



eta Sawant

WP NO 11312 of 2025

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11312 OF 2025

Vardhman Nagar Co-operative Housing Society Limited **...Petitioner**

: Versus :

1. Kent Heights Co-operative Housing Society Limited
2. M/s. Bharat Engineering Construction Company
3. Rasiklal A. Shah
4. Dineshchandra H. Bhatviya
5. Sudhir V. Gandhi
6. Usha V. Aalwani
7. Pragnyavati C. Shah
8. District Deputy Registrar, Co-operative Societies, Mumbai City (4)

...Respondents

Mr. Mayur Khandeparkar with Mr. Amogh Singh, Mr. Devansh Shah, Mr. Santosh Pathak and Mr. Harsh Tripathi i/b. Law Origin, for the Petitioner.

Mr. Karl Tamboly with Mr. Viraj Parikh, Mr. Jahan Setalvad and Ms. Smrithi Pillai i/b. Mr. Dharmesh S. Jain, for Respondent No.1.

Ms. S. D. Chipade, AGP for Respondent No.8-State.

CORAM: SANDEEP V. MARNE, J.

Judgment Reserved on : 7 OCTOBER 2026.

Judgment Pronounced on: 22 OCTOBER 2026.

JUDGMENT:

1) Two cooperative housing societies in a layout have locked horns over sharing of layout land for conveyance purpose. Petition raises issues of vital importance relating to the rights of organisations of flat purchasers to secure conveyance of land in a layout development. One of the issues involved is whether a decree envisaging conveyance of an unspecified area of land secured by one of the societies in the layout would permanently debar it from seeking its rightful land entitlement in the layout and whether execution of conveyance deed by the promoter after such decree, conveying land less than society's entitlement under the law, can result in a windfall gain for the other society to claim conveyance of the entire balance layout land, which is not lawfully due to it? Also involved is the issue as to whether the conveyance deed executed post the decree is attributable to execution of the decree or is a mere voluntary arrangement between the promoter and the Plaintiff-society. The Petition also raises the issue as to whether the principle of proportionate land division of the layout land needs to be given a complete go-bye merely because one of the society has secured a vague decree directing the promoter to convey his title in the land, without adjudicating the competing claims between two societies about distribution of layout land. Without prejudice, the Petitioner has also contended that the principle of land division proportionate to built-up

area utilized in each building cannot be followed in the instant case as the building of Respondent No.1-society is constructed by use of TDR/incentive FSI and that what can be conveyed to it is only the land proportionate to the inherent/base FSI used in its construction.

THE CHALLENGE

2) The Petitioner-Society has filed the present Petition challenging order dated 9 June 2025 passed by the District Deputy Registrar, Co-operative Societies, Mumbai City-4 and Competent Authority (**Competent Authority**) granting certificate of unilateral deemed conveyance of land admeasuring 4497.58 sq.m. to it. Petitioner is aggrieved by the area of land conveyed to it vide certificate dated 9 June 2025 and insists that it is entitled to secure conveyance of the entire balance land in the layout after deducting area of 2040 sq.mts conveyed to Respondent No.1-society. Petitioner is also aggrieved by the liberty granted to Respondent No.1-society to seek conveyance of additional area of 1863.13 sq.m. (*over and above area of 2040 sq.mts already conveyed*). According to the Petitioner, since Respondent No.1-society has secured conveyance of land admeasuring 2040 sq.m. through execution of decree passed in its favour, it is not entitled to conveyance of any additional area and that the balance plot area must necessarily be conveyed to the Petitioner-society.

3) This is a competing claim between two housing societies formed by purchasers of flats in buildings constructed as a part of layout development over sharing the land in the layout for conveyance.

Petitioner-society has 4 separate buildings and 8 wings constructed as per the originally sanctioned plan. Respondent No. 1-society was formed in respect of a building constructed subsequently as per the revised plan. Respondent No. 1 wants share in the layout land in proportion to the built-up area used in construction of its building and the Competent Authority has upheld this entitlement of Respondent No. 1-society. Petitioner is opposed to proportionate land division contending that the building of Respondent No. 1-society is constructed by use of TDR/incentive FSI and that it has already secured conveyance of land admeasuring 2040 sq. m. through execution of decree passed by Civil Court and that therefore the balance land in the layout must be conveyed to it.

FACTS

4) A larger property situated at Survey No.47, Hissa No.1 (part) of Village-Malad, Taluka-Borivali, Mumbai Suburban District at Narsing Lane at Malad (West), Mumbai - 400 064 admeasuring 10,216 sq.m. was purchased by Respondent Nos.3 to 6 vide registered Conveyance Deed dated 23 August 1971. The land owners/Respondent Nos.3 to 6 granted development rights in respect of the larger property to Respondent No.2, which was a partnership firm formed by the original land owners. Subsequently, the plot area of the larger property was reduced to 9108.10 sq.m. and Respondent No.2 submitted plans for construction of a building on the larger property. During 1972 to 1976, Respondent No. 2 constructed four separate buildings comprising 8 wings and executed agreements under Section 4 of Maharashtra Ownership Flats (Regulation

of the promotion of construction, sale, management and transfer) Act, 1963 (**MOFA**) for sale of flats constructed therein. Final Occupation Certificate (**OC**) in respect of those buildings was issued on 30 May 1979. It is the case of the Petitioner that out of the total sanctioned built-up area (**BUA**) of 7,710.65 sq.m., BUA of 6,730.38 sq.m. was utilised in construction of those 4 buildings and the balance inherent BUA left was only 980.27 sq.m.

5) On 16 March 1994, the original land owners sold the larger property to one Vasant Khetani, who thereafter sold the same to one Kent Real Estate Pvt. Ltd. (**Kent**) on 22 August 1995. Kent approached the Petitioner-society for completion of balance development on the larger property by loading TDR. An agreement dated 17 October 1995 was executed between Petitioner-society and Kent, under which Petitioner permitted Kent to consume FSI in respect of the larger property to the extent of 52,000 sq. ft., equivalent to 4,830 sq.m. including the balance FSI, TDR and staircase FSI. The limit of 40% of permissible loadable TDR was imposed on Kent. Kent paid consideration of Rs. 40,00,000/- to the Petitioner for utilising TDR upto 40%, Rs.11,00,000/- towards full and final settlement of accounts of the original land owners and Rs.15,30,000/- for right to utilise 1700 sq.ft. of staircase and lift FSI. Under the Agreement, it was agreed that if further FSI became available, Kent was to secure fresh consent of the Petitioner-society in writing. It was also further agreed between the parties that the flat purchasers of the new building would be enrolled as members of the Petitioner-society.

6) Kent accordingly constructed building of Respondent No.1-society and executed individual Agreements for Sale with the flat purchasers in which a specific covenant was included for flat purchasers becoming the members of the Petitioner-society. The flat purchase agreements also contained a covenant for conveyance of the entire property in favour of the Petitioner-society.

7) Respondent No.1-society filed L.C. Suit No. 1748 of 2003 against Kent, Petitioner-society and MCGM *inter alia* seeking directions for completion of the building, for securing OC, as well as for conveyance of land and the building. On 31 July 2008, L.C. Suit No. 1748 of 2003 was partly decreed, directing Kent to complete Society's building and obtain an OC and a Completion Certificate and to convey Kent's right, title and interest in the land and the building to Respondent No.1-society. The OC in respect of Kent's building was issued on 23 October 2008, which revealed that Kent utilised BUA of 6,899.37 sq.m. for construction of Respondent No.1-society.

8) Respondent No.1-society took out Execution Application No. 73 of 2009 under Order XXI Rule 34 of Code of Civil Procedure, 1908 **(Code)** for execution of decree dated 31 July 2008. According to the Petitioner, towards execution of the decree, Kent and Respondent No.1 executed and registered a conveyance deed in respect of land admeasuring 2,040 sq.m.

9) Petitioner-society filed Application dated 3 July 2020 under Section 11(3) of MOFA seeking conveyance of land admeasuring 10,216

sq.m. The Competent Authority passed order dated 30 March 2021, allowing the application of Petitioner-society and granted conveyance of land admeasuring 6,748.33 sq.m. Respondent No.1-society filed Writ Petition No. 8688 of 2021 challenging order dated 30 March 2021 and the proceedings were remanded to the Competent Authority for fresh adjudication. In the remanded proceedings, parties filed additional pleadings. On 9 June 2025, the Competent Authority has passed the impugned order granting deemed conveyance of land aggregating 4,497.58 sq.m. to the Petitioner. The Competent Authority has held that Respondent No.1 shall be entitled to secure conveyance of additional area of 1,863.12 sq.m. by filing separate application for deemed conveyance. Aggrieved by the order dated 9 June 2025, Petitioner-society has filed the present Petition raising the grievance that it is actually entitled to secure conveyance of entire balance portion of land after deducting area admeasuring 2,040 sq.m. already conveyed to Respondent No.1.

SUBMISSIONS

10) Mr. Khandeparkar, the learned counsel appearing for the Petitioner submits that the Competent Authority has grossly erred in undertaking the exercise of proportionate land division, which principle is wholly inapplicable in the facts of the present case, on account of both, the use of TDR/incentive FSI as well as on account of conveyance of land of 2040 sq. mt. already executed in favour of Respondent No. 1 through execution of decree. That the cause of action for Respondent No.1 to seek conveyance has already been adjudicated upon by a Civil Court of

competent jurisdiction culminating into decree dated 31 July 2008. That it is trite law that when a suit as to immovable property has been decreed but the property (*including the area*) has not been definitely identified, the question as to how much area Plaintiff is entitled to conveyance of can be decided under Section 152 of the Code by the Court which passes the decree or under Section 47 by the Executing Court. In support, he relies on judgments of the Apex Court in **Pratibha Singh and Anr. vs. Shanti Devi Prasad and Anr.**¹

11) Mr. Khandeparkar further submits that in the present case, Respondent No.1-society applied for execution of the decree under Order XXI Rule 34 of the Code and therefore the issue can also be decided under Section 47 of the Code, which uses the phrase “and not by separate suit”. That in the execution proceedings, notice was issued to the Petitioner-society along with draft conveyance deed. Accordingly, Respondent No.1 has accepted area of 2040 sq.m. by securing conveyance through execution of the decree. That therefore Respondent No.1-society’s cause of action to seek conveyance (*including the quantum of area*) stood merged into the decree which in turn stands satisfied. That the cause of action does not survive and therefore filing of application for conveyance before the Competent Authority would be barred by the principles of *res judicata* and/or cause of action estoppel. There is nothing like ‘*continuous wrong*’ which permits Respondent No.1 to travel beyond the scope of Section 47 of the Code before a completely different forum.

¹ (2003) 2 SCC 330

12) Mr. Khandeparkar further submits that execution and registration of conveyance clearly indicates absence of 'failure' on the part of the promoter within the meaning of Section 11 of MOFA, which is jurisdictional fact for the Component Authority to exercise its jurisdiction. In support of his contention of non-occurrence of failure, he relies on judgment of this Court in **Nahar Builders Ltd. and Ors. vs. Orchid Enclave CHSL and Ors.**² That therefore grant of liberty by the Competent Authority in the impugned order is clearly erroneous. In support of his contention of merger of cause of action, Mr. Khandeparkar relies on judgments of the Apex Court in **State of U.P. vs. Nawab Hussain**³, **Vishnu Vardhan vs. State of U.P.**⁴, **Bhanu Kumar Jain vs. Archana Kumar and Anr.**⁵, and **Hope Plantations Ltd. vs. Taluk Land Board, Peermade & Anr.**⁶

13) Mr. Khandeparkar further submits that reliance by Respondent No.1 on Agreement dated 17 October 1995 executed between Petitioner and Kent is based on a complete misreading of the same. That Agreement was a package deal for admission of flat purchasers of the new building as Petitioner's members and conveyance of entire larger property in favour of the Petitioner-society. Respondent No.1-society cannot cherry-pick and place reliance on only one portion/term of the Agreement while conveniently choosing to ignore the remaining part.

