

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

WRIT PETITION NO. 6063 OF 2026

1. Nahar Builders Ltd. (formerly known
as M/s. Nahar Enterprises)

...Petitioners

2. Jitendra Amritlal Sheth (Karta and
Manager of Jt. Hindu Family)

3. Narendra Amritlal Sheth

4. Jatin Manubhai Sheth

5. Shantaben Manubhai Sheth

6. Leena Jitendra Sheth

7. Purna Jatin Sheth

8. Samir Jitendra Sheth

9. Rama Narendra Sheth

10. Amar Jatin Sheth

11. Rishabh Jatin Sheth

(Petitioner Nos. 2 to 11, members of
the Joint Hindu Family of Late Amritlal
Dalpatbhai Sheth viz. A.D. Sheth HUF)

12. Jatin Manubhai Sheth (Karta and
Manager of Jt. Hindu Family)

13. Purna Jatin Sheth

14. Amar Jatin Sheth

15. Rishabh Jatin Sheth

16. Shantaben Manubhai Sheth

(Petitioner Nos. 12 to 16, members of
the Joint Hindu Family of Late
Manubhai A. Sheth viz. M.A. Sheth
HUF)

17. Narendra Amritlal Sheth (Karta and
Manager of Jt. Hindu Family)

18. Rama Narendra Sheth

(Petitioner Nos. 17 and 18, members of Joint Hindu Family of N.A. Sheth HUF)

19. Jitendra Amritlal Sheth (Karta and Manager of Jt. Hindu Family)

20. Leena Jitendra Sheth

21. Samir Jitendra Sheth

(Petitioner Nos. 19 to 21, members of Joint Hindu Family of J. A. Sheth HUF)

22. Shantaben Manubhai Sheth

23. Leena Jitendra Sheth

24. Rama Narendra Sheth

(Petitioner Nos. 22 to 24, members of Joint Hindu Family of J.A. Sheth HUF)

V/s.

1. Orchid Enclave Co-operative Housing Society Ltd.

...Respondents

2. The Competent Authority, District Deputy Registrar, Co-op Societies, Mumbai-2

3. Office of the Joint Sub Registrar of Assurances (Class-II), Mumbai

Mr. Atul Damle, Senior Advocate with Mr. Ankit Lohia, Mr. Filji Frederick and Mr. Pranav Pradhan i/b. FF & Associates for the Petitioners.

Mr. Mayur Khandeparkar with Mr. Amrut Joshi, Mr. Nikhil Adkine, Mr. Tatsat Gor, Mr. Satchit Gor and Mr. Amit Chavan i/b. Mr. Kapil Gor, for Respondent No.1.

Mr. A.C. Bhadang, AGP for State.

CORAM : SANDEEP V. MARNE, J.
JUDGMENT RESD. ON : 21 JULY 2026.
JUDGMENT PRON. ON : 28 JULY 2026.

JUDGMENT:

1) This is a challenge to the order of deemed conveyance of land and building in favour of a housing society at the instance of a developer, who intends to retain control over portion of the conveyed land on which common amenities like club house, swimming pool etc. are set up for use by the residents of the building. Petitioner contends that application for deemed conveyance could not have been entertained and decided in the light of parties entering into consent terms resulting in a consent decree. According to Petitioner, the consent decree provides for lease of portion of conveyed land in their favour and that therefore the order of deemed conveyance which does not provide for a lease in their favour is bad in law.

THE CHALLENGE

2) By this Petition filed by the Petitioner-developers, order dated 31 July 2025 passed by the District Deputy Registrar, Co-operative Societies (2), East Suburban, Mumbai and Competent Authority (**Competent Authority**) is challenged, by which land admeasuring 13,578.293 sq.m. alongwith the building is conveyed in favour of Respondent No.1-Society.

3) Petitioners have acquired development rights in respect of large portion of land admeasuring 28,494.60 sq.m. situated at Sector R-3 and CTS Nos. 53/C, 53/A-1, 53A-1/A, 53-A1/D and 53A-1/C of Village-Chandivali, Taluka-Kurla, Mumbai Suburban District. Petitioners have constructed a building on the larger portion of land and flat purchasers have formed society known as Orchid Enclave Co-operative Housing Society Limited (Respondent No.1). Respondent No.1-Society had filed L.C. Suit No. 901 of 2007 in the City Civil Court at Bombay against the Petitioners and owners of land seeking conveyance of land and building. The Suit also sought to restrain the Petitioner No. 1 from constructing building 'Blue Bell' on the plot. The suit was compromised and consent terms were executed between the Petitioner No. 1 and Respondent No.1-Society. The suit was decreed in terms of the consent terms by the City Civil Court on 25 September 2013. Under the consent terms, Petitioners agreed to execute conveyance in respect of land admeasuring 13,629.84 sq.m. in favour of Respondent No.1. Respondent No.1 agreed to give up claim in respect of land admeasuring 2662.98 sq.m. and agreed not to object to construction of the building Blue Bell thereat. Under the consent terms, Respondent No.1-Society further agreed to execute lease for a period of 99 years in favour of M/s. Nahar Buildings and Developers Ltd. in respect of land admeasuring 3546.31 sq.m.

4) According to the Petitioner, Respondent No.1-Society failed to come forward for execution of conveyance deed and lease deed. Instead, Respondent No.1 filed Application No.52 of 2025 seeking deemed conveyance of land and building under Section 11(3) of Maharashtra

Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 (**MOFA**). According to the Petitioner, Respondent No.1 suppressed the factum of execution of consent terms and passing of consent decree dated 25 September 2013. Application No. 52 of 2025 was resisted by the Petitioner by filing reply. Rosa Alba Cooperative Housing Society Ltd. (**Rosa Alba Society**) filed intervention application before the Competent Authority opposing conveyance of any portion of land on which its building is located. By order dated 31 July 2025, the Competent Authority has issued certificate of unilateral deemed conveyance in respect of land admeasuring 13578.293 sq.m. alongwith the building situated thereon in favour of Respondent No.1-Society. Petitioners are aggrieved by the order of the Competent Authority dated 31 July 2025 and have filed the present Petition.

SUBMISSIONS

5) Mr. Damle, the learned Senior Advocate appearing for the Petitioner submits that the Competent Authority has erred in exercising jurisdiction under Section 11(3) of MOFA by entertaining Application No.52 of 2025. That Respondent No.1-Society has already secured conveyance in respect of land admeasuring 13,629.84 sq.m. under the consent decree dated 25 September 2013. That once Civil Court determines entitlement of conveyance, it is not open for the Competent Authority to exercise jurisdiction under Section 11(3) of MOFA. That jurisdiction under Section 11(3) can be exercised by the Competent Authority only where there is failure on the part of the promoters within

the meaning of Section 11(3). That in the present case, far from there being any failure on the part of the Petitioners, there is a consent decree in favour of Respondent No.1 envisaging conveyance of the land. That the real remedy for Respondent No.1 was to seek execution of consent decree dated 25 September 2013 if it believed that Petitioners did not execute the conveyance deed in pursuance of the consent decree. That therefore, proceedings for conveyance cannot be initiated merely because the order passed in the previous proceedings is not implemented. That the Application No. 52 of 2025 was clearly hit by the principles of *res judicata*.

