²*

(9) *Sushanku Builders Limited Minal Co-operative Housing Society v. Apex Grievance Redressal Committee & Ors. along with connected matters¹³*

(10) *Jayantilal Investments v. The District Deputy Registrar, Coop. Societies, Mumbai City (4) & Ors.¹⁴*

10 2024 SCC OnLine Bom 3618

11 2025 SCC OnLine Bom 1981

12 2020 (6) ALJ 760

13 2025 SCC OnLine Bom 727

14 Writ Petition No.7669 of 2025

7. Submissions of Mr. Jatin Sheth:

(i) Mr. Sheth supported the arguments of Mr. Cama. He submitted that the order impugned herein is *void ab initio*, non-est and has been obtained by playing fraud on the Competent Authority. He submits that the order against the deceased Respondent is a nullity as Mrs. Pearl Patel arrayed as the Opponent No. 6 in the application for Deemed Conveyance died on 8th November 1999 i.e., 14 years prior to the filing of the Application. No order can be passed against a deceased person without bringing on record her legal heirs.

(ii) Lack of notice to the co-owners is in complete violation of the principles of natural justice and even the Owners depicted as Opponents were not served with the notice of the Application.

(iii) The foundational document being the Sub-lease Agreement between the Rahejas and M/s. A.K. Associates is not produced on record. The Respondent No. 2 - Competent

Authority has given a complete go bye to the principles of natural justice and thereby the proceedings are rendered arbitrary.

(iv) The reversionary rights of the Owners as mentioned in the original Lease Deed have been divested by the impugned order.

(v) Mr. Sheth also adopted all the other points of arguments raised by Mr. Cama.

8. I have heard learned counsel appearing for the respective parties and perused the record with their assistance.

ANALYSIS

9. I have considered the rival submissions submitted at the bar. In the run of the mill cases, generally a challenge to the grant of Certificate of Unilateral Deemed Conveyance revolves around the question of title to the subject land and building or

to the extent of entitlement of the Applicant before the Competent Authority. Such a challenge is determined based on principles fairly crystallized by various decisions of this Court. In the case at hand however, the only question that arises for consideration is whether the Owner is required to be given an opportunity of being heard, before granting a Certificate of Unilateral Deemed Conveyance. Thus, the core controversy in the present matter is limited to the remit of jurisdiction exercised by the Competent Authority and the legality and the correctness of the procedure followed by the Competent Authority in arriving at the impugned order.

10. Before embarking to answer the above question raised by the Petitioner, it is necessary to keep in view the object of the MOFA. The MOFA was enacted with the asseverate object of regulating the promotion of the construction, sale, management and transfer of flats taken on ownership basis, as it was found that acute shortage of housing in several areas of the State led to abuses and malpractices, rendering needy flat

purchasers vulnerable. Under Section 4 of the MOFA, an obligation is cast on the Promoter to enter into written agreement for sale with each of the persons desirous of purchasing flats in the building by the Promoters in a prescribed format. Such agreements are required to be registered. Section 10 of the MOFA enjoins the Promoter to take steps for registration of the organization of persons, who have taken the flats, as the Co-operative Society or as the case may be, the Company.

11. Section 11 of the MOFA, which is vital to the protective regime, mandates that the Promoter shall take all necessary steps to complete his title and convey to such an organization, his right, title and interest in the land and building and execute all relevant documents thereof, in accordance with the agreement executed under Section 4 of the MOFA. If there is no agreement as to the period within which the conveyance is to be executed, the Promoter is obligated to execute the same within the prescribed period and deliver all documents

of title relating to the property, in his possession or power. If the Promoter fails to execute the conveyance as mandated by this provision, within the prescribed period, the members of such society or the company or the association of apartment owners, as the case may be, may make an application to the Competent Authority concerned, for issuing a Certificate that such organization is entitled to have a Unilateral Deemed Conveyance executed in their favour.

12. As per Section 11(4) of the MOFA, on receiving such a submission, the Competent Authority is expected to make such inquiries as deemed necessary and after verifying the authenticity of the documents submitted and after giving the Promoter a reasonable opportunity of being heard, if satisfied that it is a fit case for issue of such Certificate, shall issue such Certificate to the Registrar of Assurances, certifying as such.

13. Section 11(5) of the MOFA then casts a duty on the Sub-Registrar to issue summons to the Promoter, to show cause why such Unilateral Deemed Conveyance should not be

registered as Deemed Conveyance and after giving the Promoter and the Applicant reasonable opportunity of being heard and upon being satisfied that it is a fit case for unilateral conveyance, register that instrument as Deemed Conveyance.