² Civil Writ Petition No. 6063 of 2026 decided on 28 July 2026

³ (1977) 2 SCC 806

⁴ 2025 SCC OnLine SC 1501

⁵ (2005) 1 SCC 787

⁶ (1999) 5 SCC 590

14) Mr. Khandeparkar further submits that the impugned order of the Competent Authority relies on GR of 2018 which has no application to the facts and circumstances of the present case. That the case involves adjudication of rights of Respondent No.1-society by Civil Court by culminating into a registered Deed of Conveyance. That the GR does not override decree of the Court or registered conveyance deed. That the formula of proportionate land division contemplated in the GR cannot be applied in the present case since the two buildings are constructed with different FSI norms. In support, he relies on judgment of this Court in M/s. Radha Vishweshwar CHSL and Anr. vs. M/s. New Bansi Park CHSL & Ors.⁷ That the concept of TDR was not introduced when Petitioner's building was constructed and the same was subsequently introduced when building of Respondent No.1 was being constructed. He submits that Petitioner's buildings have BUA of 6730.38 sq.m. constructed as per DCR, 1967 by utilising base FSI whereas building of Respondent No.1-Society has BUA of 6899.37 sq.m. constructed under DCR, 1991 by using base FSI of only 980.27 sq.m. and TDR/incentive FSI.

15) Mr. Khandeparkar further submits that the buildings of the Petitioner-society are over 42 years old and are in urgent need of going for redevelopment. That Petitioner-society is desirous of availing the benefit of Regulation 33(9) of Development Control and Promotion Regulations for Greater Mumbai, 2034 (DCPR) which requires minimum land area of 6000 sq.m. That if the impugned order is upheld, Petitioner would receive conveyance of only land admeasuring 4497.58 sq.m.,

⁷ Interim Application No.5322 of 2025 decided on 15 October 2025

rendering it ineligible to avail the benefit of cluster redevelopment. He submits that by applying the principles laid down in ***Radha Vishweshwar*** (supra), Petitioner-society is entitled to conveyance of area admeasuring 6730.38 sq.m. in addition to RG area of 1360.70 sq.m. Mr. Khandeparkar accordingly prays for setting aside the impugned order passed by the Competent Authority.

16) The petition is opposed by Mr. Tamboly, the learned counsel appearing for Respondent No.1-society. He submits that the impugned order passed by the Competent Authority is perfectly in order, which ensures proportionate land division by considering the BUA utilised in construction of each of the buildings. He submits that the Civil Court has not adjudicated area entitlement of Respondent No.1. He explains the context in which the Suit was filed, which was not limited only to grant of conveyance. That the suit was filed for adjudication of disputes between the developer and Respondent No.1 and not for adjudication of disputes relating to land entitlement between the Petitioner and Respondent No.1. He submits that what is executed under the Deed of Conveyance is a mere consensual and voluntary arrangement. That Deed of Conveyance is not executed in execution of the decree as falsely suggested. That even the Executing Court has not determined land entitlement of Respondent No.1-society.

17) Mr. Tamboly submits that this is not an ordinary dispute between the two societies since the Petitioner has monetised the development potential of the property by permitting the construction of the building of Respondent No. 1. Having sold the development potential

of the land by permitting the loading of TDR and incentive FSI, the Petitioner cannot contend that the conveyance of land to the building of Respondent No. 1 should be restricted to the land corresponding to the inherent FSI of 980.27 sq. m. That the case is squarely covered by judgment of this Court in **Satellite Garden I CHSL vs. State of Maharashtra**⁸ since there is express written consent by the Petitioner in the facts and circumstances of the present case.

18) Mr. Tamboly further submits that the Competent Authority has applied its mind to all the relevant considerations. That the exercise of proportionate land division undertaken by the Competent Authority is in accordance with the GR of 2018. That Petitioner's plea of estoppel and *res judicata* based on 2008 judgment and 2013 conveyance is baseless. That the 2013 conveyance is not executed in pursuance of any adjudication and that therefore no Court has put its seal on the conveyance of 2040 sq.m. That the judgment in ***Nahar Builders*** (supra) actually assists the case of Respondent No.1. That the land of 2040 sq.m. is only the plinth land and appurtenant land, which does not include share in the RG and other common amenities. That if case of the Petitioners is accepted, Respondent No.1 would not be left with any rights in the RG and internal roads. If Respondent No.1 is confined to plinth and appurtenant area, Petitioner must also receive same treatment.

19) That the principle of estoppel does not apply and in support, he relies on judgments of this Court in **Prestige Garden A-1 CHSL vs.**

⁸ 2026:BHC-AS:37837

State of Maharashtra⁹, Haroon Hussain Khatri vs. Competent Authority & District Deputy Registrar¹⁰ and Rohini Gupta vs. District Deputy Registrar, Co-operative Societies¹¹. He submits that Petitioner cannot seek conveyance of balance area if what is conveyed to Respondent No.1-society is not as per its entitlement under the law. In support, he relies on judgment of this Court in **Kuber Kartik New Link Road Premises Co-op. Society Ltd. vs. District Deputy Registrar¹²**. That in the present case, Respondent No.1 has not approached the Competent Authority and Petitioner has invited adjudication of land entitlement from the Competent Authority. That therefore principles of *res judicata* or estoppel do not have any application. Lastly, Mr. Tamboly submits that since the impugned order results in proportionate division of the layout land, this Court may not exercise jurisdiction under Article 227 of the Constitution of India. In support, he relies on judgment of the Apex Court in **Garment Craft vs. Prakash Chand Goel¹³**. Relying on judgment of the Apex Court in **M.S. Sanjay vs. Indian Bank¹⁴**, Mr. Tamboly submits that even if legal formulation sought to be suggested by the Petitioner is accepted to be correct, still this Court need not exercise extraordinary jurisdiction under Article 226 and 227 of the Constitution of India to disturb the arrangement which ultimately results in doing substantial justice between the parties. Mr. Tamboly prays for dismissal of the Petition.

⁹ 2024 SCC Online Bom 5625

¹⁰ 2026:BHC-AS:25183

¹¹ 2026:BHC-AS:36937

¹² Writ Petition No.7620 of 2026 decided on 19 June 2026

¹³ (2022) 4 SCC 181

¹⁴ 2025 SCC Online SC 368

REASONS AND ANALYSIS

20) Petitioner and Respondent No.1 are the two housing societies formed in respect of the buildings constructed in the same layout and who are at loggerheads for dividing the layout land for conveyance purposes. Petitioner-society has succeeded in Deemed Conveyance Application No.94 of 2020 and has secured conveyance of land aggregating 4497.58 sq.m., out of the total layout land admeasuring 9108.10 sq.m. It is however not satisfied with the quantum of area conveyed in its favour and believes that after deducting land area admeasuring 2040 sq.m. already conveyed in favour of Respondent No.1-society, the balance land admeasuring 7068 sq.m. must come to its share. On the other hand, it is the contention of Respondent No.1-society that it is entitled to proportionate share in the layout land on the basis of BUA utilised in construction of its building.

ORDER OF THE COMPETENT AUTHORITY

21) In Petitioner's application for deemed conveyance, the Competent Authority has undertaken the exercise of land division proportionate to the BUA utilised in construction of buildings of the two societies and has apportioned their shares in the land by holding as under:

xi. In conclusion, after a meticulous review of the Applicant's submissions, Opponent No.7's objections, architect certificates, this Authority determines that the Applicant, Vardhaman Nagar Co-operative Housing Society Ltd., is entitled to the deemed conveyance for the land admeasuring 4497.58 sq.

meters as above out of total 9108.10 sq. meters land bearing Survey No.47, Hissa No. 1 (part), and CTS Nos. 484 and 484/1 to 17, located at Narsing Lane, Malad (West), Mumbai – 400064, adjusted from the earlier granted/ordered 6748.33 square meters. This entitlement is formalized through registration pursuant to the order dated March 30, 2021, and remains valid, aligning with their possession since 1987 and statutory rights under MOFA, 1963, against BECC's failure to convey.

xii. The following table is confirmed by the Architect.

Society Name	Net-plot Area SM	RG Area SM	Set-back Area SM	Plot-Area as per PRC SM
Applicant	3807.52	671.91	18.15	4497.58
Opponent No.7	3903.13	688.79	18.60	4610.52
TOTAL	7710.65	1360.70	36.75	9108.10

22) Thus, the Competent Authority has determined entitlement of Petitioner-society of land admeasuring 4,497.58 sq.m. and that of Respondent No.1 as 4,610.52 sq.m. Accordingly, it has conveyed land admeasuring 4,497.58 sq.m. to the Petitioner, which is distributed as 3,807.52 sq.m. of net plot area, proportionate share in RG area of 671.91 sq.m. and proportionate share in set-back area of 18.15 sq.m.

23) Since Respondent No.1-society is held entitled for conveyance of land admeasuring 4610.52 sq.m. (*which is distributed as net plot area of 3,903.13 sq.m., RG area of 688.79 sq.m. and set-back area of 18.60 sq.m.*), the Competent Authority has granted liberty to the Respondent to file an application for deemed conveyance of balance portion of land totally aggregating 2570.52 sq.mts (*distributed as 1863.13 sq.mts of net plot, R.G. area of 688.79 sq.mts and set back area of 18.60 sq.mts*). The Competent Authority has held in para-28(xiii) of the order as under:

xiii. The Applicant is entitled to retain only 3807.52 sq. meters out of the 6748.33 square meters already granted/conveyed vide early order, towards its net-plot area entitlement. The Opponent No.7 has already been conveyed in 2040 sq. meters area. Accordingly, Opponent No.7 shall be entitled to an additional area of 1863.13 sq. meters-being the difference between 3903.13 sq. meters (total entitlement) and 2040 sq. meters (already considered)-towards its net plot area entitlement, subject to the submission of a separate Deemed Conveyance application by Opponent No.7 in respect of the said area. The RG Area of 1360.7 sq.meters shall be continued to be shared in proportion to 49.38 : 50.62 between Applicant and Opponent No.7 societies, or each will be respectively entitled to 671.91 sq. meters and 688.79 sq. meters exclusively towards and as RG Area. Similarly, the Set-back Area of 36.75 sq. meters shall continue to be shared in proportion to 49.38 : 50.62 between Applicant and Opponent No. 7 societies, or each will be respectively entitled to 18.15 sq. meters and 18.60 sq. meters exclusively towards and as Set-back Area.

24) The Competent Authority has determined Petitioner's entitlement for deemed conveyance as under:

29. Therefore, in view of the aforesaid orders of the Hon'ble High Court and after going through all the documents submitted by the concerned parties and, I am of the opinion that the Applicant Society is entitled to get the unilateral conveyance of the land admeasuring 3807.53 square meters plus undivided share of RG area admeasuring 671.91 square meters plus 18.15 square meters Set back area aggregating to 4497.58 square meters, being Survey No.47, Hissa No.1 (part), and CTS Nos.484 and 484/1 to 17 of Village Malad, Taluka-Borivali, in Mumbai Suburban District.

25) The Certificate of unilateral deemed conveyance issued by the Competent Authority in favour of the Petitioner-society reads thus:

In exercise of the powers conferred on me U/s 5 (A) of the Maharashtra Ownership Flats Act, 1963, I, Rajesh Lovekar, Competent Authority & District Deputy Registrar, Co-operative Societies, Mumbai City (4), hereby certify that "Vardhaman Nagar Co-operative Housing Society Ltd.," Vardhaman Nagar, Narsing Lane, Malad (West), Mumbai 400064 is entitled to have Unilateral Deemed Conveyance of deemed conveyance for the land admeasuring 3807.53 square meters Set back area aggregating to 4497.58 square meters, bearing Survey No.47, Hissa No.1 (part), and CTS Nos. 484 and 484/1 to 17 of Village Malad, Taluka Borivali, in Mumbai Suburban District along with society

building standing thereon and accordingly certificate is issued on following terms and conditions

26) Ordinarily, there can be no qualms about the exercise undertaken by the Competent Authority in conducting the exercise of proportionate land division based on BUA utilised in construction of buildings of Petitioner and Respondent No.1-society. This is exactly what is contemplated under the GR dated 22 June 2018 and has been reiterated by this Court in several judgments. However, two difficulties are posed in the present case for undertaking the exercise of land division in proportion to the BUA utilised in construction of each building. The building of Respondent No.1-society is constructed by utilisation of massive TDR/incentive FSI. Secondly, Respondent No.1-society has already registered deed of conveyance of land admeasuring 2040 sq.m. and therefore the Petitioner demands conveyance of the balance land to itself without undertaking the exercise of proportionate land division. There is yet another plea raised by the Petitioner that the flat purchasers of the building of Respondent No.1-society were under contractual obligation to become members of Petitioner-society and that therefore it is otherwise impermissible to convey any portion of land to Respondent No.1-society.