6) Mr. Damle submits that the issue involved in the Petition is squarely covered by the judgment of this Court in **Nahar Seth & Jogani Developers Pvt. Ltd. vs. Deputy Registrar, Co-operative Societies & Competent Authority and Anr**¹. He submits that Respondent No.1-Society is deliberately not seeking execution of consent terms dated 25 September 2013 with a view to wriggle out of commitment to execute lease in respect of land admeasuring 3546.31 sq.m. That under the consent decree, Respondent No.1-Society is not supposed to possess entire land admeasuring 13629.84 sq.m. and portion of that land admeasuring 3546.31 sq.m. was required to be leased out to the Petitioners. On the other hand, the impugned order of conveyance has the effect of conveying entire land admeasuring 13,578.293 sq.m. without any obligation to execute lease of land admeasuring 3546.31 sq.m. in favour of the Petitioners. He relies on judgment of the Apex Court in **Ajanta LLP vs. Casio Keisanki Kabushiki Kaisha D/B/A Casio Computer**

¹ 2024 SCC OnLine Bom 1662

Company Limited and Anr.² in support of his contention that a compromise decree creates an estoppel by judgment and would operate as a *res judicata* for subsequent proceedings involving same cause of action. He also relies on judgment of this Court in **Sanu Enterprises vs. Vikhroli Laxmi Apartments Coop. Housing Society Limited**³ in support of his contention of *res judicata*. He also relies on judgment of the Apex Court in **S. Malla Reddy vs. Future Builders Cooperative Housing Society and Ors.**⁴ in support of his contention that subsequent proceedings for same relief are not maintainable. He also relies on judgment of this Court in **Sanu Enterprises Vs. Vikhroli Laxmi Apartments Housing Society Ltd.**⁵

7) He prays for setting aside the impugned order dated 31 July 2025.

8) Mr. Khandeparkar, the learned counsel appearing for Respondent No.1-Society opposes the Petition. He submits that the order of the Competent Authority results in proportionate subdivision of land in accordance with GR dated 22 June 2018. That the Society has received conveyance of lesser land admeasuring 13,578.293 sq.m. as compared to the land indicated in the consent terms of 13,629.84 sq.m. He submits that mere execution of consent terms does not prevent Competent Authority from exercising jurisdiction under Section 11(3) of MOFA. He relies on provisions of Section 16 of MOFA in support of his contention that the provisions of Section 11(3) have overriding effect on contract

² (2022) 5 SCC 449

³ Writ Petition No.491 of 2022 decided on 24 February 2026.

⁴ 2013 SCC OnLine SC 366

⁵ Writ Petition No. 491 of 2022 decided on 24 February 2026

containing contrary stipulations. That consent terms are nothing but agreement between the parties and that consent decree is again an agreement with imprimatur of the Court. That therefore mere covenants of the consent terms cannot come in the way of Competent Authority exercising jurisdiction under Section 11(3) of MOFA. That in the present case, there is failure on the part of the Petitioners in executing the conveyance as conveyance was actually not executed despite passage of period of 12 long years from the date of execution of the consent terms. That since Respondent No.1-Society has a remedy under Section 11(3) of MOFA, it was not necessary to take the route of seeking execution of consent decree. He submits that even otherwise, the consent terms provide for performance of obligations in sequence. That under the consent terms, it was the responsibility of the Petitioners to first convey land admeasuring 13629.84 sq.m. The second obligation in sequence was to effect registration of the conveyance. The third obligation was to effect repairs to the building. The last obligation for Respondent No.1-Society to execute lease deed was to kick in only after the first three obligations of the Petitioners are discharged. That therefore, time for execution of lease in favour of the Petitioners by Respondent No.1-Society has not arrived. As of now, the order of the Competent Authority merely results in fulfillment of the first obligation of the Petitioner to convey land in favour of Respondent No.1-Society. That therefore, passing of impugned order by the Competent Authority does not contravene the consent decree in any manner. That since there is no conflict between the order of the Competent Authority and the consent terms, there is no warrant for interference in the impugned order.

9) Mr. Khandeparkar further submits that the principle of *res judicata* has no application in the facts and circumstances of present case. That the decree dated 25 September 2013 is not the outcome of any adjudication made by the City Civil Court. That parties merely agreed on particular arrangement which is converted into consent decree. In such circumstances, there is no question of application of principles of *res judicata*. He relies on judgment of this Court in **Paramanand Builders LLP vs. Competent Authority & District Deputy Registrar, Cooperative Societies and Ors.**⁶ in support of his contention that consent terms cannot override the statutory obligations under Section 11 of MOFA. He relies on judgment of this Court in **Prestige Garden A-1 CHSL vs. State of Maharashtra**⁷ in support of his contention that the principle of estoppel does not apply. He also relies on judgment of this Court in **Nahalchand Laloochand Private Limited and Ors. vs. Shri Panchamrut CHSL and Ors.**⁸ in support of his contention of broad contours of enquiry under Section 11 of MOFA. He submits that in a summary enquiry conducted under Section 11, the Competent Authority has not caused any violence to the consent decree. He accordingly prays for dismissal of the Petition.

REASONS AND ANALYSIS

10) The case involves a unique conundrum. Petitioner-developers completed construction of 5 buildings of Respondent No. 1 Society and desired construction of an additional building in the layout. In a composite Suit filed by the Respondent No.1-Society to stop the

⁶ 2026 SCC OnLine Bom 1522

⁷ 2024 SCC OnLine Bom 5625

⁸ 2025 SCC OnLine Bom 341

Petitioner No. 1 from constructing an additional building in the layout and for seeking conveyance of the entire layout land, a compromise took place. Under the compromise, the Society decided to give up its challenge against construction of additional building upon acceptance of some consideration and against a promise to carry out repairs and painting works in its buildings. Under the compromise, the Petitioner-developer agreed to convey the proportionate land to the Society (*leaving aside the land meant for construction of additional building*), but upon a condition that it would retain the land and structure forming part of common amenities and accordingly extracted a promise from the Respondent No. 1 Society to lease back 26% of the conveyed land almost free of costs.

11) After striking a deal with the Society leading to a consent decree, the Petitioners faltered on its undertaking to convey land in favour of the Society for 12 long years. In the meantime, they took advantage of the Consent Terms by completing construction of the additional building, sold flats therein and earned profits. After waiting for 12 long years, the Society approached the Competent Authority seeking conveyance of land. By allowing the Application filed by the Society, the Competent Authority has conveyed slightly lesser land than the one agreed under the Consent Terms. Petitioners have challenged the Order of the Competent Authority because it does not grant to them lease of the land on which common amenities of the Society are situated.

CONVEYANCE OF LAND BY THE COMPETENT AUTHORITY

12) By the impugned order and certificate dated 31 July 2025, the Competent Authority has granted conveyance of land admeasuring 13,578.293 sq.m. in favour of Respondent No.1-Society. The Competent Authority has relied upon sanctioned plan dated 31 May 2005, on the basis of which buildings of Respondent No.1-Society are constructed. It appears that the construction was undertaken in respect of plot admeasuring 16,292.82 sq.m. After deducting 15% area reserved for Recreation Ground (**RG**), the balance area of land available was 13,848.9 sq.m. It appears that the Municipal Corporation sanctioned total built-up area (**BUA**) of 18,313.13 sq.m. out of which BUA of 15,262.28 sq.m. is utilised in construction of buildings of the Respondent No.1-Society. The Competent Authority has accordingly determined the proportionate share of Respondent No.1-Society in the land as 83.34%. The Competent Authority has thereafter divided both the net plot area of 13,848.90 sq.m. and RG area of 2443.92 sq.m. by taking into consideration share of Respondent No.1-Society of 83.34%. Accordingly, the land entitlement of Respondent No.1-Society is determined as under:

(i)	83.34% of net plot area of 13,848.90 sq.m.	11541.673 sq.m.
(ii)	83.34% of RG land of 2443.92 sq.m.	2036.762 sq.m.
	TOTAL	13,578.293 sq.m.

13) It appears that Rosa Alba Society had filed Intervention Application before the Competent Authority and had expressed an apprehension that the Respondent No. 1 Society was seeking conveyance

of land admeasuring 2662.98 sq.m. excluded for its building under the Consent Terms. The Competent Authority has considered the objection of Rosa Alba Society and has undertaken the exercise of land division proportionate to the BUA used for buildings of the two societies. After conveying 83.34% land admeasuring (11541.673 + 2036.762) 13578.293 sq.m. to Respondent No. 1 Society, the balance 16.66% land admeasuring 2714.527 sq.m. in the layout is left for Rosa Alba Society.