14. Thus, a conjoint reading of the relevant provisions of the MOFA and the MOFA Rules, clearly assign statutory obligations on the Promoter. The general reluctance and refusal on the part of the Promoter to discharge these obligations, especially, pertaining to completing the title of the Society, made the Legislature to step in and enforce these obligations. The Competent Authority is thus, entrusted with the responsibility to enforce the Promoter's obligations. The Competent Authority is however, required to follow the fundamental principles of the judicial process.

15. I have carefully gone through all the decisions cited by the parties. The decisions cited by Mr. Khandeparkar affirm that the Competent Authority is to follow a summary

procedure in arriving at a conclusion as to whether a case for grant of Unilateral Deemed Conveyance is made out. It is settled law that the remit of enquiry of the Competent Authority is confined to the question as to whether there is an agreement within the contemplation of Section 4 of the MOFA; whether the Promoter has committed a default in conveying his right, title and interest in the land and building in favour of the Society and thereby failed to perform his statutory obligation under the MOFA. All the decisions relied upon by Mr. Khandeparkar hold that the Competent Authority is neither competent nor expected to delve into the question of title of the said land. In *Zainul Abedin (Supra @ Pg. No. 17)*, the Court determined an issue concerning the deemed conveyance, traveling beyond the stipulations in the agreement and the grievance of the Petitioner in that matter that a larger property was allowed to be claimed by the Society. In that context, the Court held that the proper remedy of the Petitioner was to approach the competent Civil Court and not to file a Writ Petition.

16. The challenge raised by the Petitioner in the present matter, however, is not related to determining his title. The title of the Petitioner and Respondent Nos.6 to 11 as owners, is not disputed. The challenge pertains and is limited to the adherence by the Competent Authority, to the principles of natural justice. Hence, the core issue in the case of *Zainul Abedin (Supra @ Pg. No.17)* is quite distinct from that in the present case.

17. In *Blue Heaven Co-operative Housing Society Ltd. (Supra @ Pg. No.17)*, the debate before the Court centered upon the right of the flat purchasers to enforce MOFA obligations against the owner. In that context, while answering several issues, this Court held that it is not only the conveyance of the land which can be granted but also the assignment of lease and the Competent Authority is entitled to mould the relief and grant certificate for assignment of lease in favour of the Society. The finding in the decision sought to be relied upon by Mr. Khandeparkar is based on the distinct

facts in that matter. However, this Court in *Blue Heaven (Supra @ Pg. No.17)* itself, observed that the definition of the expression 'Promoter' is of widest amplitude and is so defined to ensure that the intention of the legislature to enact MOFA, is achieved and the owners fall within the definition of 'Promoter' under Section 2(c) of the MOFA and are bound to convey their right, title and interest in the land and building in accordance with the flat purchaser's agreement.

18. Insofar as the case in hand is concerned, the following facts emerge. The Society has joined only six legal heirs in the Misquitta Family as Opponent Nos. 1 to 6. Admittedly, the Opponent No. 6 was deceased, even at the time of making the application for deemed conveyance. There is no justifiable reason given by the Society as to why only six owners were made parties to the Application, save and except, a submission that the Society was unable to trace the other co-owners. This justification is unreasonable and unacceptable. The averments in the Application, pertaining to the rights of the Respondent

No. 5- Rahejas being transferred to the Respondent No. 4- M/s. A.K. Associates, which is portrayed as the Promoter in relation to the construction on the said property, is totally ambiguous. Clause (iv) of the Application contains an averment that 'It *appears* that some agreement for sub-lease must have been executed by and between the said Mr. Suresh Lachmandas Raheja and M/s. A.K. Associates, i.e., the Opponent herein, wherein Mr. Suresh Lachmandas Raheja must have granted to M/s. A.K. Associates, i.e., the Opponent herein the sub-lease of the larger plot'. It is clear from the said averment itself that the status of M/s. A.K. Associates as sub-lessee is uncertain.

19. It also appears from paragraph 4 of the Application that on an earlier occasion, the Competent Authority by its order dated 10th July 2012 had rejected an earlier application seeking Unilateral Deemed Conveyance on the ground that Original Owners were not made parties to the Application as Opponents. Thus, the Applicant in the present Application

selectively made only six legal heirs, as owners of the said land as Opponents without joining the Petitioner and the Respondent Nos. 6 to 11 as parties to the Application. This also clearly establishes the fact that the Society was well aware of the fact that the Owners were required to be made parties to an application seeking Unilateral Deemed Conveyance.