27) Thus, Petitioner's main contention in the present petition is that it must secure conveyance of the balance portion of land admeasuring 7068.10 sq.m. (*total land admeasuring 9108.10 sq.m. - 2,040 sq.m. already conveyed to Respondent No.1*).

DECREE PASSED IN CIVIL SUIT FILED BY RESPONDENT NO. 1

28) The sheet anchor of the Petitioner in demanding conveyance of balance land admeasuring 7,068.10 sq.m. is the decree passed in favour of Respondent No.1 in L.C. Suit No. 1748 of 2003, which according to the Petitioner, is executed and marked as satisfied by virtue of the registered Deed of Conveyance dated 31 December 2013 in respect of land admeasuring 2040 sq.m. According to the Petitioner, since Respondent No.1 has already secured conveyance of land admeasuring 2,040 sq.m. through execution of a decree of the Civil Court, the balance land must now go to it.

29) No doubt, there is a decree passed in favour of Respondent No.1 in L.C. Suit No. 1748 of 2003, which directed conveyance of land in its favour. However, it is necessary to understand the context in which the suit was filed and the decree was passed. As observed above, after completion of construction of four buildings of the Petitioner-society, there was balance inherent BUA of 980.27 sq.m. left in the larger property. The larger property was sold by the original owners to Vasant Khetani, who in turn sold the same to Kent. After purchasing the layout land, Kent has constructed Kent Heights building of Respondent No.1-society and has sold the flats therein by execution of agreements under Section 4 of MOFA. The flat purchasers of Kent Heights building had various grievances against the developer. It appears that Kent had left the building incomplete which did not obtain occupancy certificate. Kent had failed to provide water connection nor had provided the promised amenities in the building. There were temporary structures of Kent at the

suit site. Kent was apparently restraining the flat purchasers of Kent Heights Building from using the two recreational grounds in the layout. With these grievances, Respondent No.1-society filed L.C. Suit No. 1748 of 2003 in the City Civil Court. The gist of the prayers in the Suit is borne out from para-1 of the judgment of the City Civil Court, which reads thus:

1. By this suit plaintiffs have sought directions to defendant no.1 to complete the building viz. 'Kent heights' and obtain occupation certificate and to provide water connection and other amenities and to prevent obstruction from defendant no.2 on the entire suit plot including R.G. Nos.1 & 2 and not to further develop and construct on the suit property and to make accounts in respect of the amounts collected by defendant no.1 from the members of the plaintiff-society and further to give the records and documents in respect of the suit property and its development thereon. The mandatory injunction has been also sought against defendant no.2, directing defendant no.2- society from removing the cement benches and platform erected on the suit property and to remove the temporary structure put up on the suit site and preventing defendant no.2 from interfering plaintiffs from using RG Nos.1&2 and putting up any construction and preventing defendant no.2 from causing any obstruction to the members of the plaintiff-society from enjoying the amenities as set out in the prayer clause. Further injunction is sought against municipal corporation – Defendant no.3 from granting any construction permission of any type on the property without the consent of plaintiff no.1.

30) Thus, the Suit filed by Respondent No. 1 was mainly for completion of various works in the building, for securing occupation certificate for it and for enabling the residents of the building to enjoy the common amenities in the layout. In the L.C. Suit No. 1748 of 2003, the City Civil Court framed following issues:

- (1) Do the plaintiffs prove that plaintiff nos.2 to 4 have purchased suit flats from the defendant no.1 by registered agreement for sale dated 17.12.1997 or their about?
- (2) Do the plaintiffs prove that defendant no.1 is under obligation as per the provisions of M.O.F.A. to complete the building Kent Heights and obtain

occupation and completion certificates; to provide full water connection and to make provisions for parking of vehicles in the property in favour of all the flat purchasers of plaintiff no.1 society and to convey the property in favour of the plaintiff no.1 society, as prayed in prayer clause (a) of the plaint para no.31?

- (3) Do the plaintiffs prove that as per agreement of sale of flats the whole plot [sic] of land is to be conveyed to the plaintiff no.1 society?
- (4) Does plaintiff prove that defendant no.2 are obstructing and interfering in the use, occupation and enjoyment of the plot and common amenities and spaces by the plaintiffs and other members as averred in plaint para no.113?
- (5) Whether plaintiffs are entitled for perpetual injunction to restrain defendant no.2 and his members for cause and obstructing and interfering in the use, occupation and enjoyment of the plot and common amenities and spaces by the plaintiffs and other members as alleged in plaint para no.13?
- (6) Whether plaintiffs are entitled for injunction to restrain defendant from making further construction on the said property of any nature?
- (7) Whether plaintiffs are entitled for account as prayed in prayer clause (a) (vii)?
- (8) Whether plaintiffs are entitled for prayer prayed in prayer clause (c) regarding order sanction for prosecution?
- (9) Whether plaintiff is entitled for any other relief and claim?
- (10) What Order and Decree?

31) Thus, one of the issues framed in the Suit was with regard to the conveyance of the land and the building by the Kent to Respondent No. 1 society. It appears that Respondent No.1-society had prayed for conveyance of the entire larger property in its favour. The relevant discussion by the City Civil Court on Issue No.3 relating to conveyance is as under:

30. The agreement executed between defendant no.1 and defendant no.2 authorises the plaintiff-society to form independent ad-hoc committee to look after the day to day affairs. It is seen that defendant no.1 has not taken steps to form the society and therefore, plaintiff had to form their society and complete the remaining structures. Now there are two independent societies. Defendant no.2 is already existing society and the plaintiff-society is a new society. The plaintiff's rights created by the subsequent agreement are subject to the limitations imposed by the earlier agreement taken place between defendant no.1 and defendant no.2, as defendant no.2 cannot transfer any better title

than he had in the suit property. Therefore, I am of the view that plaintiffs are entitled for conveyance of the land purchased for plaintiff-society along with the amenities as per rules. Thus, issue no.3 is answered partly in the affirmative.

32) The operative portion of the judgment and order dated 31 July 2008 of the City Civil Court reads thus:

Suit No.1748/03 is partly decreed with costs as under:-

Defendant No.1 is directed to complete the building and obtain Occupation Certificate and Completion Certificate and to make the necessary provisions and take steps to provide water connection **and to convey to the plaintiff-society his right, title and interest in the land and building and execute all relevant documents therefor in accordance with the agreement executed by him in favour of the flat purchasers within two months from the date of the order, failing which the plaintiffs will be entitled to get the title conveyed through court subject to the rules and regulations of the M.M.C. Act.**

Defendant No.1 is restrained from developing the suit premises any more.

Commissioner be appointed for making of accounts in order to ascertain the amount of money due to plaintiff from defendant no.1

Defendant no.1 is restrained from disposing and developing of the suit property.

Defendant no.1 shall pay the costs of the suit to plaintiff.

Preliminary decree be drawn accordingly.

(emphasis and underlining added)

33) Thus, the City Civil Court directed conveyance of Kent's right, title and interest in the land and the building in favour of the Respondent No. 1 Society and to execute the relevant documents in accordance with the agreement executed by Kent in favour of the flat purchasers. The decree is silent about the exact portion of land to be

conveyed in favour of Respondent No.1-society and it vaguely directed conveyance of *‘his right, title and interest in the land and the building’*. In the event of failure to convey the land and the building, the Court directed that Respondent No. 1 society would be entitled to get the title conveyed through Court “*subject to the rules and regulations of the M.M.C. Act*”. What exactly is the purport of this condition is difficult to comprehend. Be that as it may. The City Civil Court essentially adjudicated the disputes between Respondent No.1-society and Kent while decreeing the suit. It upheld the right of Respondent No.1-society of conveyance of land from the promoter, but did not touch the issue of distribution of land between Petitioner and Respondent No.1-society.

CONVEYANCE DEED POST THE DECREE

34) Respondent No.1-society filed Application for execution of the decree dated 31 July 2008. In the execution application, the Additional Registrar of City Civil Court issued notice to the judgment debtors on 10 December 2010, to which a draft of conveyance was appended. The said draft envisaged conveyance of land admeasuring “3040 sq.mts” in favour of Respondent No.1-society. It is not known as to what ultimately happened in the execution proceedings. However, on 31 December 2013, Respondent No.1 and Kent executed registered Deed of Conveyance under which land admeasuring only “2040 sq.m.” has been conveyed in favour of Respondent No.1-society. Thus, there is reduction of 1000 sq.m. land in the Deed of Conveyance as compared to the draft of conveyance appended to the notice issued in the execution proceedings. In the Deed of Conveyance, land admeasuring 2040 sq.m. is

described as '*the land below and appurtenant to the said building*'. This is clear from the following recital in the Deed:

The land below and appurtenant to the said Building admeasures 2040 sq.mts. and bearing final Plot bearing C.T.S. No.484 (part), Hissa No.2 (part) from and out of the sold larger land and is shown yellow wash on the plan hereto annexed as Annexure A; and is hereinafter referred to as "the said area".

35) Further recital to the Deed of Conveyance records that Respondent No.1 had requested Kent to execute the deed in terms of the judgment and decree dated 31 July 2008. This is clear from the following covenant:

The purchasers in terms of the said Judgment and Decree dated 31st July 2008 [sic] have requested the Developers/Promoters to execute these presents so as to effectively convey the said property more particularly written hereunder in the Second Schedule together with the said Building in favour of the Purchasers, and the Developers/Promoters have agreed to do so by executing this Indenture. For the purpose of the present Conveyance no additional or separate consideration is being paid to the Developers/Promoters save and except the consideration already paid to the Developers/Promoters under the various agreements with the flatholders in the Purchasers' society.

36) As per the Deed of Conveyance dated 31 December 2013, the land in the second schedule has been conveyed by Kent in favour of Respondent No.1. The second schedule to the Deed reads thus:

THE SECOND SCHEDULE ABOVE REFERRED TO:

ALL THOSE pieces or parcels of land admeasuring about 2040 sq. mts. bearing CTS No.484 (part), Survey No.2 (part), Village Malad, Taluka Borivli and Sub District Bandra, District Mumbai in Greater Mumbai situated, lying and being at Narsing Lane, Malad (West), together with the structure standing thereon and bounded as follows:

37) There is nothing on record to indicate that copy of Conveyance Deed was placed before the Executing Court or that it marked the decree as satisfied after taking note of Conveyance Deed.

WHETHER CONVEYANCE DEED IS EXECUTED TOWARDS MARKING OF SATISFACTION OF THE DECREE

38) As observed above, that the Deed of Conveyance is not executed as per the draft appended to the notice issued by the Executing Court. This lends credence to the submission of Mr. Tamboly that the execution of Deed of Conveyance is a voluntary act between Respondent No.1 and Kent. There is nothing on record to indicate that the Deed of Conveyance was produced before the Executing Court for the purpose of marking the decree as satisfied. This indicates that the Deed of Conveyance is a private arrangement between Respondent No.1 and Kent during pendency of the execution proceedings. In any case, it cannot be held that the Deed of Conveyance is executed after adjudication by the Executing Court of quantum of land conveyable to Respondent No.1 in the layout.

39) In view of the above discussion, it is difficult to accept the contention raised on behalf of the Petitioner that the Conveyance Deed dated 31 December 2013 is executed towards satisfaction of the decree or that Respondent No.1 is estopped from claiming land area in excess of what is conveyed under the said Deed. These findings are recorded particularly considering the unique circumstances of the present case where the area of land in the draft deed does not match the one reflected

in the Conveyance Deed. As per the exercise of proportionate land division, *(even by taking into consideration the limit imposed under the Agreement dated 17 October 1995)* Respondent No.1 would be entitled to higher area of land. This Court therefore is not inclined to adopt hyper-technical approach of binding Respondent No.1 to the voluntary conveyance executed after passing of decree in its favour for the purpose of denying it its lawful right.