14) This is how the Competent Authority has determined the share of Respondent No.1-Society and of Rosa Alba Society in the land (*net plot area as well as RG*) proportionate to the BUA utilised in construction of their respective buildings in the layout. What is done by the Competent Authority is in accordance with the procedure prescribed in the Government Resolution dated 22 June 2018, which provides for land division in the layout proportionate to BUA utilised in construction of each building. Relevant part of the GR provides thus:

If there are many buildings on one plot and have a separate co-operative society of each building and if construction of some of them is incomplete then while making Deemed Conveyance of completed building, undivided share of occupancy right in the proportion of construction on the proportionate area of the construction of the building of such society or ground coverage or plinth area, similarly open space, common services and facilities, roads should be given.

15) This Court has repeatedly upheld the principle of land division proportionate to the BUA utilized in construction of each building while granting conveyance to a society whose building is located in the layout development and where all societies do not come together for seeking conveyance of the whole land in the layout.

16) Ordinarily therefore, what is done by the Competent Authority is in accordance with law. This is the reason why Petitioners have not seriously disputed the computations made by the Competent Authority. In the present petition, Petitioners do not contend that Respondent No.1-Society is not entitled to conveyance of land admeasuring 13,578.293 sq.m. However, the certificate of deemed conveyance is challenged only on the ground that there has been a consent decree passed in the suit filed by Respondent No.1-Society and that therefore, the Competent Authority could not have entertained application of Respondent No.1 for deemed conveyance. In short, what is questioned by the Petitioners is the jurisdiction of the Competent Authority to entertain the application filed under Section 11(3) of the MOFA for unilateral deemed conveyance when there is already a decree of Civil Court for conveyance of land in favour of Respondent No.1-Society.

PROVISIONS OF MOFA

17) The provision for unilateral deemed conveyance has been introduced by the Legislature by amending Section 11 of MOFA after noticing a trend where the developers/landowners were deliberately avoiding conveyance of land and building in favour of organisation of flat purchasers. Such avoidance on the part of developers was with the objective of utilising future development potential in the land by putting additional construction on the basis of additional FSI sanctioned due to the change in the FSI regime. It was felt that the provisions of unamended Section 11 imposing statutory duty on the promoter to convey the land

and building in favour of organisation of flat purchasers was ineffective. It was also noticed that the organisation of flat purchasers were required to file suits and fight a long litigation for securing the conveyance. It would be apt to consider the Statement of Reasons and Objects for 2008 Amendments to Section 11 of MOFA, which is as under:

STATEMENT OF OBJECTS AND REASONS

The Maharashtra Ownership Flats (Regulation of the promotion, of construction, sale, management and transfer) Act, 1963 has been enacted by the Government of Maharashtra in the year 1963 to regulate for a certain period in the State, the promotion of the construction of, the sale and management, and the transfer of flats on ownership basis. The said Act has been enacted to effectively prevent the sundry abuses and malpractices which had been on increase, consequent upon the acute shortage of housing in the several areas of the State.

2. It has come to the notice of the Government that the objective behind enactment of the said law is not fully achieved and its implementation has not been effective enough to curb certain malpractices and sundry abuses by the promoters or developers of the properties. Therefore, to make provisions of the said Act more effective and to safeguard interests of the purchaser of the flats, the Government of Maharashtra considers it expedient to carry out certain amendments to the existing provisions of the said Act. The important amendments proposed to be carried out are as follows:-

(a) It is proposed to provide for appointment of one or more Competent Authorities for different local areas who would, on failure on the part of the promoter,-

(1) to form a co-operative society of the persons who have purchased the flats from the promoter, on application received from such purchasers, direct the District Deputy Registrar, Deputy Registrar or, as the case may be, the Assistant Registrar of Co-operative Societies to register the co-operative society of such flat owners:

(i) to execute a conveyance within the prescribed period as provided in section 11, on receiving an application from the flat owner members of a co-operative society, issue a certificate to such society certifying that the said society was entitled to have a conveyance registered and that it is a fit case for execution of a unilateral conveyance as a 'deemed conveyance in favour of the said society. by the Registration Officer under the Registration Act, 1908.-

(b) To serve as a deterrent, a provision is also being made for disqualifying a promoter, convicted under the said Act (except under section 12A), for a period of five years so as to debar him from being granted any permission by the local authorities under the relevant laws for undertaking construction of flats.

(c) The proceedings before the Competent Authority are given the status of judicial proceedings for the purposes of sections 193 and 228 of the Indian Penal Code and every Competent Authority is to be deemed to be a Civil Court for the purpose of sections 345 and 347 of the Code of Criminal Procedure, 1973.

3. The Bill seeks to achieve the above objectives.

(emphasis added)

18) The Legislature has therefore created a faster and swifter mechanism of unilateral deemed conveyance without the consent of the landowner or promoter. Accordingly, provisions of sub-sections (3), (4) and (5) are introduced in Section 11 of MOFA wherein an organisation of flat purchasers can file an application before the Competent Authority and seek certificate of unilateral deemed conveyance of land and building which can be registered as a conveyance under sub-section (5). Provisions of Section 11 of MOFA read thus:

11. Promoter to convey title, etc., and execute documents, according to agreement.—

(1) A promoter shall take all necessary steps to complete his title and convey to the organisation of persons, who take flats, which is registered either as a co-operative society or as a company as aforesaid or to an association of flat takers or apartment owners, his right, title and interest in the land and building, and execute all relevant documents therefor in accordance with the agreement executed under section 4 and if no period for the execution of the conveyance is agreed upon, he shall execute the conveyance within the prescribed period and also deliver all documents of title relating to the property which may be in his possession or power.

(2) It shall be the duty of the promoter to file with the Competent Authority, within the prescribed period, a copy of the conveyance executed by him under sub-section (1).

(3) If the promoter fails to execute the conveyance in favour of the Co-operative society formed under section 10 or, as the case may be, the Company or the association of apartment owners, as provided by sub-section (1), within the prescribed period, the members of such Co-operative society or, as the case may be, the Company or the association of apartment owners may, make an application, in writing, to the concerned Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the society or the Company or the association, who have purchased the flats and all other relevant documents (including the occupation certificate, if any), for issuing a certificate that such society, or as the case may be, Company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.

(4) The Competent Authority, on receiving such application, within reasonable time and in any case not later than six months, after making such enquiry as deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, shall issue a certificate to the Sub-Registrar or any other appropriate Registration Officer under the Registration Act, 1908 (16 of 1908), certifying that it is a fit case for enforcing unilateral execution, of conveyance deed conveying the right, title and interest of the promoter in the land and building in favour of the applicant, as deemed conveyance.

(5) On submission by such society or as the case may be, the Company or the association of apartment owners, to the Sub-Registrar or the concerned appropriate Registration Officer appointed under the Registration Act, 1908 (16 of 1908), the certificate issued by the Competent Authority alongwith the unilateral instrument of conveyance, the Sub-Registrar or the concerned appropriate registration Officer shall, notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), issue summons to the promoter to show cause why, such unilateral instrument should not be registered as 'deemed conveyance' and after giving the promoter and the applicants a reasonable opportunity of being heard, may on being satisfied that it was fit case for unilateral conveyance, register that instrument as, 'deemed conveyance'.