20. The prayer made in the Application seeks a Certificate declaring that the Society is entitled to have a Unilateral Deemed Conveyance but limits itself to seeking assignment of leasehold rights in the land and conveyance of building under the MOFA. Mr. Khandeparkar is at pains to canvass that the Society is entitled to receive only those rights, which are vested in the Promoter. However, the statutory obligation on the Promoter is to first complete his own title and thereafter convey the same to the organization of persons, who have taken the flats, which in this case is the Respondent No. 3-Society. Having contested the application before the

Respondent No. 2 - Competent Authority, strangely, he supports the impugned order, before this Court. It is also strange that the Society as well as the Competent Authority appear to be satisfied with the conveyance of rights in the said property, limited to the leasehold rights. I say strange, because Mr. Khandeparkar brought to my notice that, the Society is presently under redevelopment, pursuant to an agreement executed by and between the Society and the Respondent No. 12. Without conveyance of ownership rights to the land as well as building, the title to the land remains elusive to the Society. In the course of redevelopment, any additional FSI, if any available, will continue to be the property of the Petitioner and other co-owners. Having noted these observations, it is made clear that these observations are only incidental and have no bearing on the limited issue involved in the present matter.

21. Be that as it may, by way of the impugned order, the Respondent No. 2 - Competent Authority while certifying the

entitlement of the Society to be granted Unilateral Deemed Conveyance, has directed transfer of the right, title and interest of the Promoters in favour of the Society. While doing so, the Respondent No. 2 - Competent Authority has failed to appreciate that the Owners of the said land are also entitled to be made Opponents in the Application and are entitled to an opportunity of being heard. The impugned order records that a public notice was directed to be given in the local newspaper to invite objections from any other interested parties. The said notice is purported to have been given in Form 13 in the '*Free Press Journal*' and Dainik '*Navshakti*' (Marathi). The impugned order also notes that notices were issued to Opponents by R.P.A.D. However, there is no mention regarding submissions made by the six co-owners. In fact, the order also notes existence of the lease deed executed by the Original Owners in favour of the Respondent No. 5-Rahejas and in turn to the Respondent No. 4- M/s. A.K. Associates. Having referred to the original Lease Deed, the Respondent No. 2 - Competent Authority failed to appreciate that only the

six Opponents shown as owners are not the only owners of the property. Moreover, he proceeded to accept the status of Respondent No. 4 - M/s. A.K. Associates as a sub-lessee of the Respondent No. 5-Rahejas, only on an averment of the parties present before him i.e., only the Society and M/s. A.K. Associates, without seeking a copy of the Sub-lease Deed, which demonstrates that the Respondent No. 2 - Competent Authority failed to comply with the mandate of Section 11(4) of the MOFA, which obliges him to pass orders after verifying the authenticity of the documents as well as making such enquiries as deemed necessary. He is also required to give the Promoter a reasonable opportunity of being heard.

22. The Competent Authority has not recorded any reason in the impugned order as to why it accepted only Anthony's legal heirs as Opponents and failed to direct the Petitioner and other co-owners to be made parties. All in all, it is clear that the Petitioner and other co-owners were neither made parties nor were they given any opportunity of being heard.

23. In *Tushar Jivaram Chauhan (Supra)*, this Court held that the Competent Authority is required to give a fair and equal opportunity of hearing to all concerned, including Owner, Promoter, Builder and the Purchaser of the property in question and that the Builder is not the only counter party to an application for Deemed Conveyance. The scheme of MOFA itself contemplates that the Competent Authority is to take a decision of granting Deemed Conveyance only after satisfying himself about the veracity of the documents and by following the prescribed procedure, including giving fair and equal opportunity to all concerned. The principles of natural justice are to be strictly followed. The summary power in the Competent Authority does not mean that the Authority is entitled to overlook to the principles of natural justice. The facts in the present case demonstrate a complete breach of the most elementary rule of *audi alteram partem*.

24. The submissions of Mr. Khandeparkar that in the facts of the case, no prejudice as such, can be said to have been

caused to the Petitioner, cannot be acceded to. In the case of ***Sudhir Kumar Singh (Supra)***, as relied upon by Mr. Khandeparkar, the Supreme Court, after an analysis of its previous precedents, has enunciated that the breach of the *audi alteram partem* rule, cannot, by itself, without more, lead to the conclusion that prejudice is thereby caused. Where procedural and/or substantive provisions of law embody the principles of natural justice, an infraction, *per se*, does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law, which is conceived not only in individual interest but also in public interest.