40) It is also seen that if Respondent No.1 is held entitled to conveyance of land of only 2040 sq.mts, which is the plinth and appurtenant land, it will not secure any share in the Recreational Ground and Petitioner alone would be entitled to own and use the RG. The RG is a common amenity for being used by both the societies and Petitioner-society cannot alone claim rights in respect thereof. Therefore, on this count also, contention of the Petitioner that Respondent No.1 cannot seek conveyance of land over and above area of 2040 sq.m. on account of passing of decree in its favour, cannot be accepted.

41) It is accordingly held that the Conveyance Deed is not executed in pursuance of execution proceedings or towards making satisfaction of the decree.

WHETHER EXECUTION OF REGISTERED DEED OF CONVEYANCE IN FAVOUR OF RESPONDENT NO. 1-SOCIETY ENTITLES PETITIONER TO CLAIM CONVEYANCE OF LAND IN EXCESS OF ITS TRUE ENTITLEMENT?

42) According to Mr. Khandeparkar, even though the decree of the City Civil Court may have been silent about the exact area of the land

to be conveyed, the issue can still be resolved in the execution proceedings. According to him, the Executing Court can ascertain the area of land to be conveyed under the decree. He has relied on judgment of the Apex Court in ***Pratibha Singh*** (supra) in which the Apex Court has held that any defect in not properly describing the property as per the requirements of Order VII Rule 3 and Order XX Rule 3 of the Code is capable of being cured and that the same can be cured in execution proceedings. The Apex Court has held that the exact description of decretal property may be ascertained by the Executing Court as a question relating to execution, discharge or satisfaction of the decree within the meaning of Section 47 of the Code. It is held that mere accidental slip or omission by a Court in not describing the decretal property cannot defeat such decree. It is held by the Hon'ble Apex Court in ***Pratibha Singh*** in paras-15, 16 and 17 of the judgment as under:

15. Order 7 Rule 3 CPC requires where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it. Such description enables the court to draw a proper decree as required by Order 20 Rule 3 CPC. In case such property can be identified by boundaries or numbers in a record for settlement of survey, the plaint shall specify such boundaries or numbers. Having perused the revenue survey map of the entire area of RS Plot No. 595 and having seen the maps annexed with the registered sale deeds of the defendant judgment-debtors we are clearly of the opinion that Sub-plots Nos. 595/I and 595/II were not capable of being identified merely by boundaries nor by numbers as sub-plot numbers do not appear in records of settlement or survey. The plaintiffs ought to have filed the map of the suit property annexed with the plaint. If the plaintiffs committed an error the defendants should have objected to it promptly. The default or carelessness of the parties does not absolve the trial court of its obligation which should have, while scrutinizing the plaint, pointed out the omission on the part of the plaintiffs and should have insisted on a map of the immovable property forming the subject-matter of the suit being filed. This is the first error.

16. The second error was committed during the execution proceedings. Under Order 21 Rule 32 CPC a decree for specific performance of a contract, on failure

to obey, may be enforced by the judgment-debtor being detained in civil prison. Order 21 Rule 34 provides the procedure for execution of documents pursuant to a decree. Where a decree is for the execution of a document the decree-holder may prepare a draft of the document in accordance with the terms of the decree and deliver the same to the court. Thereupon the court shall cause the draft to be served on the judgment-debtor together with a notice requiring his objections, if any, to be made out within time as the court fixes in this behalf. Where the judgment-debtor objects to the draft, his objections shall be stated in writing and then determined. The draft shall be approved or altered consistently with the finding arrived at by the court. In the present case the plaintiff decree-holders pointed out that the defendant judgment-debtors were aware of the contents of the draft sale deed. The fact remains that the draft sale deed accompanied by a notice requiring objections to be made by a judgment-debtor as provided by sub-rule (2) of Rule 34 of Order 21 CPC was not caused to be served by the court. The record also reveals the judgment-debtors repeatedly insisting, maybe dogmatically, on draft sale deed being delivered to them enabling objections being filed. There is no determination by the executing court that the immovable property as delineated and demonstrated in the map accompanying the draft sale deed was the property forming the subject-matter of the agreement to sell and the decree. Inasmuch as the possession is yet to be taken by the plaintiff decree-holders, this aspect can still be taken care of and that we shall do by making an appropriate direction in the operative part of this order.

17. When the suit as to immovable property has been decreed and the property is not definitely identified, the defect in the court record caused by overlooking of provisions contained in Order 7 Rule 3 and Order 20 Rule 3 CPC is capable of being cured. After all a successful plaintiff should not be deprived of the fruits of decree. Resort can be had to Section 152 or Section 47 CPC depending on the facts and circumstances of each case — which of the two provisions would be more appropriate, just and convenient to invoke. Being an inadvertent error, not affecting the merits of the case, it may be corrected under Section 152 CPC by the court which passed the decree by supplying the omission. Alternatively, the exact description of decretal property may be ascertained by the executing court as a question relating to execution, discharge or satisfaction of decree within the meaning of Section 47 CPC. A decree of a competent court should not, as far as practicable, be allowed to be defeated on account of an accidental slip or omission. In the facts and circumstances of the present case, we think it would be more appropriate to invoke Section 47 CPC.

43) In my view however, ratio of the judgment in *Pratibha Singh* would have no application to the facts of the present case. I find it bit difficult to accept the proposition that when decree of a Civil Court

does not specify the exact area of land to be conveyed in favour of a housing society, the Executing Court can resolve the dispute relating to area entitlement. In cases involving layout development, the land division and area entitlement between different societies are often a hot-bed of controversy. When conveyance of share of land in a layout development is sought, it is incumbent that the Civil Court determines the exact land area which would fall to the share of the plaintiff-society and direct conveyance of specified land area in the decree. The Civil Court cannot leave the question of land area to speculation and make a vague decree for conveyance of promoter's right, title and interest in the land and the building. When the case involves construction of only one building on a plot of land, issuance of direction by the Civil Court for conveyance of promoter's right, title and interest in the land and the building would suffice and would result in an executable decree. In such case any ambiguity about description of land can be resolved by the executing Court as held in ***Pratibha Singh***. However, when it comes to conveyance of a land in a layout where there are multiple buildings/societies, it is incumbent that the Civil Court determines with sufficient clarity the exact land entitlement of the plaintiff-society or else, a vague decree directing conveyance of promoter's right, title and interest in the land and the building would create more problems than solving one.

44) The Executing Court cannot go behind the decree. If the Trial Court fatters in not determining the exact land entitlement of a society in a layout development, the Executing Court cannot undertake that exercise. What Trial Court has avoided to do cannot be done by an

Executing Court. There is a conceptual difference between omission to describe the suit property in accordance with the requirement of Order VII Rule 3 of the Code leading to difficulty in identifying the property at the time of execution and Trial Court's failure to perform essential function of determining the land entitlement for conveyance in a layout development. What happens in the former case is omission of the plaintiff leading to lack of clarity about identification of the property, whereas what happens in the latter case is Trial Court's failure to adjudicate contentious issue of land sharing in the layout development. Therefore, the defect in the decree in the latter case cannot be cured by the Executing Court. The Executing Court cannot undertake the exercise of determining the contentious issue of share of land in a layout development.

45) In the present case, though the Trial Court has adjudicated right of Respondent No.1 to seek conveyance from Kent, it has failed to adjudicate the exact area of land which Respondent No.1 is entitled to secure by considering the competing claims between the two societies. The issue of conveyance of land in a layout development involves twin inquiries. The first adjudication is about the promoter's obligation to convey the land and the building under Section 11 of MOFA. The second inquiry is about the proportionate land division in the layout by adjudicating the share of each society in the land. Thus, the former inquiry is between the Plaintiff-society and the promoter, whereas the latter one is between the two societies. Both inquiries are necessary. In a given case, the promoter may oppose conveyance on the ground that the time for conveyance is yet to occur or construction of the building is still

incomplete or that the society is not entitled to own the land, but can get only a lease thereof, etc. Therefore, the Court first needs to adjudicate the issue as to whether the promoter can be directed to convey the land or not. In a case involving single building scenario conveyance suit can be restricted only to the first inquiry between the Plaintiff-society and the promoter. On the other hand, a plaintiff-society needs to seek both the adjudications in layout scenario viz. promoter obligation to convey the land and Plaintiff-society's share in the layout land. In the present case, the Respondent No. 1-society appears to have restricted the adjudication only to the former inquiry i.e. about promoter's obligation to convey the land. It did not seek adjudication of issue of proportionate land division in the suit.

46) Though the Petitioner was Defendant No. 2 in L.C. Suit No. 1748/2003, no issue was framed with regard to the share of the layout land between the two societies. It appears that Defendant No.2 (*Petitioner*) filed written statement questioning the validity of construction of building of Respondent No.1-society and contended that the whole property must be conveyed to the Petitioner and that Respondent No.2 was not entitled to conveyance of the land. In the light of rival positions taken in the pleadings, the Trial Court framed Issue No.3 about Plaintiff's entitlement to conveyance of whole of the land. The issue has been answered partly in the affirmative by recording findings in para-30 of the judgment as culled out above. Thus, there were neither any pleadings nor evidence before the Trial Court for deciding the competing claims between the two societies with regard to sharing of land entitlement. As observed above, ordinarily, once a prayer

for conveyance of the land is included in the plaint and if the case involves layout development, the Trial Court is required to ascertain the exact area of land which is required to be conveyed to the plaintiff-society. In the present case, since the main thrust of the Plaintiff was on completion of construction of the building and since the issue was as to whether either of the societies can secure conveyance of the whole land, there was no occasion for the Trial Court to decide the issue of proportionate land division. Be that as it may. The City Civil Court did not ascertain the exact area of land to be conveyed in favour of the Plaintiff-society. As observed above, the Executing Court cannot undertake the exercise of conducting evidentiary trial with regard to the area entitlement in the layout land. In such a situation, expecting the Executing Court to ascertain share of land entitlement would be akin to it determining shares of parties in a partition suit. In a given case, if the Trial Court merely holds that plaintiff is entitled to a share in the land but does not specify the quantum of such share, the Executing Court cannot go beyond the decree and decide the exact share of the plaintiff.

47) Mr. Khandeparkar has relied upon provisions of Section 47 of the Code in support of his contention that only the Executing Court can decide the dispute relating to land-sharing on account of use of words '*not by a separate suit*'. Section 47(1) of the Code reads thus:

47. Questions to be determined by the Court executing decree.-

(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

48) Thus, only the issues relating to execution, discharge or satisfaction of the decree can be decided by the Executing Court. Any issue which travels beyond the scope of execution, discharge or satisfaction of the decree would fall squarely outside the jurisdiction of the Executing Court. In the present case, it is difficult to hold that ascertainment of shares in the land is a question relating to execution, discharge or satisfaction of the decree. The question of determination of shares in the land requires adjudication and the same cannot be decided by the Executing Court in exercise of jurisdiction under Section 47 of the Code.

49) Mr. Khandeparkar has also relied on provision of Section 152 of the Code in support of the contention that if the quantum of land is not ascertained in the decree, the Plaintiff (Respondent No. 1) can approach the Court which made the decree to get the necessary clarification. Section 152 of the Code reads thus:

152. Amendment of judgments, decrees or orders .-

Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

Thus only clerical or arithmetical mistakes in the judgments, decrees or orders arising therein from any accidental slip or omission can be corrected by the Court under Section 152 of the Code. However as observed above, ascertainment of quantum of area to be shared by the two societies in the layout land requires adjudication. The jurisdiction of civil court under Section 152 of the Code is clarificatory or ministerial

and not adjudicatory. Any issue that requires adjudication cannot be dealt with in exercise of jurisdiction under Section 152 of the Code.