19) Under sub-section (1) of Section 11 of MOFA, there is a statutory duty on the promoter to convey in favour of the organisation of flat purchasers the land and the building within the prescribed period. If the promoter fails to perform the statutory duty under Section 11(1) of the Act, there is a remedy for the organisation of flat purchasers under

Section 11(3). The application for unilateral deemed conveyance can be filed by the organisation of flat purchasers under sub-section (3) of Section 11 of MOFA '*If the promoter fails to execute the conveyance*'. Thus, occurrence of failure by the promoter to convey the land and building becomes a jurisdictional fact for the Competent Authority to exercise jurisdiction under Section 11(3). The 'failure' within the meaning of Section 11(3) occurs when the promoter fails to execute conveyance under Section 11(1) within the prescribed period. Rule 9 of Maharashtra Ownership Flats (Regulation of the Promotion of Construction etc.) Rules, 1964 (**MOFA Rules**) has prescribed the period for promoter to convey the land and building as four months from the date on which a co-operative society or a company is registered or an association of flat purchasers is constituted. Rule 9 of MOFA Rules reads thus:

9. Period for conveyance of title of promoter to organisation of Flat purchasers

If no period for conveying the title of the promoter to the organisation of the flat purchasers is agreed upon, the promoter shall (subject to his right to dispose of the remaining flats, if any) execute the conveyance within four months from the date on which co-operative society or the company is registered or, as the case may be, the association of flat takers is duly constituted.

When a promoter has submitted his property to the provisions of the Maharashtra Apartment Ownership Act, 1970 by executing and registering a Declaration as required by section 2 of that Act, and no period for conveying the title of the promoter in respect of an apartment to each apartment-taker is agreed upon, the promoter shall execute the conveyance or deed of apartment in favour of each apartment-taker within four months from the date the apartment-taker has entered into possession of his apartment.

The promoter shall file with the Competent Authority a copy of the conveyance executed by him under sub-section (1) of section 11 within a period of two months from the date of its execution.

20) Before proceeding further, provisions of Section 16 of MOFA also needs to be noted. Noting that the provisions of the Transfer of Property Act, 1882 may come in the way of implementation of the statutory scheme of MOFA and to ensure that the contracts to the contrary executed by the developers do not defeat the statutory rights of the flat purchasers, the Legislature has incorporated Section 16 in MOFA, which provides thus:

16. Act to be in addition to Transfer of Property Act and to over-ride contract to the contrary.—

The provisions of this Act, except where otherwise provided, shall be in addition to the provisions of the Transfer of Property Act, 1882 (IV of 1882), and shall take effect notwithstanding anything to the contrary contained in any contract.

21) Thus Section 16 of MOFA overrides contractual covenants to the contrary. Section 16 is an important provision, which is aimed at nullifying any private deal or unfair bargain struck by the developers with the flat purchasers and ensures that the statutory rights of the flat purchasers would override such contractual deal/bargain. When the statutory scheme of MOFA and MOFA Rules provide for obligation and duty to convey the land and the building in favour of organisation of flat purchasers within the prescribed time, the promoter cannot contractually agree that either there would be no conveyance or conveyance would be executed after 25 years or that conveyance would be executed after completion of entire layout development or that only leasehold rights in the land would be assigned retaining the ownership in favour of promoter/land owner, etc. Section 16 ensures that any contract to the contrary cannot defeat the statutory right of the organisation of flat purchasers to seek unconditional conveyance of whole of the land (*as per*

its entitlement) without retaining any specie of right therein in favour of the promoter/landowner. Section 16 of MOFA is aimed at curbing the tendencies on the part of the promoters and landowners in avoiding to convey unconditional ownership of whole of the land.

FILING OF CONSENT TERMS AND PASSING OF DECREE IN PURSUANCE THERETO

22) In the present case, the commencement certificate for construction of buildings of Respondent No.1-Society was apparently issued on 18 October 1989 and further approval was granted on 12 August 1995. Petitioners constructed building of Respondent No.1-Society comprising of Wings-A, B, C, D and E named 'Orchid Enclave'. The building received occupancy certificate on 2 June 2005. The flat purchasers formed Respondent No.1-Society, which was registered on 30 January 2006. Petitioners, however, failed to execute conveyance in favour of the Society, which led to filing of L.C. Suit No. 901 of 2007 by the Society. The suit was essentially required to be filed because the Petitioners were planning to construct one more building in the layout by name 'Blue Bell'. Respondent No.1-Society was opposed to construction of an additional building in the layout and therefore in L.C. Suit No.901 of 2007, they sought restraint order against Petitioner No.1 from putting any additional construction in the form of Blue Bell building. Respondent No.1-Society also sought prayer for conveyance of the entire larger land. The suit was compromised between Respondent No.1-Society and Petitioner No.1-developer and consent terms dated 25 September 2013

were tendered in L.C. Suit No. 901 of 2007. The relevant clauses of the Consent Terms are as under:

2. The Defendants no. 1 do hereby agree and undertake to assign, transfer and convey in the exclusive and absolute favour of the Plaintiff no. 1, all that piece and parcel of land admeasuring **13,629.84 sq. meters** along with the structures thereon shown bounded by red colour boundary including the five (5) wings of the Orchid Enclave Building bearing the names as "A", "B", "C", "D" and "E" Wing, situate lying and being on the larger plot of land bearing Sector no. R-3 admeasuring in the aggregate about 28,494.60 sq. meters and comprising of the land bearing CTS no. 53/C, 53/A-1, 53-A/1-A, 53-A/1-D and 53-A/1-C, of Village Chandivali, Taluka Kurla, Mumbai Suburban District and Sub-District of Mumbai, on the plan annexed hereto and marked as **ANNEXURE A** strictly in terms set out in the draft Deed of Conveyance accepted and approved by the parties hereto and the copy whereof acknowledged as accepted and approved by the parties is annexed herewith and marked as **ANNEXURE B**.

3. The Deed of Conveyance duly signed by the parties shall be lodged for registration by the Plaintiff no. 1 in the office of Sub-Registrar and the Defendants No. 1 agree and undertake to attend the office of the Sub-Registrar of Assurances at Chembur at such time and date as may be mutually agreed between the parties and in any event within thirty (30) days of the execution hereof to confirm and admit the execution and for the purposes of Registration of the said Deed of Conveyance more particularly detailed in clause (2) above. The Defendants no. 1 agree and undertake that the responsibility of getting the said Deed of Conveyance registered with the concerned sub-registrar of Assurances within the aforesaid period of thirty (30) days would be that of the Defendants no. 1 alone. The stamp duty and registration charges, if any, payable on the said Deed of Conveyance shall however be borne by the Plaintiff no. 1 alone.

4. The Defendant no. 1 has on or before the execution hereof paid to the Plaintiff no. 1 the sum of Rs. 5,00,00,000/- (Rupees Five Crores only) by Demand Draft/Pay Order dated 18/09/2013, bearing no. 000837, drawn on HDFC Bank in favour of the Plaintiff no. 1, as and by the way of Society Fund. The Plaintiff no. 1 admit and acknowledge the payment of the said amount. The Defendant no. 1 further agrees and undertakes to carry out the work of repairs of leakages and the painting of the said five (5) wings of the Orchid Enclave Building bearing the names as "A", "B", "C", "D" and "E" Wing and also replace / install the missing electric poles in the garden of the Orchid Enclave complex with all requisite permission from the competent authorities, if required. The said work shall be carried out as soon as may be practicable and in any event within six (6) months of the execution of these presents.

5. The Plaintiff no. 1 in the light of the above, agree and undertake to permanently relinquish and waive all and every of their right, title, interest and/or claim to seek the conveyance of the land admeasuring **2662.98 sq. meters** more particularly delineated in blue colour boundary lines on the plan annexed hereto and marked as ANNEXURE C. The Plaintiff no. 1 in consideration of the payment of the said Society Fund, hereby withdraw and revoke all and every of their objection to the construction of the building known as "Blue Bell" on the said delineated land and further declare and confirm that the said delineated land and the building constructed thereon, as aforesaid would at all times belong to the Defendants no. 1 and that they would be entitled to deal with and dispose off the same as they may deem fit, without any recourse to the Plaintiff no. 1.