25. A larger bench of the Supreme Court, in its recent decision in the matter of ***Krishnadatt Awasthy v. State of M.P. & Ors.***¹⁵, referred to it, after a split verdict by two learned judges of the Supreme Court, discussed the position of law summarised in ***Sudhir Kumar (Supra)*** in the context of the

15 2025 INSC 126

‘prejudice’ exception. The observations of the Supreme Court were as under:

“47. The aforementioned principles on the ‘prejudice exception’ must not be however be understood as infringing upon the core of the principle of audi alteram partem. In this regard, the constitutionalisation of administrative law and the doctrinal shifts spearheaded in Maneka Gandhi v. Union of India [1978] 1 SCC 248] were succinctly observed in a recent judgment in Madhyamam Broadcasting Ltd. v. Union of India [(2023) 13 SCC 401], as under:

55.1 Firstly, procedural fairness was no longer viewed merely as a means to secure a just outcome but a requirement that holds an inherent value in itself. In view of this shift, the courts are now precluded from solely assessing procedural infringements based on whether the procedure would have prejudiced the outcome of the case. [S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379; The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary; also see Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664 : AIR 1981 SC 818] Instead, the courts would have to decide if the procedure that was followed infringed upon the right to a fair and reasonable procedure, independent of the outcome. In compliance with this line of thought, the courts have read the principles of natural justice into an

enactment to save it from being declared unconstitutional on procedural grounds. [Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545; C.B. Gautam v. Union of India, (1993) 1 SCC 78; Sahara India (Firm) (1) v. CIT, (2008) 14 SCC 151; Kesar Enterprises Ltd. v. State of U.P., (2011) 13 SCC 733]

55.2 Secondly, natural justice principles breathe reasonableness into the procedure. Responding to the argument that the principles of natural justice are not static but are capable of being moulded to the circumstances, it was held that the core of natural justice guarantees a reasonable procedure which is a constitutional requirement entrenched in Articles 14, 19 and 21. The facet of audi alteram partem encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are available for perusal. While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the core of the principle is abrogated because it is the core that infuses procedural reasonableness. The burden is on the applicant to prove that the procedure that was followed (or not followed) by the adjudicating authority, in effect, infringes upon the core of the right to a fair and reasonable hearing. [See para 12 of Bhagwati, J.'s judgment in Maneka Gandhi v. Union of India, (1978) 1 SCC 248.]

48. *Pertinently on the issue, a five-judge bench of this Court in CORE(supra) described the object of observing the principles of natural justice as under:*

80. ...The object of observing the principles of natural justice is to ensure that “every person whose rights are going to be affected by the proposed action gets a fair hearing.” The non-observance of natural justice is itself a prejudice to any person who has been denied justice depending upon the facts and circumstances of each case. The principle of procedural fairness is rooted in the principles of the rule of law and good governance. In Madhyamam Broadcasting Limited v. Union of India (2023) 13 SCC 401, this Court held that the requirement of procedural fairness “holds an inherent value in itself.”

26. Returning to the facts of the present case, as detailed herein above, a denial of opportunity of hearing to the Petitioner, as owner of the said land, cannot be said to be inconsequential or immaterial. The Petitioner and the Respondent Nos. 6 to 11 as Owners are entitled to bring to the notice of the Respondent No. 2-Competent Authority any facts related to the said property. The legal heirs of Anthony Misquitta are made Opponents in the Application seeking

Deemed Conveyance as owners. Directing the Sub-Registrar of Assurances to transfer right, title and interest of the Promoters in the said property in favour of the Society, also implies the transfer of rights of the said legal heirs shown as Opponents. Admittedly, they are not the only Owners of the property. In view of the same, the absence of the Petitioner and the Respondent Nos. 6 to 11 has undoubtedly rendered a gross procedural irregularity in the decision of the Respondent No. 2 - Competent Authority in deciding to grant the impugned Certificate.