50) In any case, it is not necessary for this Court to delve deeper into the aspect of availability of remedies for Respondent No. 1 to have conveyance of its share of land in the layout. It is Petitioner who approached the Competent Authority and have invited adjudication of dispute about conveyance of its share in the layout land. The present Petition questions the correctness of adjudication done by the Competent Authority. Therefore in this Petition, it is not even necessary to decide what remedies Respondent No. 1 must adopt for securing correct entitlement of land in pursuance of the decree passed in its favour. In the present case, Petitioner-society wants to take advantage of the conundrum created for Respondent No. 1 in securing its due land entitlement through the decree passed in its favour. Petitioners contention relating to impermissibility for Respondent No. 1 to go beyond the decree allegedly executed and marked as satisfied are aimed at ensuring that the Petitioner-society receives conveyance of land in excess of its entitlement. This aspect is dealt with in greater detail in the latter part of the judgment.

ESTOPPEL AND RES-JUDICATA

51) Mr. Khandeparkar has strenuously pressed into service objections of estoppel and *res-judicata* to oppose the liberty granted to Respondent No.1-society to apply for conveyance of balance portion of the land. According to him, once the Deed of Conveyance is registered

towards execution of the decree, the cause of action has come to an end and initiation of any fresh proceedings would be barred by the principles of *res judicata* and estoppel. In support, Mr. Khandeparkar has relied on the judgment of the Apex Court in ***State of UP Versus. Nawab Hussain*** (supra) in which the Apex Court has held in para-3 of the judgment as under:

3. The principle of estoppel *per rem judicatam* is a rule of evidence. As has been stated in *Marginson v. Blackburn Borough Council* [(1939) 2 KB 426 at p. 437] , it may be said to be “the broader rule of evidence which prohibits the reassertion of a cause of action”. This doctrine is based on two theories: (i) the finality and conclusiveness of judicial decisions for the final termination of disputes in the general interest of the community as a matter of public policy, and (ii) the interest of the individual that he should be protected from multiplication of litigation. It therefore serves not only a public but also a private purpose by obstructing the reopening of matters which have once been adjudicated upon. It is thus not permissible to obtain a second judgment for the same civil relief on the same cause of action, for otherwise the spirit of contentiousness may give rise to conflicting judgments of equal authority, lead to multiplicity of actions and bring the administration of justice into disrepute. It is the cause of action which gives rise to an action, and that is why it is necessary for the courts to recognise that a cause of action which results in a judgment must lose its identity and vitality and merge in the judgment when pronounced. It cannot therefore survive the judgment, or give rise to another cause of action on the same facts. This is what is known as the general principle of *res judicata*.

52) Relying on judgment of the Apex Court in ***Nawab Hussain***, Mr. Khandeparkar has contended that it is not permissible to obtain a second judgment for the same relief on the same cause of action so as to avoid conflicting judgments, multiplicity of actions and to prevent administration of justice from falling into disrepute. In my view however, since there was no adjudication of the issue of exact area entitlement of Respondent No.1 in the decree passed by the Civil Court, the principle of estoppel or *res judicata* would not have any application to the facts and

circumstances of the present case. The case does not involve a situation where the Civil Court has adjudicated area entitlement of Respondent No.1-society and has determined the same as 2040 sq.m. On the other hand, the Civil Court merely directed execution of conveyance without specifying the exact area to be conveyed. Respondent No.1-society submitted a draft for conveyance of land admeasuring 3040 sq.m. and it is difficult to fathom as to on what basis, conveyance of land admeasuring 3040 sq.m. was sought. It is incomprehensible as to on what basis, area of 3040 sq.m. was arrived at in the draft of conveyance appended to execution notice. Ultimately, Conveyance Deed is not executed in respect of area of 3040 sq.m. and the same is executed in respect of lesser area of 2040 sq.m. As observed above, there is nothing on record to indicate that the Conveyance Deed is executed towards satisfaction of the decree. Since the decree did not specify any area to be conveyed, it is difficult to hold that execution of Conveyance Deed was towards marking satisfaction of the decree. In my view therefore, the principle of *res judicata* would have no application to the facts and circumstances of the present case.

53) Mr. Khandeparkar has also relied on judgment of the Apex Court in ***Bhanu Kumar Jain*** (supra), in which it is held in paras-29 to 32 as under:

29. There is a distinction between “issue estoppel” and “res judicata”. (See *Thoday v. Thoday* [(1964) 1 All ER 341 : (1964) 2 WLR 371 : 1964 P 181 (CA)] .)

30. Res judicata debars a court from exercising its jurisdiction to determine the lis if it has attained finality between the parties whereas the doctrine issue

estoppel is invoked against the party. If such an issue is decided against him, he would be estopped from raising the same in the latter proceeding. The doctrine of res judicata creates a different kind of estoppel viz. estoppel by accord.

31. In a case of this nature, however, the doctrine of “issue estoppel” as also “cause of action estoppel” may arise. In *Thoday* [(1964) 1 All ER 341 : (1964) 2 WLR 371 : 1964 P 181 (CA)] Lord Diplock held: (All ER p. 352 B-D)

“... ‘cause of action estoppel’, is that which prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties. If the cause of action was determined to exist i.e. judgment was given on it, it is said to be merged in the judgment.... If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped per rem judicatam.” [Ed.: The rest of the extract from *Thoday* [(1964) 1 All ER 341 : (1964) 2 WLR 371 : 1964 P 181 (CA)] may usefully be referred to (All ER p. 352, B-F) “Estoppel per rem judicatam is a generic term which in modern law includes two species. The first species, ‘cause of action estoppel’, is that which prevents a party to an action from asserting or denying, as against the other party, the existence of a particular cause of action, the non-existence or existence of which has been determined by a court of competent jurisdiction in previous litigation between the same parties. If the cause of action was determined to exist, i.e., judgment was given on it, it is said to be merged in the judgment, or for those who prefer Latin, transit in rem judicatam. If it was determined not to exist, the unsuccessful plaintiff can no longer assert that it does; he is estopped per rem judicatam. This is simply an application of the rule of public policy expressed in the Latin maxim, ‘nemo debet bis vexari pro una at eadem causa’. In this application of the maxim, causa bears its literal Latin meaning. The second species, ‘issue estoppel’, is an extension of the same rule of public policy. There are many causes of action which can only be established by proving that two or more different conditions are fulfilled. Such causes of action involve as many separate issues between the parties as there are conditions to be fulfilled by the plaintiff in order to establish his cause of action; and there may be cases where the fulfilment of an identical condition is a requirement common to two or more different causes of action. If in litigation on one such cause of action any of such separate issues whether a particular condition has been fulfilled is determined by a court of competent jurisdiction, either on evidence or on admission by a party to the litigation, neither party can, in subsequent litigation between them on any cause of action which depends on the fulfilment of the identical condition, assert that the condition was fulfilled if the court has in the first litigation determined that it was not, or deny that it was fulfilled if the court in the first litigation determined that it was.”]

32. The said dicta was followed in *Barber v. Staffordshire County Council* [(1996) 2 All ER 748 (CA)] . A cause of action estoppel arises where in two different proceedings identical issues are raised, in which event, the latter proceedings between the same parties shall be dealt with similarly as was done in the previous proceedings. In such an event the bar is absolute in relation to all points decided save and except allegation of fraud and collusion. [See *C. (A Minor) v. Hackney London Borough Council* [(1996) 1 All ER 973 : (1996) 1 WLR 789 (CA)].]

54) Reliance is also placed on judgment of the Apex Court in ***Hope Plantations*** (supra) in which it is held in para-26 of the judgment as under:

26. It is settled law that the principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrably wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are “cause of action estoppel” and “issue estoppel”. These two terms are of common law origin. Again, once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that the issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the Code of Civil Procedure contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.

55) No doubt, the principles of *res judicata* do apply to proceedings before the Competent Authority under Section 11(3) of MOFA as held by the Apex Court in ***Faime Makers Pvt. Ltd. vs. District Deputy Registrar, Co-operative Societies (3), Mumbai***¹⁵ as under:

¹⁵ (2025) 5 SCC 772

23. It has been settled by this Court that the principle of *res judicata* applies to and binds quasi-judicial authorities. This Court in *Ujjam Bai v. State of U.P.* [*Ujjam Bai v. State of U.P.*, 1962 SCC OnLine SC 8] has taken the view that principles of *res judicata* equally apply to quasi-judicial bodies. Whenever a judicial or quasi-judicial tribunal gives a finding on law or fact, its findings cannot be impeached collaterally or in a second round and are binding until reversed in appeal or revision or by way of writ proceedings.

24. The characteristic attribute of a judicial act or decision is that it binds, whether right or wrong. Thus, any error, either of fact or law, committed by such bodies cannot be controverted otherwise by way of an appeal or revision or a writ unless the erroneous determination relates to the jurisdictional matter of that body.

25. This position has been further reinforced in *Abdul Kuddus v. Union of India* [*Abdul Kuddus v. Union of India*, (2019) 6 SCC 604] which relies upon *Ujjam Bai* [*Ujjam Bai v. State of U.P.*, 1962 SCC OnLine SC 8]. In *Abdul Kuddus* [*Abdul Kuddus v. Union of India*, (2019) 6 SCC 604], this Court held that the opinion by the Foreigners Tribunal is a quasi-judicial order. Therefore, it would be incorrect to hold that the opinion of the Tribunal and/or the consequential order passed by the registering authority would not operate as *res judicata*. Further, it was established that any quasi-judicial authority would not ordinarily have the power to unilaterally take a contrary view taken by a coordinate or predecessor authority at an early point in time.

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

56) Thus, the principle of *res judicata* applies only when Competent Authority seeks to adjudicate fresh application for deemed conveyance after decision of earlier application, order in which has attained finality. Thus for successive applications before the Competent Authority, the principle of *res judicata* does apply. The principle of *res judicata* would also apply where the Civil Court makes adjudication of land area in a suit and Competent Authority seeks to re-adjudicate the same issue in Application under Section 11(3) of MOFA. However, this does not apply to a converse situation where Competent Authority makes adjudication relating to land entitlement and the affected party

seeks to re-adjudicate the same issue before Civil Court. It is well-settled principle that adjudication made by the Competent Authority in exercise of its summary jurisdiction under Section 11(3) of MOFA is not final determinative of rights and entitlements of parties in respect of the conveyed land. It is always open for an aggrieved party to file a civil suit and seek declaration to the contrary. This is because Civil Court undertakes an intrinsic evidentiary enquiry as compared to summary enquiry made by the Competent Authority. This law is well settled by the judgment of the Division Bench of this Court in **Mazda Construction Co. vs Sultanabad Darshan Co-operative Housing Society Ltd.**¹⁶ and of the Apex Court in **Arunkumar H. Shah (HUF) vs. Avon Arcade Premises Co-operative Housing Society Ltd.**¹⁷ Thus, principle of *res judicata* does not apply when Competent Authority adjudicates the issue of land entitlement and it is open for the aggrieved party to seek declaration to the contrary by filing a civil suit.

57) In the present case, the principles of *res judicata* and estoppel are sought to be applied because a decree is already made by the Civil Court in respect of a prayer for conveyance made by Respondent No.1-society.

58) So far as the principle of estoppel is concerned, the same is sought to be applied essentially on account of conduct of the Respondent No.1 in executing and registering the Deed of Conveyance dated 31 December 2013. However, if the promoter contractually conveys area of

¹⁶ 2012 SCC OnLine Bom 1226

¹⁷ 2025 SCC OnLine SC 825

land lesser than the lawful entitlement of the society and if the society executes and registers a Deed of Conveyance in respect of such lesser land, the same does not prevent the society from applying for deemed conveyance of the balance land under Section 11(3) of MOFA. Section 11 of MOFA creates an absolute right in favour of organization of flat purchasers to secure conveyance of land and the building. This right cannot be circumscribed by any private contractual arrangement between the parties. Section 16 of MOFA provides that the provisions of the Act take effect notwithstanding anything to the contrary contained in the contract. Section 16 of MOFA 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.