6. Consequent upon to the fulfilment of its obligations by the Defendants no. 1, in terms of clause (2), (3) and (4) above, the Plaintiff no. 1 agree and undertake to execute and register a Deed of Lease for the period of 99 years, in respect of the land admeasuring **3546.31 sq. meters**, along with the structure constructed thereon and more particularly delineated in green colour boundary lines in the plan annexed herewith at Annexure C in favour of M/s. Nahar Builders and Developers Ltd., strictly on such terms and conditions and for such consideration as is set out in the draft Lease Deed the copy whereof, duly accepted and approved by the parties, is annexed herewith and marked as **ANNEXURE D** The Plaintiff no. 1 agree and undertake to attend to the office of the Sub-Registrar of Assurances at Chembur for the purposes of confirmation of the execution and for registration of the said Lease Deed simultaneous to the registration of the Deed of Conveyance in terms of clause (2) above. The stamp duty and the registration charges, if any, payable on the said Lease Deed and all out of pocket expenses in respect thereof shall however be borne by the Defendants no. 1 alone.

23) Thus, Petitioner No.1 agreed and undertook to assign, transfer and convey land admeasuring 13,629.84 sq.m. in favour of Respondent No.1 alongwith the structure thereon comprising of Orchid Enclave building with 'A' to 'E' wings. Under Clause 3 of the consent terms, Petitioner No.1 undertook to register the conveyance within a period of 30 days of execution of the consent terms. Under Clause 5, the Society gave up its challenge to construction of the building Blue Bell by accepting consideration of Rs. 5 Crore from Petitioner No. 1 in addition to promise for carrying out repairs and painting works to its buildings under

Clause 4. Under Clause 6, the Society agreed to grant lease in respect of land admeasuring 3546.31 sq.m. in favour of an entity named 'Nahar Builders and Developers Ltd.' as per the draft annexed to the Consent Terms. The draft of the Lease Deed annexed to the Consent Terms would indicate that what was supposed to be leased out is the land on which the building's common amenities like club house, swimming pool, tennis court, etc. are situated. The draft Lease Deed also contemplated permission to the lessee to carry out construction of basement and ground floor parking spaces.

24) Thus, the Consent Terms envisage a unique arrangement where the Petitioner No. 1, after conveying the lawfully due land to the Society, wants the Society to hand back substantial portion (26%) of such conveyed land to its group entity almost free of cost (on lease rent of Rs. 1). More importantly, the Consent Terms envisage loss of common amenities meant for the Respondent No. 1 Society by handing over the same to the developer, with further permission for the developer to construct additional parking spaces therein. The Consent Terms thus envisage a situation where after milking the entire development potential flowing out of the layout land, Petitioner No. 1 wants to retain the common amenities in the form of Club House, Swimming Pool, Tennis Court, etc. to itself.

25) The Consent Terms were tendered in L.C. Suit No.901 of 2007 and accordingly, the learned Judge of the City Civil Court passed a decree

in terms of the Consent Terms on 25 September 2013. Accordingly, the decree came to be drawn up in view of the Consent Terms.

WHETHER 'FAILURE' ON THE PART OF PROMOTER HAS OCCURRED?

26) As observed above, failure on the part of the promoter to convey land as per Section 11(1) becomes the jurisdictional fact for the Competent Authority to exercise jurisdiction under Section 11(3) to grant deemed conveyance. It is therefore necessary to examine whether a 'failure' within the meaning of Section 11(1) of MOFA has occurred in the present case for the Competent Authority to exercise jurisdiction under Section 11(3).

27) Though Petitioner No.1 agreed and undertook to convey land admeasuring 13,629.84 sq.m. in terms of the consent terms dated 25 September 2013, he did not perform the obligation. While it completed the construction of Blue Bell building taking benefit of Clause-5 of the consent terms, it failed to execute and/or register conveyance deed in favour of Respondent No.1-Society. The Society waited for 12 long years for Respondent No.1 to execute the conveyance. In my view therefore, there is a 'failure' on the part of Petitioner No.1 to convey the land and the building within the meaning of Section 11(1) of MOFA. The case does not involve a situation where conveyance in terms of the decree is actually executed. If such conveyance was executed, the 'failure' within the meaning of Section 11 (3) would not have occurred and Competent Authority could not have exercised the jurisdiction. However, since

conveyance was actually not executed, it will have to be necessarily assumed that there is a 'failure' on the part of Petitioner No.1 to convey the land and the building.

28) Section 11(1) of MOFA mandates that the promoter shall convey his right, title and interest in the land and the building and 'shall execute' all relevant documents therefor in accordance with the agreement executed under Section 4. The act of 'conveyance' does not occur unless a Deed of Conveyance is executed and registered. It is only when the act of registration of the Conveyance Deed happens that it can be presumed that there is fulfillment of statutory duty under Section 11(1) and that there is no 'failure' on the part of the promoter. However, mere 'agreement' by the promoter for conveyance would not be sufficient for the purpose of holding that there is fulfillment of the statutory duty and that there is no failure on the part of the promoter within the meaning of Section 11(3) of MOFA. Failure would not occur only when the act of conveyance is completed. The legislative objective behind Section 11 is to ensure that the organisation of flat purchasers must be vested with title, and legal effect of vesting gets completed only when a Deed of Conveyance is executed and registered. Therefore, mere agreement or undertaking by a developer to convey the land and building would not be sufficient to hold that there is no failure within the meaning of Section 11(3) of the Act.

29) In the present case, Petitioner No.1-developer did not convey the land and the building in favour of Respondent No.1-Society for 12

long years after passing of the consent decree dated 25 September 2013. In my view therefore, failure within the meaning of Section 11(3) of MOFA has clearly occurred in the facts and circumstances of the present case. What must be appreciated is the legislative intent behind making provision for unilateral deemed conveyance through Competent Authority under Section 11(3) to (5) of MOFA. The objective is to obviate the need by organisation of flat purchasers to enter into lengthy litigation for the purpose of seeking conveyance. The legislature has provided for a summary enquiry while granting certificate of unilateral deemed conveyance by the Competent Authority. Therefore, while the option of filing execution proceedings was open to Respondent No.1-Society, the same would have resulted into a lengthy litigation between the parties. Instead, the Society has taken aid of a swifter and faster remedy under Section 11(3) of MOFA. Since there is 'failure' on the part of Petitioner No.1-developer within the meaning of Section 11(3) of MOFA, the Competent Authority has correctly exercised the jurisdiction in granting certificate of unilateral deemed conveyance.

CONVEYANCE OF LAND WITHIN THE LIMITS OF CONSENT TERMS

30) In the present case, upon noticing failure on the part of the promoter, Competent Authority has exercised the jurisdiction and has conveyed in favour of Respondent No. 1 Society land admeasuring 13578.293 sq.m. Under the Consent Terms, the Petitioner No. 1 had agreed and undertaken to convey land admeasuring 13629.84 sq.m. to Respondent No. 1 Society. Thus, the case does not involve conveyance of

land to Respondent No.1-Society by the Competent Authority in excess than the one agreed in the Consent Terms. This is clear from the following:

Land agreed to be conveyed	Land conveyed vide certificate of unilateral deemed conveyance
13629.84 sq.m.	13578.293 sq.m.

31) Similarly, Rosa Alba Society also does not get land lesser than the one agreed under the Consent Terms. This is clear from the following:

Land reserved for Rosa Alba Society under Consent Terms	Land remaining balance after conveyance in favour of Respondent No.1 Society
2662.98 sq.m.	2714.527

32) Thus, it cannot be contended that the certificate of unilateral deemed conveyance issued by the Competent Authority contravenes the Consent Terms in any manner. In fact, the certificate conveys lesser land to Respondent No.1-Society than the one agreed in the Consent Terms.