27. It is thus, clearly demonstrated that the Respondent No. 2 - Competent Authority has failed to appreciate the factors, which were germane for the determination of the Application. Undoubtedly, the Respondent No. 2 - Competent Authority was not expected to delve into the question of title. In any case, the title to the said property is not disputed in the present matter. However, the fact that only six persons were selectively arrayed as Owners of the said property, clearly

indicates a singular lack of consideration by the Registrar in the discharge of his duties under Section 11(4) of the MOFA. The Competent Authority is statutorily bound to make necessary enquiries and ascertain the veracity of the documents filed along with the application seeking deemed conveyance. The entire object of MOFA is to convey and complete the title of the co-operative housing society and protect the interests of the flat purchasers. When the promoter fails to comply with the statutory obligations, it is the duty of the competent authority to enforce compliance, by following the procedure set out in Section 11(4) of MOFA. Thus, the question about whether prejudice was caused due to non-observance of the principles of natural justice cannot be raised where such principles are incorporated into the statutory procedure itself. Moreover, the prejudice theory must be understood as an exception to the general rule and cannot be the norm. In view of the foregoing, a gross violation of the principle of *audi alteram partem* is noticed in the present case.

28. Pursuant to the issuance of the Deemed Conveyance certificate by the Competent Authority, the Sub-Registrar of Assurances acted upon the same and registered the Deed of Assignment and Transfer, without giving any notice to the Petitioner and the Respondent Nos. 6 to 11. However, the six Owners (including a deceased Owner) have been referred to in the said Deed of Conveyance as confirming parties. Even, the property card extract of the said property shows a mutation entry of only the six persons mentioned in the application seeking Unilateral Deemed Conveyance as owners who have confirmed the Conveyance document. This is seriously prejudicial to the Petitioner and the Respondent Nos. 6 to 11, who are also co-owners in the said property. Thus, the impugned order passed by the Registrar has seriously prejudiced the Petitioner and other owners.

29. Pursuant to the impugned order and Deed of Assignment and Transfer dated 5th July 2014 registered with the Sub-Registrar, an agreement for re-development of the

property was entered into with Respondent No. 12 and the said work is in progress after demolishing the old building. I have perused the agreement for re-development of the said property dated 22nd September 2013. Surprisingly, the document mentions the original owners as being such, in respect of the said property. However, the document then terms the Society as being entitled to have all right, title and interest in the land and building, sufficient to appoint the Respondent No. 12 as a developer to carry out the re-development of the said property. This document based on the Unilateral Deemed Conveyance Certificate followed by the registered transfer document is also prejudicial to the interests of the Petitioner and the co-owners since all along, neither the Society nor the Respondent No. 4 has disputed the title of the owners in the said property.

30. An inference thus, becomes inescapable that the impugned order was passed by the Competent Authority, without adhering to the fundamental principles of judicial

process and providing an effective opportunity of hearing to the Petitioner and without conducting an enquiry under Section 11(4) of the MOFA. Resultantly, the impugned order dated 28th May 2014 passed by the Competent Authority as well as the instrument of Unilateral Deed of Conveyance dated 5th July 2014 are quashed and set aside and the matter is remitted back to the Competent Authority for a fresh decision after providing an opportunity of hearing to the Petitioner and other concerned persons.

31. Hence, the following order: -

ORDER

(i) The impugned order dated 28th May 2014 passed by the Competent Authority stands quashed and set aside.

(ii) The Unilateral Deed of Conveyance dated 5th July 2014 also stands canceled.

(iii) The Application for grant of Unilateral Deed of Conveyance stands remitted back to the Competent Authority

for a decision afresh, in accordance with the law, after providing an effective opportunity of hearing to the parties.

(iv) The parties shall appear before the Competent Authority on 9th March 2026. The Competent Authority is requested to make an endeavour to hear and decide the Application as expeditiously as possible and preferably within a period of two months from the date on which the parties communicate the present Judgment and Order to it.

(v) By way of abundant caution, it is clarified that the consideration was confined to test the legality and correctness of the impugned order and the Competent Authority shall not be influenced by any of the observations herein above while deciding the application afresh.

(vi) All contentions of all the parties are expressly kept open for consideration.

32. The Petition is allowed. Rule is accordingly made absolute.

(DR. NEELA GOKHALE, J)

33. After the Judgment and Order was pronounced, Mr. Yatin Shah, learned counsel appearing for the Respondent No.12, and Mr. Udayasankar Samudrala, learned counsel appearing for the Respondent No.3, sought a stay of this Judgment and Order for a period of four weeks from today.

34. For the reasons mentioned in the Judgment and Order and also since the impugned order was passed way back in the year 2014, I am not inclined to stay the present Judgment and Order.

(DR. NEELA GOKHALE, J)

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