59) Therefore, mere contractual arrangement made between the promoter and the society does not defeat the right of the society to secure conveyance of its entitled portion of land. If this principle is not recognized, the same would again create a handle for developers who would commit the mischief of conveying lesser land or rights lesser than ownership in the land in favour of a society and then raise the objection of estoppel before the Competent Authority. To illustrate, if a building is constructed by utilizing the entire FSI potential from the land admeasuring 1,000 sq.m., the developer may deliberately execute conveyance of land admeasuring only 800 sq.m. to the society with a

view to exploit further additional development potential flowing through change in the FSI regime by retaining ownership in respect of the land admeasuring 200 sq.m. Merely because the society may have signed and registered Deed of Conveyance for land admeasuring 800 sq.m., such conduct of the society would not estop it from claiming conveyance of 200 sq.m. of land by filing an application under Section 11(3) of MOFA before the Competent Authority. To discuss another illustration, a promoter, who owns the land, may grant only leasehold rights in the land in favour of the society and then raise an objection of estoppel when society files application under Section 11(3) of MOFA for conveyance of ownership rights. Mere conduct of the society in accepting leasehold rights in the land would not destroy its legal right under Section 11 to claim ownership in respect of the land by filing application for deemed conveyance before the Competent Authority.

60) The principle of estoppel is wholly inapplicable to MOFA scheme when organization of flat purchasers exhibit a conduct in accepting lesser area/right than those lawfully due to it under the Act. No amount of conduct of organization of flat purchasers can ever defeat the statutory right created in its favour to have conveyed promoters' right, title and interest in respect of the land and the building. This would apply where such organization accepts either lesser area of land or lesser right like lease through a private contract / instrument / deed. Execution of such contract does not defeat statutory right of organization of flat purchasers who can always approach the Competent Authority for what is deliberately withheld by the promoter contrary to Section 11 of MOFA .

61) It is otherwise well-settled position that mere execution or registration of a conveyance deed does not operate as an estoppel for organisation of flat purchasers seeking to exercise the remedy to secure conveyance of rights and area lawfully due under MOFA. In ***Prestige Garden CHSL*** (supra), Petitioner-society had executed and registered deed of conveyance of land admeasuring 3461.43 sq.m. in pursuance of order passed by the Competent Authority and thereafter challenged the order of the Competent Authority for securing conveyance of higher area of land. An objection of estoppel was raised by the promoter contending that the society was estopped from challenging the order on which it had acted upon. Rejecting the contention, this Court held in paras-38 and 41 of the judgment as under:

38. The Unilateral Deed of Conveyance was registered conveying land admeasuring 3461.43 square meters. Thereafter subsequent to the objection raised by Respondent No. 10, the communication dated 10th June, 2021 was addressed to the Petitioner-Society directing it to register the Deed of Rectification which was done on 4th August, 2021. As discussed above, the statutory provisions entitle the Petitioner to the Promoter's right, title and interest in the land and building and by the impugned order the Competent Authority has conveyed only the constructed structure which was in clear violation of the mandate of MOFA. The submission on principles of estoppel and approbation and reprobation is premised on the reasoning that the Petitioner-Society has obtained a benefit under the impugned order and having obtained benefit and acted upon the order, cannot now turn back and assail the said order. The submission overlooks the position that under the statutory provisions, the Petitioner-Society was entitled to the conveyance of the land as well as the building. It is settled position in law that there cannot be any estoppel against statute. In view of the provisions of MOFA it cannot be said that the Petitioner Society has received any benefit under the impugned order which but for the impugned order the Petitioner was not entitled to and thus having accepted the benefit now cannot turn back and challenge the order. The Petitioner in the present case has been denied what is rightfully due to them under MOFA, i.e. conveyance of the land and the building. It cannot be said that the Petitioner-Society with full knowledge of its legal rights had accepted the impugned order. In my view, interest of justice demands that the Petition is not thrown out on procedural law of principle of estoppel or acquiescence.

Weighed against the substantial justice, in my opinion, the submission on the aspect of estoppel and approbation and reprobation is liable to be rejected.

41. The next decision relied upon by Mr. Cama is decision of the Apex Court in case of *State of Punjab v. Dhanjit Singh Sandhu* (supra). In that case, the respondent allottee had accepted the terms and conditions of allotment letter and possession was taken but they did not raise any construction as required. Upon demand being raised for payment of non construction fee to avoid resumption, the same was paid and after availing benefit of extension sought refund of extension fee. The Apex Court held that once an order has been passed, complied with and accepted and derived benefit out of it, the same cannot be challenged on any ground. There is no quarrel with the proposition of law laid down by the Apex Court. What needs to be noted is while applying procedural law like principle of estoppel or acquiescence, the Court would be concerned with conduct of party for determination as to whether he can be permitted to take different stand in a subsequent proceeding unless there exists statutory interdict. (See *Jai Narain Parasrampuriah v. Pushpa Devi Saraf* [(2006) 7 SCC 756]. In the instant case, it cannot be said that by accepting the impugned order, the Petitioner-Society has acquired a benefit which it could not have otherwise acquired. The statutory provisions of MOFA entitle the Petitioner to obtain conveyance of the land and building and conveyance of constructed structure is to the detriment of the Petitioner.

62) Thus, there cannot be any estoppel against the statute. Since MOFA creates a statutory right in favour of organization of flat purchasers to secure conveyance of promoter's right, title and interest, if it is found that by way of contract, lesser area of land or right lesser than the one lawfully due under Section 11 is conveyed, the act of such organisation in signing the deed of conveyance would not destroy the statutory right under Section 11, which can be enforced under Section 11(3) by filing application before the Competent Authority.

CONTENTION THAT 'FAILURE' WITHIN THE MEANING OF SECTION 11 OF MOFA HAS NOT OCCURRED FOR RESPONDENT NO. 1 TO APPLY FOR DEEMED CONVEYANCE OF ADDITIONAL AREA:

63) Mr. Khandeparkar has contended that 'failure' within the meaning of Section 11(3) of MOFA has not occurred in the present case

and that therefore the Competent Authority could not have granted liberty to Respondent No.1 to apply for conveyance of additional land admeasuring 1863.13 sq.m. Undoubtedly, occurrence of failure by the promoter to convey his right, title and interest in the land and building in favour of organization of flat purchasers becomes a jurisdictional fact for the Competent Authority to exercise jurisdiction to entertain deemed conveyance application and in absence of such failure, jurisdiction to decide application for deemed conveyance cannot be exercised. Mr. Khandeparkar has relied on judgment of this Court in ***Nahar Builders*** (supra), in which it is held in para-26 to 28 as under:

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.

64) Relying on the observations made by this Court in para-27 of the judgment, Mr. Khandeparkar has contended that since conveyance in terms of the decree is executed, 'failure' within the meaning of Section 11(3) of MOFA has not occurred and that therefore the Competent Authority does not have jurisdiction to entertain the application of Respondent No.1 for conveyance of additional area over and above what is conveyed through the Deed of Conveyance. Ordinarily, what Mr. Khandeparkar contends deserves acceptance. However, in the present case, Respondent No.1 has not invoked the jurisdiction of the Competent Authority under Section 11(3) of MOFA. It is while deciding Petitioner's application for deemed conveyance under Section 11(3) that the Competent Authority has arrived at a conclusion that Petitioner is entitled to conveyance of only proportionate land in the layout. After conveyance of proportionate land in favour of the Petitioner and after considering the area of 2040 sq.m. conveyed in favour of Respondent No.1, balance land would have still remained in the ownership of Kent. To avoid this incongruous situation where the developer Kent would derive undue benefit of ownership of balance land in the layout,

Competent Authority has granted liberty to Respondent No.1 to file application for deemed conveyance of the balance portion of land. Such arrangement made by the Competent Authority subserves the ends of justice and I find no reason to exercise extraordinary jurisdiction under Article 227 of the Constitution of India to disturb this arrangement by accepting technical submissions canvassed on behalf of the Petitioner.

OBLIGATION OF FLAT PURCHASERS OF KENT HEIGHTS BUILDING TO BECOME MEMBERS OF PETITIONER-SOCIETY

65) It is contended by Mr. Khandeparkar that under the Agreement dated 17 October 1995, [permission to construct building by utilizing TDR/ insensitive FSI was granted subject to the flat purchasers of that building becoming members of Petitioner-society. It is also contended that even in the Agreements for Sale executed by Kent with flat purchasers, a specific obligation was imposed for becoming members of Petitioners-society. However, flat purchasers of Kent Heights building did not apply for membership with Petitioner-society and instead opted for formation and registration of their own society. If Petitioner was aggrieved by formation and registration of new society, it ought to have opposed the same by filing appeal against Registration order. It however failed to do so. Having not questioned formation of Respondent No. 1-society, Petitioner cannot now contend that it cannot get conveyance of land due to it. Once a housing society is registered, conveyance of land and building becomes its lawful entitlement under MOFA. If Petitioner wanted the entire layout land conveyed to it, it ought to have prevented formation of another society in the layout. At this stage, Petitioner

cannot be permitted to raise the objection of flat purchasers of kent Heights Building forming a separate society.

66) Mr. Khandeparker's contention of Respondent No. 1-society selectively relying on Agreement dated 17 October 1995 does not appeal to this Court. Because the stipulation with promoter for membership with Petitioner-society is not adhered to, it does not relieve Petitioner of consequences of consent given by it. It may be that violation of stipulation in Agreement dated 17 October 1995 about compulsory membership with Petitioner-society gave rise to remedy to the Petitioner to challenge formation of Respondent No. 1-society. However, Petitioner failed to exercise that remedy. Violation of that contractual stipulation did not give a handle to the Petitioner to walk out of the consent given by it. In my view therefore, non adherence to contractual stipulation for compulsory membership of Petitioner-society is wholly irrelevant for deciding the issue at hand.

PROPORTIONATE LAND DIVISION

67) It is Petitioner's case that even if the principle of proportionate land division is to be applied in the facts and circumstances of the present case ignoring the absence of cause of action for Respondent No.1 in view of execution of registered Deed of Conveyance through execution of decree, Respondent No.1 is entitled to secure conveyance of land corresponding to only inherent BUA of 980.27 sq.m. This contention is premised on the fact that when the original plans were sanctioned and OC was issued in respect of Petitioner's

building, total BUA sanctioned was 7710.65 sq.m., out of which BUA admeasuring 6730.38 sq.m. was utilised in construction of Petitioner's building, leaving the balance BUA of only 980.27 sq.m. This position is buttressed by the OC plan issued in respect of the building of Respondent No.1-society on 23 October 2008 which again shows that the balance basic FSI in respect of the plot was only 980.27 sq.m.

68) However, in the present case, there appears to be consent by the Petitioner-society to the revised plan for putting up additional construction over and above BUA of 980.27 sq.m. by loading additional TDR and incentive FSI. As observed above, after Kent purchased the larger property with balance BUA of only 980.27 sq.m., it approached Petitioner-society with a proposal for loading of additional BUA in the proposed building through TDR and incentive FSI. Accordingly, agreement dated 17 October 1995 came to be executed between Petitioner and Kent under which Petitioner granted rights in favour of Kent to consume FSI/BUA in respect of larger property to the extent of 52000 sq.ft. equivalent to 4830 sq.m. It would be apt to refer to the relevant clauses of the Agreement dated 17 October 1995. Clauses-2, 3 and 7 of the Agreement read thus:

2. The construction for availing of the FSI shall be carried out by the party of the First Part on a portion of the plot of land, which portion is shown delineated by red colour boundary line on the plan hereto annexed, i.e. on the eastern side of the existing road on maximum upto 50% of the Existing Road, from gate to C Building.

I. Consideration of Rs.40,00,000/- (Rupees Forty Lacs Only) as consideration on execution of these presents for the rights to utilise the transferable development right upto 40% available under the D.C. rules of the total property area.

II. Rs.11,00,000/- (Rupees Eleven Lacs Only) for full and final settlement of accounts between the original owners and the society.

III. Rs.15,30,000/- (Rupees Fifteen Lacs Thirty Thousand Only) for rights to utilise 1700 Sq.ft. at the rate Rs.900 per Sq.ft. FSI of the staircase area of the building occupied and held by the party of the Second Part and if for any reason the said staircase FSI is not available, the party of the second part shall refund Rs.900/- per Sq.ft. to the party of First part and if more staircase FSI is availed or availed by to them, the party of first part will pay at the rate of Rs.900/- per additional Sq.ft. to the party of the second part on sanction of the IOD within 1 month transaction should be completed.