IS CERTIFICATE OF DEEMED CONVEYANCE BAD FOR NON-GRANT OF LEASE IN FAVOUR OF PETITIONERS?

33) Mr. Damle has contended that the certificate of deemed conveyance does not take into consideration the right of Petitioners to have a lease in respect of land admeasuring 3546.31 sq.m. and that therefore the same contravenes the consent terms. I am unable to agree. The Competent Authority exercising jurisdiction under Section 11 of MOFA is not expected to decide entitlement of the developer to secure

lease in respect of the conveyed land from the society. That enquiry would be outside the jurisdiction of the Competent Authority. The Competent Authority has limited jurisdiction to convey land and building in favour of the society. If the developer is entitled to secure any other right in the property, he needs to adopt appropriate proceedings for the same and he cannot expect the Competent Authority to grant such right. In the present case, it was not competent for the Competent Authority to direct Respondent No.1-Society to execute conveyance of land admeasuring 3546.31 sq.m. in favour of the Petitioners. Reliance in this regard by Mr. Khandeparkar on judgment of this Court in ***Nahalchand Laloochand Pvt. Ltd. vs. Shri. Panchamrut CHSL*** (supra) outlining the limited scope of inquiry under Section 11 by the Competent Authority is apposite.

34) Clause 6 of the Consent Terms begins with the expression '*Consequent upon to the fulfilment of its obligations by the Defendants no. 1, in terms of clause (2), (3) and (4) above*'. Thus, the occasion for execution of lease under the Consent Terms would arise only after the land was first conveyed in favour of the Respondent No. 1-Society. That event itself had not occurred and therefore the Society was required to knock the doors of the Competent Authority to first seek conveyance of land in its favour. All that is done at this juncture is conveyance of land in favour of the Respondent No. 1 Society. The order of the Competent Authority, in no manner, comes in the way of Petitioners seeking execution of the consent decree for seeking lease of portion of the conveyed land.

35) It also appears that under the Consent Terms, lease of land admeasuring 3546.31 sq.m. was agreed to be conveyed in the name of an altogether different entity 'M/s. Nahar Builders and Developers Ltd.'. Petitioner No. 1 before me is 'Nahar Builders Ltd'. Whether both the entities are same or distinct is unknown. Secondly, the said entity or Petitioner No.1 have the remedy of seeking execution of the conveyance deed for the purpose of securing lease in respect of land admeasuring 3546.31 sq.m. In such execution proceedings, Respondent No.1 would be entitled to raise all defences. Whether a promoter can seek back lease of portion of the conveyed land and whether such a term is in accordance with the provisions of Sections 4 and 11 of MOFA is something which can be decided in appropriate proceedings. This Court need not delve deeper into those issues. Suffice it to hold that mere agreement in the consent terms for execution of lease of land admeasuring 3546.31 sq.m. in favour of the entity M/s. Nahar Builders and Developers Ltd. cannot be a ground for Competent Authority not to convey the land and the building in favour of Respondent No.1-Society. In my view therefore, the impugned order passed by the Competent Authority does not contravene the consent decree in any manner.

36) Mr. Damle has strenuously relied on judgment of this Court in *Nahar Seth & Jogani Developers Pvt. Ltd.* (supra). However, careful perusal of the observations made by this Court in that judgment would indicate that jurisdiction of Competent Authority to decide application under Section 11(3) of MOFA after execution of the consent terms is not negated by this Court. On the other hand, this Court has repeatedly held

in that judgment that Competent Authority was expected to apply its mind to the consent decree and consent terms and then pass order of unilateral deemed conveyance. This is clear from the following observations made by this Court in the judgment:

12. ... Once the entire position was placed before the Competent Authority, all that the Competent Authority was required to do was to apply its mind to the Consent Decrees and Consent Terms.

13. It is seen that Competent Authority has miserably failed to apply its mind and without considering the essence of the same has passed the impugned order. ...

14. ... The Consent Terms and the Consent Decrees passed by the Civil Court are completely disregarded and set to naught by virtue of the impugned order dated 04.03.2022. Such an impugned order is clearly not sustainable.

37) Thus, judgment of this Court in ***Nahar Seth & Jogani Developers Pvt. Ltd.*** does not conclude that Competent Authority ceases to have jurisdiction under Section 11 of MOFA after a consent decree is passed based of consent terms filed by the parties. All that this Court has held in ***Nahar Seth & Jogani Developers Pvt. Ltd.*** is that the Competent Authority ought to have granted conveyance in accordance with the consent terms. In the present case, the Competent Authority has not contravened the consent decree while exercising its limited jurisdiction under Section 11(3) and (4) of MOFA and has conveyed lesser land than the one contemplated in the consent decree. It appears that in the facts of the case in ***Nahar Seth & Jogani Developers Pvt. Ltd.***, while setting aside the order passed by the Competent Authority, this Court has issued directions for execution of deed of conveyance by the developer in favour of the society and deed of lease by the society in favour of the developer. I

am unable to follow the said course of action in the present case for variety of reasons. Firstly, this Court is exercising supervisory jurisdiction over the order passed by the Competent Authority, which did not have jurisdiction to direct execution of lease in favour of the developer under Section 11 of MOFA. Therefore, what could not have been done by the Competent Authority cannot be done by this Court in exercise of jurisdiction under Article 227 of the Constitution of India. Secondly and more importantly, execution of lease under the Consent Terms is dependent on Petitioner No.1 executing repairs and painting works in the building of Respondent No.1 Society. It is not known whether Petitioner No.1 has fulfilled that obligation or not. Performance of obligations under the consent terms is sequential (which aspect is dealt with in greater details in the latter part of the judgment). Therefore in the facts of this case, it is not possible to issue a direction to the Respondent No.1 Society to execute lease in favour of Petitioner No.1. Thirdly, in the facts of the present case, this Court is satisfied that the order of the Competent Authority directing conveyance of lesser land than the one agreed in the consent terms does not amount to violation of the consent terms.

38) As observed above, if Petitioners want to have the lease of the portion of the land executed in their favour, they need to exercise remedy available in law. Mr. Damle has submitted that Petitioners have already filed application for execution of the consent decree dated 25 September 2013. Copy of the Execution Application No. 31 of 2026 is placed on record at Exhibit-J to the Petition. The date of filing of Execution Application is not disclosed by the Petitioners. But the same

appears to have been filed after filing of Application for deemed conveyance by the Respondent No. 1 Society. Thus, the Petitioners, who showed no interest in acting in terms of the Consent Decree for 12 long years, suddenly developed interest in execution of decree and filed Execution Application, filing of which was aimed at somehow defeating the Application for deemed conveyance. This conduct on the part of the Petitioner needs to be deprecated. The direction sought for by the Petitioners in Execution Application again shows that the conveyance of land by the Competent Authority does not contravene the consent decree. In Clause 'J' of Execution Application, Petitioners have sought a direction that Plaintiff-society is entitled to portion of land admeasuring 13629.84 sq.m. As against this, the Competent Authority has conveyed land admeasuring 13578.293 sq.m. to Respondent No. 1 Society.

39) Petitioner can press its entitlement for execution of lease before the Executing Court which can decide the same after taking into consideration all defences that can be raised by Respondent No.1-Society. Therefore there is no warrant for setting aside the order of the Competent Authority only because the order does not grant lease of portion of land in favour of the Petitioner.