IV. Party of the first part is allowed to construct the building upto half portion of the present Internal Eastern Road from gate to "C" Bldg. road, Office of the society to the extend of 200 sq.ft. shall be constructed at Eastern side of the existing road subject to approval of BMC.

3. In the event there being further FSI available due to increase or enhancement of D.C. Rules and the party of the first part desiring to avail and consume additional FSI the same can be done only after getting consent of the party of the second part in writing.

7. It is agreed that all the flats and other premises acquired shall be enrolled as members of the party of the Second part on payment of share money, security deposit etc, by the said flat/shops acquirers to the party of the second part. The party of the First part hereby confirm that adequate provision shall be made in the Agreement that may be executed by them with the prospective flats/premises including with regard to the said members observing and following rules and regulations and bye-laws of the Society, PROVIDED HOWEVER for sake of convenience and clarity, the members who will be acquiring flats and other premises through the party of the First part shall be entitled to form its independent Ad-Hoc Committee to manage and look after the day to day affairs related to the building that will be constructed by the party of the First part in pursuance of these presents PROVIDED FURTHER that prior consent in that behalf shall be obtained from the party of the Second Part.

69) Thus, the Petitioner-society permitted Kent to utilise BUA in excess of 980.27 sq.m. and upto the extent of 4830 sq.m., which included loading of TDR upto the extent of 40% of total area of larger property and BUA/FSI in respect of staircase/lift upto 1700 sq.ft. Petitioner did not permit additional construction in the layout free of cost and accepted valuable consideration for permitting Kent to do so. It accepted an

amount of Rs.40 lakhs towards consideration for right to utilise 40% of the available TDR under the Regulations, Rs.11 lakhs towards settlement of accounts with original owners and Rs.15,30,000/- for utilising staircase/lift FSI in respect of Petitioner's own building at the rate of Rs.900 per sq.ft. It was agreed that if staircase/lift FSI out of Petitioner's building was not made available, Kent was to refund Rs.900 per sq.ft to Petitioner and if additional FSI became available out of staircase/lift, Kent was to pay additional amount of Rs.900 per sq.ft. to the Petitioner for such additional FSI/TDR. Petitioner also agreed for exact location at which the new building was to be constructed and agreed to construct office admeasuring 200 sq.ft. for the Petitioner-society. Under Clause 3 of the Agreement, it was agreed that in the event of any further FSI being made available due to change in the DC Regulations, Kent was to avail and consume the same only after getting fresh consent of Petitioner in writing.

70) Thus, the case involves express consent in writing by Petitioner for construction of building of Respondent No.1-society by consuming BUA upto 4830 sq.m. by loading TDR as well as staircase/incentive FSI. Petitioner accepted substantial consideration of Rs.40 lakhs, Rs.11 lakhs and Rs.15,30,000/- (total Rs.66.3 lakhs) in addition to getting office admeasuring 200 sq.m. constructed for itself. The case therefore would be squarely covered by exception recognised by this Court in paras-210 and 211 in judgment in ***Satellite Garden-I CHSL*** (supra). This Court has recognised departure from the principle of freezing/crystallisation of land area where an organisation of flat purchasers gives express consent in writing to revision of plan which

involves loading of TDR/incentive FSI. This Court has held in paras-210 and 211 as under;

210) It is not that in every case the plans are revised behind the back of already constructed buildings. There may be cases where the developer has secured written consent from the society of building already constructed as per originally sanctioned plan for effecting a revision therein for availing additional BUA. In some cases, the existing societies may have monetized their right of giving consent by securing consideration in the form of money or additional facilities and may have given consent for revision in the plan. In such cases, whether the concept of land freezing/crystallisation as on the date of formation of the first society can be applied? In my view, the answer is in the negative. Where there is express consent by the flat purchasers/societies of earlier buildings for revision of plans for construction of subsequent buildings, the freezing/crystallisation concept cannot apply. Where such express written consent is given, land division can be undertaken on the basis of subsequently revised plan, which has such consent. However, in every case where such express consent is not given, proportionate land division must necessarily be on the basis of the first sanctioned plan or at least the sanctioned plan which was in existence at the time of application of concept of freezing.

211) It is contended that Competent Authority being a tribunal of limited jurisdiction cannot go into the issue of existence of consent. There can be no dispute about this proposition and since existence or otherwise of the consent, being a matter of intrinsic evidentiary inquiry, the Competent Authority would not have jurisdiction to decide that issue. However, in its summary jurisdiction, if the developer or society of subsequent building produces a consent letter/affidavit, I do not see much difficulty in the Competent Authority in acting on the same and assuming that there exists a consent for undertaking the exercise of proportionate land division. If a competing society has any contrary claim, the same can always be taken for adjudication to the Civil Court as the order of deemed conveyance passed by the Competent Authority is not final determinative of rights and entitlement of parties qua the land conveyed. On the other hand, if no prima facie written evidence of consent is produced, the Competent Authority can proceed on the basis of absence of consent and apply the principle of freezing/crystallisation of land entitlement as per the plan in existence at the time of expiry of the prescribed period under Section 11 of MOFA and Rule 9 of MOF Rules for the first society. In such a case, the developer/society of latter building can approach the Civil Court to establish existence of consent. In my view therefore, though the Competent Authority may not be able to resolve the issue of existence or otherwise of consent but can make an adjudication on the basis of prima facie existence/absence of material to indicate consent. I am supported in my view by the judgment of this Court in Nook CHS Ltd. (supra).

71) While laying down the principles for conveyance of land in the layout development, this Court has held in para-223 of the judgment as under:

223) From the above discussion, following principles emerge:

(a) The right to secure conveyance of the land and the building inures in favour of the organisation of flat purchasers upon expiry of the period prescribed in Section 11 of the MOFA read with Rule 9 of MOF Rules.

(b) Consequently, in a layout development, the proportionate land which was meant to be conveyed in favour of an organisation of flat purchasers, as on the date of expiry of period of four months from its formation, stands crystallised and frozen and shall not get reduced merely on account of subsequent revision of the plans.

(c) The conveyance or deemed conveyance of land in a layout development by undertaking the exercise of land division proportionate to BUA used in construction of each building shall be on the basis of either the first sanctioned plan or the plan sanctioned as on the date when freezing/crystallisation occurs i.e. when the period specified under Rule 9 of the MOF Rules expires.

(d) The above principle shall however be subject to an exception where the flat purchasers of earlier buildings/their societies have given a written consent for modification/revision of the plan, in which case, the exercise of proportionate land division can be undertaken by taking into consideration the plan, which has such consent.

(e) The Competent Authority accordingly needs to convey the proportionate land to the societies in a layout by taking into consideration the sanctioned plan, which existed at the time when the time prescribed under Rule 9 of the MOF Rules had expired from the date of formation of organisation of flat purchasers or the plan which has the written consent as discussed above, whichever is later.

(f) If the developer or any other organisation of flat purchasers in the layout are aggrieved by land division as discussed above and are able to demonstrate land entitlement to the contrary, they need to file a suit questioning the land conveyed by the Competent Authority. A society seeking conveyance of land by application of principle of freezing/crystallisation need not be driven to Civil Court for seeking conveyance of the proportionate land.

(g) Developers and promoters shall give adequate notice to the flat purchasers about construction of the building by use of incentive FSI / TDR having and the potential risk of securing lesser land as compared to BUA used in construction of their building(s).

(emphasis added)

72) Thus, in a case where there is express consent in writing for modification/revision of the plan for putting up additional construction by utilisation of TDR/incentive FSI, the principle of freezing/crystallisation does not apply. It is held in ***Satellite Garden I CHSL*** that in cases involving written consent, Competent Authority needs to undertake the exercise of proportionate land division by taking into consideration the plan which is referred to in the written consent and not the originally sanctioned plan.

73) Applying the ratio enunciated by this Court in ***Satellite Garden I CHSL***, in my view proportionate land division needs to be undertaken in the context of the Agreement dated 17 October 1995, which contains express written consent by the Petitioner-society for additional construction upto BUA of 4830 sq.m.

74) Mr. Khandeparkar has relied on judgment of this Court in ***Radha Vishweshwar*** (supra) in support of his contention that when buildings are constructed by using different FSI norms, the principle of proportionate land division as per the GR dated 22 June 2018 cannot be made applicable. This Court held in paras-38 and 39 of the judgment in ***Radha Vishweshwar*** is as under:

38) In my view, there is fundamental flaw in the methodology adopted by Plaintiffs' Architect for dividing the land in the layout considering the peculiar facts and circumstances of the case. In ordinary circumstances, what has been done by the Architect could have been accepted. In fact, the GR dated 22 June 2018 contemplates division of land in a layout proportionate to the built-up area utilised for construction of building of each society. However, there is a reason why such a formula of division of land proportionate to built-up area cannot be adopted in the present case. This is because the buildings are

constructed by applying different FSI norms. As observed above, building of Defendant No.1 has been constructed by use of FSI 1.00 and this is how built-up area of 2276.00 sq.mtrs. has been sanctioned for construction of buildings of First Defendant-Society. If the same FSI norms of 1.00 was to be applied for construction of buildings of Plaintiff-Societies, the formula of subdivision of land corresponding to utilisation of FSI could have been applied. In that case, the built-up area that would have been sanctioned for construction of buildings of Plaintiff-Society could only be about 1282.65 sq. mts. However, by utilising FSI of 1.84 by loading external TDR of 3463.90 sq.mtrs, buildings of Plaintiff-Societies are constructed with massive built-up area of 4535.43 sq.mtrs. though the balance land available for construction was only about 1282.65 sq.mtrs. Therefore the simple methodology of subdivision of land corresponding to utilised built up area for each building cannot be applied in the present case. Doing so would result in Plaintiff-Societies walking away with larger share of land on account of higher built up area of 4535.43 sq mtrs. used in its buildings as compared to much smaller built up area of 2276.00 sq. Mtrs. used for construction of building of Defendant No.1-Society. The division of land, RG area and road setback FSI in proportion of 66.59 % for Plaintiff-Societies and 33.41% for Defendant No.1-Society cannot be accepted.

39) Thus, application of formula of subdivision of land corresponding to utilised built up area in the present case would amount to comparing an apple with an orange. Though the said formula has been recognised in various judgments of this Court, as well as in the G.R. dated 22 June 2018 and seeks to tackle tendency on behalf of the Developers in not conveying land for several years, grant of proportionate land area to Plaintiffs commensurate to the built up area utilised for their building would put Defendant No.1-Society to a disadvantageous position. Mere execution of the Agreement dated 29 October 2004 by the Defendant No.1-Society permitting the entire layout property as recipient plot for use of TDR does not mean that the Defendant No.1- Society has diluted its rights in respect of land at CTS No. 507/C and half of CTS No.507/B. As observed above, the said Agreement actually proceeds on admission of use and occupation of CTS No. 507/C and half of CTS No.507/B by Defendant No.1-Society. I am therefore prima-facie not inclined to accept the computations made by Plaintiff's Architect in Certificate at Exh.B to the Plaintiff. The issue of conveyance of land in a layout to different societies whose buildings are constructed by use of different FSI, as of now, appears to be not decided in any judgment. Therefore, an equitable argument needs to be done in the unique facts and circumstances of the case, which I propose to do in following paragraphs.

75) Relying on the above findings in *Radha Vishweshwar*, Mr. Khandeparkar submits that if Respondent No.1-society is granted conveyance proportionate to the BUA utilised in construction of its

building, it would walk away with larger share of land and that the same would confer undue benefit on Respondent No.1 because its building has TDR/incentive FSI as compared to Petitioner's building being constructed with base/inherent FSI. However, the case of **Radha Vishweshwar** did not involve grant of consent by a society to the modified/revised plan contemplating use of TDR/incentive FSI, which is the case here.

76) In my view, therefore, land entitlement of Respondent No.1-society cannot be restricted to the proportionate ratio of BUA of 980.27 sq.m. and the same is required to be determined by taking into consideration BUA of 4830 sq.m. to which Petitioner consented in writing. To this extent only, the Competent Authority has committed an error as it has taken into consideration the actual BUA utilised in construction of building of Respondent No.1 of 6899.37 sq.m. The total land entitlement of 4497.58 sq.m. determined by the Competent Authority is based on utilisation of BUA of 6730.38 sq.m. As observed above, Petitioner had consented for consumption/utilisation of BUA of only 4830 sq.m. As per Clause-3 of the Agreement dated 17 October 1995, if Kent desired to utilise any further permissible FSI, the same was to be done only after securing fresh consent of Petitioner in writing for construction of BUA in excess of 4830 sq.m. Kent did not secure consent of Petitioner-society. Therefore, for BUA of 2069.37 sq.m. (6899.37 sq.m. *actually utilized less 4830 sq.m. which Petitioner had consented to*), there is no consent by the Petitioner. Therefore, Respondent No.1 is not entitled to take into consideration BUA admeasuring 2069.37 sq.m. (for which there is no consent) for determining the proportionate land division.

77) As per the directions of this Court, Mr. Tamboly has placed on record the figures of proportionate land division calculated on the basis of BUA of Respondent No.1-society of 4830 sq.mts (52,000 sq.ft.) which is as under:

B. Calculation on basis of Kent's built-up area taken at 4,830 sq.m. (52,000 sq.ft.)

Built-up FSI	Sq.m.	Ratio
Vardhman Nagar CHS (Buildings 1 to 4)	6730.38	58.22%
Kent Heights CHS (Building No. 5)	4830.00	41.78%
Total	11560.38	100.00%

Applied to the plot:

Society	Net plot	RG area	Set-back	Total
Vardhman Nagar CHS	4489.09	792.19	21.40	5302.68
Kent Heights CHS	3221.56	568.51	15.35	3805.42
Total	7710.65	1360.70	36.75	9108.10

78) Therefore, the land entitlement of Respondent No.1-society would only be 3805.42 sq.m. and the balance land of 5302.68 sq.m. needs to be conveyed in favour of the Petitioner.

79) Mr. Khandeparkar has submitted that conveying land admeasuring 5302.68 sq.m. would seriously prejudice Petitioner's entitlement to reconstruct its building under Regulation 33(9) of DCPR, 2034. It appears that under Regulation 33(9), cluster redevelopment is permissible only if the total plot area is atleast 6,000 sq.m. in suburban area of Mumbai City. If cluster redevelopment is permissible for the Petitioner-society, the members would receive higher FSI upto 4.00 as

compared to maximum permissible FSI of 3.00 for non-cluster development. It is contended that the building of the Petitioner-society is over 42 years old and its members reside in 6 flats with a configuration of 300 sq.m. It is further contended that under the cluster redevelopment, members of the Petitioner-society would secure larger flats in the new building of decent size.

80) In my view however, permissibility for the Petitioner to undertake cluster redevelopment cannot be a factor relevant for deciding its land entitlement. One cannot apply a reverse formula of first determining the quantum of land parcel required for cluster development and then determine land entitlement of a society. The proper method is to first decide the land entitlement and right of the society to redevelop its building and then accordingly proceed depending on the applicable Development Control Regulations. In any case, this Court has already made several attempts to settle disputes between the parties and had urged both the societies to come together and go for joint cluster redevelopment. However, due to serious disputes about the land sharing, the settlement could not go through. Even after conveying land admeasuring 5302.68 sq.m. for Petitioner and 3805.42 sq.m. for Respondent No.1-society, they can still come together and apply for cluster redevelopment. Therefore, denial of opportunity to undertake cluster redevelopment for the Petitioner-society alone cannot be a ground for conveying to it the land, which it is not lawfully entitled to.

81) In my view therefore, the proceedings deserve to be remanded to the Competent Authority for issuance of a fresh certificate

of deemed conveyance in favour of the Petitioner-society in respect of total land admeasuring 5302.68 sq.m. with liberty to Respondent No.1-society to apply for conveyance of balance land admeasuring 1765.42 sq.m. (3805.42 sq.m. less 2040 sq.m.).

NON-INTERFERENCE BY THIS COURT IN EXERCISE OF EXTRAORDINARY JURISDICTION

82) In the present case, Petitioner-society is attempting to grab additional land than the one lawfully due to it. As observed above, the correct and lawful entitlement of the Petitioner-society in the layout is land admeasuring 5302.68 sq.m. However, it has filed the present Petition with a view to ensure that it secures conveyance of land admeasuring 7068.10 sq.m. (*total land of 9108.10 sq.m. less 2040 sq.m. conveyed to Respondent No.1 vide deed dated 31 December 2013*). To grab that additional portion of land, Petitioner-society has taken the shelter of legal principles such as res-judicata, estoppel, conveyance secured through execution of decree, etc. Thus, by presenting legal formulations, Petitioner is seeking to grab excess piece of land, which is lawfully due to Respondent No.1-society. The issue for consideration is whether this Court can exercise extraordinary jurisdiction under Article 227 of the Constitution of India to aid the Petitioner-society in doing so? In a given case, those legal formulations may be capable of being accepted by a Court of law. Once a decree of a Civil Court is secured and the same is sought to be executed, it is ordinarily not open for the plaintiff to file fresh proceedings on the same cause of action. However, if this legal principle is strictly applied to the facts and circumstances of the present

case, it would result in a situation where Respondent No.1 would be deprived of its lawful land entitlement and the same would permit Petitioner to grab extra portion of land. This Court would not permit its extraordinary jurisdiction under Article 227 to be invoked for achieving such an oblique motive. Once this Court is satisfied that the outcome of the proceedings is satisfactory, it would not exercise extraordinary jurisdiction under Article 227 of the Constitution of India to correct either an error of fact or even an error of law. Supervisory jurisdiction of this Court under Article 227 is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. Reliance by Mr. Tamboly on judgment of the Hon'ble Apex Court in ***Garment Craft*** (supra) in this regard is apposite, in which it is held in para 15 of the judgment 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 : (2010) 1 SCC (Civ) 69] 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.

(emphasis added)

83) More recently, in *M.S. Sanjay* (supra), the Apex Court has held that interference by a Writ Court for mere infraction of statutory provisions or norms cannot be a matter of course if such infraction has not resulted in injustice. The Apex Court has held that legal formulations cannot be enforced *de hors* from the realities of the facts and situation of a case. While administering law, it is to be tempered with equity and if the equitable situation demands that legal formulations need not be taken to their logical end, the High Court can mould the final order in exercise of its extraordinary jurisdiction. If the High Court finds that the order challenged in the petition is logically invalid, it can refuse to upset the same with a view to do substantial justice. The Apex Court has held in paras-9 and 10 of the judgment as under:

9. It is well settled that interference by the Writ Court for mere infraction of any statutory provision or norms, if such in-fraction has not resulted in injustice is not a matter of course. In the case of *Shiv Shanker Dal Mills v. State of Haryana*, (1980) 2 SCC 437, the dealers in that case had paid market fees at the increased rate of 3%, which was raised from the original 2 per cent under Haryana Act 22 of 1977. The excess of 1 per cent over the original rate was declared *ultra vires* by this Court in the case of *Kewal Krishna Puri v. State of Punjab*, (1980) 1 SCC 416. The excess of 1 per cent over the original rate having been declared *ultra vires*, became refundable to the respective dealers from whom they were recovered by the Market Committee concerned. The demand for refund of the excess amounts illegally recovered from them not having been complied with, the dealers filed Writ Petitions under Article 32 and Article 226 of the Constitution for a direction to that effect to the Market Committee concerned. The Market Committees contended that although the refund of the excess collections might be legally due to the dealers, many of them had in turn recovered this excess percentage from the next purchasers. While disposing of the petition and laying down guidelines, this Court held as under:

“Article 226 grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the court, exercising this flexible power, to pass such order as public interest dictates and equity projects. Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where

only private interests are involved. Accordingly, the granting or withholding of relief may properly be dependent upon considerations as of public interest.”

10. It has been rightly observed that legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal Court of Appeal, which it is not. It is a settled principle of law that the remedy under Article 226 of the Constitution of India is discretionary in nature and in a given case, **even if some action or order challenged in the petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties.**

(emphasis added)

84) In my view, this is a perfect case for invocation of principles expounded tioned by the Hon’ble Apex Court in judgments of ***Garment Craft*** and ***M.S. Sanjay***. If the legal formulations presented by Mr. Khandeparkar (*which may appear to be legally acceptable in facts of some other case*) are strictly applied in the present case, the same would result in gross injustice where Respondent No.1-society would be deprived of its lawful entitlement thereby conferring undue benefit on the Petitioner-society. By strictly applying the principle of proportionate land division, Petitioner-society would be entitled to land admeasuring only 5302.68 sq.m. since it consented for construction of building of Respondent No.1-society by utilising BUA of 4830 sq.m. If the legal objections presented by Mr. Khandeparkar about impermissibility for Respondent No.1 to file application before the Competent Authority to secure conveyance of balance land is accepted, the balance land

admeasuring 1765.42 sq.m. would continue to be owned by the developer-Kent. That land would neither be owned by the Petitioner-society nor by the Respondent No.1-society. To cure this position, this Court needs to uphold the order of the Competent Authority granting liberty to Respondent No.1-society to apply for deemed conveyance of balance portion of land by clarifying the exact area of the balance portion which I have already done. I am therefore not inclined to accept the legal objections presented by Mr. Khandeparkar which would result in conveyance of entire balance portion of land (after deducting 2040 sq.m.) to the Petitioner-society, which is not lawfully due to it.

CONCLUSIONS

85) The conspectus of the above discussion is that the principle of proportionate land division needs to be applied in the present case. Accordingly, Petitioner and Respondent No.1-society are entitled to conveyance of land proportionate to BUA area utilised in construction of their buildings, subject to the caveat that the BUA of Respondent No. 1's building will have to be capped at the consent area. Since BUA admeasuring 6730.38 sq.m. is utilised in construction of buildings of Petitioner-society, it is entitled to own 58.22% land in the layout which works out to 5302.68 sq.m. This area of 5302.68 sq.m. would comprise of net plot area of 4489.09 sq.m., RG share of 792.19 sq.m. and setback area of 21.40 sq.m. Though BUA utilised in construction of buildings of Respondent No.1-society is 6899.37 sq.m., it is not entitled to receive land in proportion to the actual BUA utilised in construction of its building. This is on account of the fact that Petitioner No.1-society had

given consent for utilisation of BUA of only 4830 sq.m. Accordingly, by considering BUA of 4830 sq.m., Respondent No.1 is entitled to own 41.78% land in the layout. Accordingly, the proportionate share of Respondent No.1 in the layout shall be 3805.42 sq.m. comprising of net plot of 3221.56 sq.m., RG share of 568.51 sq.m. and setback advantage of 15.35 sq.m. Since land admeasuring 2040 sq.m. is already conveyed to Respondent No.1-society, it shall be at liberty to apply for conveyance of balance portion of land which shall be additional net plot area of 1181.56 sq.m. in addition to RG share of 568.51 sq.m. and setback advantage of 15.35 sq.m.

ORDER

86) The Petition accordingly succeeds in part, and I proceed to pass the following order:

- i. Order dated 9 June 2025 passed by the Competent Authority in Application No. 94 of 2020 is set aside.
- ii. Application No. 94 of 2020 is remanded to the Competent Authority for fresh adjudication.
- iii. Respondent No.1 shall file an application for deemed conveyance before the Competent Authority within a period of 4 weeks.

- iv. The Competent Authority shall decide Petitioner's Application No. 94 of 2020 together with the Application to be filed by Respondent No. 1 and shall issue Certificates of deemed conveyance in favour of the Petitioner and Respondent No.1-society by conveying lands in the layout in their favour in the following manner:

Society	Net plot (sq.m.)	RG area (sq.m.)	Set-back (sq.m.)	Total (sq.m.)
Vardhman Nagar CHS	4489.09	792.19	21.40	5302.68
Kent Heights CHS	3221.56	568.51	15.35	3805.42
Total	7710.65	1360.70	36.75	9108.10

82. With the above directions, the Petition is partly allowed and disposed of. There shall be no order as to costs.

NEETA
SHAILESH
SAWANT

Digitally signed by
NEETA SHAILESH
SAWANT
Date: 2026.10.22
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[SANDEEP V. MARNE , J.]