APPLICATION OF PRINCIPLE OF ESTOPPEL

40) Mr. Damle has relied upon judgment of the Apex Court in *Ajanta LLP* (supra) in support of his contention that a compromise decree creates estoppel by judgment. The judgment also holds that a consent

decree would not serve as an estoppel where compromise was vitiated by fraud, misrepresentation or mistake. The Apex Court has held in paras-20 to 22 as under:

20. Resolving a dispute pertaining to a compromise arrived at between the parties, this Court in *Shankar Sitaram Sontakke* [*Shankar Sitaram Sontakke v. Balkrishna Sitaram Sontakke*, AIR 1954 SC 352] held as under : (AIR p. 353, para 7)

“7. ... If the compromise was arrived at after due consideration by the parties and was not vitiated by fraud, misrepresentation, mistake or misunderstanding committed by the High Court — the finding which was not interfered with by the High Court — it follows that the matter which once concluded between the parties who were dealing with each other at arm's length cannot now be reopened.”

21. **A judgment by consent is intended to stop litigation between the parties just as much as a judgment resulting from a decision of the Court at the end of a long drawn-out fight. A compromise decree creates an estoppel by judgment** [*Byram Pestonji Gariwala v. Union Bank of India*, (1992) 1 SCC 31] . It is relevant to note that in *Byram Pestonji Gariwala v. Union Bank of India*, (1992) 1 SCC 31], this Court held that the appellant therein did not raise any doubt as to the validity or genuineness of the compromise nor was a case made out by him to show that the decree was vitiated by fraud or misrepresentation. While stating so, this Court dismissed the appeal.

22. **A consent decree would not serve as an estoppel, where the compromise was vitiated by fraud, misrepresentation, or mistake.** The Court in exercise of its inherent power may rectify the consent decree to ensure that it is free from clerical or arithmetical errors so as to bring it in conformity with the terms of the compromise. Undoubtedly, the Court can entertain an application under Section 151CPC for alterations/modification of the consent decree if the same is vitiated by fraud, misrepresentation, or misunderstanding.

(emphasis added)

41) While Mr. Damle contends that the principle of estoppel applies and the Respondent No. 1 Society could not have filed application for deemed conveyance after the consent decree, Mr. Khandeparkar has

relied on the judgment of this Court in ***Prestige Garden A-1 CHSL*** (supra) in support of his contention that the principle of estoppel has no application against provisions of a statute. He contends that if MOFA creates a remedy under Section 11 in favour of the Society upon occasion of 'failure' by the developer, the Society cannot be estopped from exercising that remedy as provisions of Section 16 of MOFA creates an overriding effect over any private arrangement between the parties. It is Society's contention that the scheme of MOFA does not permit a promoter/developer to seek back portion of the conveyed land. In my view, it is not necessary to delve deeper into the issue of application of principle of estoppel. As of now, this Court is not concerned with the issue as to whether the compromise leading to consent decree is lawful or not. That issue would arise when the Petitioners' application for execution would seek execution of the consent decree for lease of portion of the conveyed land is decided. Suffice it to observe that in a given case where a cooperative housing society had acted on the certificate of unilateral deemed conveyance by registering Deed of Conveyance for lesser area of land, this Court in ***Prestige Garden A-1 CHSL*** still permitted the society to challenge the order of deemed conveyance for seeking conveyance of higher area of land by holding that there cannot be estoppel against a statute.

42) Ordinarily, what Mr. Khandeparkar contends could have been accepted if the arrangement between the parties was in the form of a mere agreement. In that case, provisions of Section 16 of MOFA would have nullified the agreement between the parties upon being

demonstrated that the same is contrary to the provisions of MOFA and mere act of the Society in entering into the agreement would not have acted as estoppel. In judgment of this Court in ***Paramanand Builders LLP*** (supra) relied upon by Mr. Khandeparkar, this Court has held that internal arrangement between the parties cannot nullify the mandate of Section 11 of MOFA. However, in the present case, parties have filed the agreement in the Court and have obtained imprimatur of the Court thereon. In the present case there is no adjudication of rights and liabilities by the City Civil Court. It has merely recorded compromise between the parties and has put its seal on the private agreement. It is only the imprimatur of the court on the agreement which stops the Court from declaring, in these proceedings, that provisions of MOFA would override the private arrangement made between the parties. That declaration needs to be sought in appropriate proceedings. Respondent No. 1 Society can either raise that defence before the Executing Court (if permissible) or it can adopt separate proceedings for seeking a declaration that the compromise is not lawful.

SEQUENTIAL PERFORMANCES UNDER THE CONSENT DECREE

43) Under the Consent Terms, the reciprocal performances agreed are sequential. Clause 6 of the Consent Terms begin with the expression '*Consequent upon to the fulfilment of its obligations by the Defendants no. 1, in terms of clause (2), (3) and (4) above*'. Therefore, the first act agreed and undertaken as per the Consent Terms was to be performed by the Petitioner No. 1, who was to first convey the land in

favour of the society. The second act was again for Petitioner No. 1 to perform where it was supposed to register the conveyance deed within 30 days. The third act was once again for the Petitioner No. 1 to perform where it was required to carry out, within 6 months, the work of repairs of leakages and the painting of the five wings of Orchid Enclave Building, replace/install electric poles in the garden on complex. It is only after the first, the second and the third acts were performed by the Petitioner No. 1 that the Respondent No. 1 Society was supposed to execute the lease of portion of land in favour of the entity Nahar Builders and Developers Ltd.

44) It is an admitted position that none of the said three acts are performed by the Petitioner No. 1. Therefore, no occasion arose for Respondent No. 1 to execute the lease. Since performance of the first act itself did not occur, the Society was required to seek remedy under Section 11 of MOFA to get conveyance executed in its favour. It is only after the conveyance was sought from the Competent Authority that the Petitioners thought of filing Application for Execution. As of now, only first part of the performance under the consent decree has taken place. If Petitioners believe that they are entitled to secure lease of portion of conveyed land, it will be for them to secure the same in execution proceedings as the Authority under Section 11 of MOFA is not competent to grant that relief in favour of Petitioners. Similarly, if Respondent No.1-Society believes that the scheme of MOFA does not permit the promoter to seek back portion of the conveyed land, it will have to adopt appropriate proceedings seeking such a declaration or it can defend execution proceedings by taking that defence, if permissible in law.

Considering the unique statutory scheme of MOFA, it is difficult to hold that the remedy of Respondent No. 1 Society under Section 11(3) of MOFA is barred even where the promoter has failed to convey the land despite passage of more than 12 years of the parties entering into consent terms.

OBJECTIVE OF PETITIONERS

45) As observed above, the whole objective behind challenging the Order of deemed conveyance by the Petitioners is to ensure that the Society does not receive the conveyance of its due land entitlement. Apart from delaying the conveyance for eternity, the Petitioner-developers want to retain with themselves the land meant for common amenity spaces to be used by the residents of the building. Thus, after milking the entire development potential in the layout land, Petitioners desire that they must receive lease of land on which Society's common amenities such as club house, swimming pool, etc are located. The FSI/BUA for construction of buildings of Respondent No. 1 Society has also arisen out of the land admeasuring 3546.31 sq.m. It would need that land for sustenance of its building. As observed above, whether a compromise for leasing back portion of conveyed land in favour of the developer is lawful within the meaning of Order XXIII Rule 3 of the Code of Civil Procedure 1908 (CPC) is something which would be decided in appropriate proceedings. Petitioners' remedy of seeking lease of land admeasuring 3546.31 sq.m. is not barred on account of passing of the impugned order by the Competent Authority. In such circumstances, the objective of the

Petitioners in avoiding conveyance of land in favour of Respondent No.1 Society by raising technical objection needs to be appreciated and the order of the Competent Authority conveying land due to Respondent No.1 Society need not be disturbed.

IS THIS A CASE FOR THIS COURT TO EXERCISE EXTRAORDINARY JURISDICTION UNDER ARTICLE 227?

46) Present is a case where Petitioner No.1-developer has acted in gross violation of provisions of MOFA. It has failed to perform the statutory obligations of conveying the land and the building in favour of the Society. From its conduct, it is more than apparent that it has avoided to execute conveyance in favour of the Society. It first made Respondent No.1-Society approach City Civil Court by filing a suit. Even after the consent decree, it took no steps for 12 long years to act on the said Consent Terms. Now the Petitioners take a very specious stand that Respondent No.1-Society ought to have exercised the remedy of seeking execution of the consent decree. The objective behind taking this stand is more than obvious viz. to embroil Respondent No.1-Society in another round of lengthy litigation. Whether this Court can be a party to such oblique objective of the developer is the question. The answer, to my mind, appears to be in emphatic negative. This Court would not permit its extraordinary jurisdiction under Article 227 to be misused by a party like the Petitioner whose only objective is to somehow avoid grant of conveyance of land and building in favour of the Society and to retain control over the same for eternity. Far from assisting such a developer,

this Court would in fact come down heavily on such tendencies and would refuse to allow its jurisdiction to be misused for perpetuating unlawful gain. The extraordinary jurisdiction under Section 227 need not be exercised by the High Court to correct every error of law and fact when the final finding is found to be justified or found to be supported. In this regard, reference can be made to the judgment of the Apex Court in **Garment Crafts vs. Prakash Chand Goel**⁹ in which it has held in para-15 as under:

15. Having heard the counsel for the parties, we are clearly of the view that the impugned order [Prakash Chand Goel v. Garment Craft, 2019 SCC OnLine Del 11943] is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. [Celina Coelho Pereira v. Ulhas Mahabaleshwar Kholkar, (2010) 1 SCC 217] The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice.

47) In the facts of the present case, this Court is ultimately satisfied that Respondent No.1-Society is rightly conveyed land admeasuring 13,578.293 sq.m. (*as against the land agreed to be conveyed of 13,629.84 sq.m. under the consent terms*). Therefore, the impugned order of the Competent Authority need not be interfered with by entertaining

⁹ (2022) 4 SCC 181

technical objections sought to be raised by the Petitioners that the Respondent No.1-Society must file execution proceedings for execution of the consent decree.

48) It is also well-settled principle that when extraordinary jurisdiction of High Court is invoked, Petitioner must show that the justice is on his side. Useful reference in this regard can be made to the observations of the Chief Justice M. C. Chagla of this Court, speaking for the Division Bench in *State of Bombay vs. Morarji Cooverji*¹⁰, in which it is held as under:

42. ... This is, on the contrary, a case where the premises requisitioned for a public purpose are occupied by a Government servant and are sought to be taken possession of by the landlord by asking the Court to throw the Government servant out and restore possession to the landlord when that landlord has never shown its need of those premises by occupying them himself. **Therefore, this is clearly a case where justice is not on the side of the petitioner, it is on the side of the State, and we see no reason why we should grant any relief to the petitioner.**

44. With respect to the learned Judge, the matter is much more serious than merely the question of this particular vacancy of 1956 not being relevant to the vacancy which is the subject-matter of the requisition order. **On a writ petition, as we have already said, the petitioner has not merely to show good faith, but he has not to suppress any facts and has also to show that justice lies on its side.** If the learned Judge had taken these circumstances into consideration and then had come to the conclusion that the discretion should be exercised in favour of the landlord, then undoubtedly we would not have interfered with the order passed by the learned Judge.

(emphasis added)

49) In *M.P. Mittal Versus. State of Haryana*¹¹, the Apex Court has held that while exercising jurisdiction under Article 226 of

¹⁰ 1958 SCC OnLine Bom 188

¹¹ (1984) 4 SCC 371

Constitution of India, it is open to the High Court to consider whether it should decline relief to a Petitioner if grant of relief would defeat the interest of justice. The Court can always refuse relief if Petitioners seek to invoke jurisdiction in order to secure dishonest advantage or to perpetuate an unjust gain. It has been held by the Apex Court in para-5 as under:

5. Now there is no dispute that the appellant knowingly and deliberately entered into the guarantee agreement and is liable as guarantor to make payment of the dividend due from Messrs Depro Foods Limited. Nor is it disputed that the amount due, with interest, stands at Rs 2,02,166—in respect of the period ending with the year 1977. It was not contended that the appellant in fact does not possess sufficient funds or cannot avail of sufficient personal property for the purpose of discharging the liability. The record also shows that before instituting coercive proceedings, the Assistant Collector provided the appellant an opportunity to pay up the amount due from him and that the appellant made no attempt to discharge the liability. When that is so, we are of opinion that he is not entitled to relief in these proceedings. **The appeal arises out of a writ petition and it is well-settled that when a petitioner invokes the jurisdiction of the High Court under Article 226 of the Constitution, it is open to the High Court to consider whether, in the exercise of its undoubted discretionary jurisdiction, it should decline relief to such petitioner if the grant of relief would defeat the interests of justice. The court always has power to refuse relief where the petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetuate an unjust gain.** This is a case where the High Court was fully justified in refusing relief. On that ground alone, the appeal must fail.

(emphasis added)

50) Therefore, in the facts and circumstances of the present case, I am not inclined to exercise jurisdiction in favour of the Petitioner to interfere in the impugned order passed by the Competent Authority. The judgment obviously is not to be read to mean that in every case where there is a decree of Civil Court, the Competent Authority can exercise jurisdiction under Section 11(3) of MOFA or can pass order contrary to the decree. The judgment is rendered in unique facts and circumstances of

the present case where there is gross failure on the part of the promoter to convey land, the conveyed land is within the limits of agreement under the Consent Terms and the remedy of the Petitioners to have the lease executed in their favour is not barred.

JUDGMENTS RELIED ON BY PETITIONERS

51) Mr. Damle has also relied upon judgment of the Apex Court in ***S. Malla Reddy*** (supra) in support of his plea of *res judicata*. The judgment however is an authority on the proposition that parties cannot repeatedly file proceedings in a different form by quoting different provisions of law for the same relief which was negated earlier. The judgment is rendered in the unique facts of the case where the Defendant therein had initially admitted Plaintiff's claim in the written statement and later filed two applications for striking off the admission in the written statement (Order VI Rule 16 CPC) and for seeking permission to file detailed written statement (Order VIII Rule 9 CPC) after changing the advocate. Both applications were dismissed and the dismissal attained finality till the Apex Court. Thereafter, the Defendant therein filed application for amendment of written statement (Order VI Rule 17 CPC), which was allowed by the Trial Court. In these peculiar facts, the Apex Court held that the Defendant therein could not have filed repeated applications for same relief. The Apex Court upheld the Order of the High Court dismissing the application for amendment of written statement. The law enunciated by the Apex Court in ***S. Malla Reddy*** does not apply

in the facts and circumstances of the present case as Respondent No.1's plea for conveyance has never been rejected in the earlier proceedings.

52) The judgment in *Sanu Enterprises* (supra) involved case of filing of second application for deemed conveyance after rejection of the first application by the Competent Authority, which is not the factual situation in the present case. Therefore, ratio the judgment is inapplicable to the facts of the present case.

CONCLUSION AND ORDER

53) Considering the overall conspectus of the case, I am of the view that no interference is warranted in the impugned order of deemed conveyance which appears, to my mind, as unexceptionable. Writ Petition is devoid of merits. It is accordingly **dismissed** with no order as to costs. It is however clarified that observations made by this Court in the judgment shall not come in the way of parties exercising their respective remedies in relation to consent decree.

[SANDEEP V. MARNE, J.]

54) After the judgment is pronounced, the learned counsel appearing for Petitioner seeks continuation of ad-interim order passed on 5 May 2026. The request is opposed by the learned counsel appearing for the first Respondent-society. Considering the nature of findings recorded

in the judgment, I am not inclined to continue the stay. The request is accordingly rejected.

[SANDEEP V. MARNE, J.]

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signed by
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