



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO. 5692 OF 2008**

Dattatray Laxman Desai,  
 Adult, Occupation : Business, residing at  
 Kolhapur, through his Constituted  
 Attorney Raju Mohan Majnalkar, adult,  
 Occupation : Business, residing at 2068  
 'A' Ward, Dhotri Galli, Rankalves,  
 Kolhapur 416 002. ...Petitioner

***Versus***

1. Deputy Collector And Competent  
 Authority, Kolhapur Urban Agglomeration,  
 Kolhapur.
2. The State of Maharashtra  
 Through the Secretary, Urban  
 Development Department,  
 Mantralaya, Mumbai 400 032. ...Respondents

Mr. Rajesh S. Datar, Advocate for the Petitioner.

Dr. Birendra Saraf, Advocate General a/w Ms. Neha Bhide, G.P.,  
 Ms. N.M. Mehra, AGP, Mr. Jay Shanklecha, 'B' Panel Counsel for  
 the Respondent/State.

**CORAM** **: RAVINDRA V. GHUGE,**  
**SANDEEP V. MARNE &**  
**M.M. SATHAYE, JJ.**

**RESERVED ON** **: 30<sup>th</sup> JUNE, 2025**

**PRONOUNCED ON** **: 08<sup>th</sup> JULY, 2025**

**JUDGMENT (PER : RAVINDRA V. GHUGE, J.)**

1. By an order dated 11<sup>th</sup> June, 2009 (herein after referred to as the Reference Order), the Division Bench of this Court issued Rule in this Writ Petition and, by the said speaking order, recorded that it was unable to agree with the view taken by a Co-ordinate Division Bench of this Court, in the order dated 27<sup>th</sup> January, 2009 passed in *Mandke Construction Company & Ors. V/s. The State of Maharashtra & Ors., (Civil Writ Petition No.5052 of 2008)*.

2. Having disagreed with the view taken by the Court in *Mandke Construction Company (Supra)*, the Division Bench of this Court formulated the following questions with a request to the Hon'ble the Chief Justice to refer the following 3 questions to the Full Bench :-

*“[i] Whether it will be discriminatory and arbitrary to exercise the powers on the part of the State Government in placing reliance on the government resolution dated 15/10/1997 denying the petitioner the benefit of the decision in Shantistar Builders case wherein the facts of the said case as well as the case of the petitioner relating to the guidelines while sanctioning the scheme under section 20 and 21 of the U.L.(C. & R.)Act, 1976 is are identical as it violates the fundamental rights of the petitioner under Articles 14 and 300 A of the Constitution of India.*

*[ii] Whether the judgment of the Honourable Supreme Court in the given facts and circumstances will govern the case of the petitioners particularly when the petitioners' scheme was sanctioned on 19/5/1989 and the tenements are yet to be surrendered to the government in accordance with the scheme.*

*[iii] Whether the guidelines modified by the Supreme Court in Shantistar Builders case is binding on all pending proceedings”*

3. As we proceed to deal with the submissions of the learned Advocates, we deem it appropriate to refer to the main prayer made by the Petitioner in this Writ Petition, which is as under :-

*“12(a) that this Hon’ble Court be pleased to issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, Order or Direction thereby quashing and setting aside the Orders dated 8<sup>th</sup> January 2007 and 16<sup>th</sup> June 2007 issued by Respondent No.2 and Respondent No.1 respectively and this Hon’ble Court be further pleased to direct Respondents No. 1 and 2 herein to grant benefit of the Government Resolution dated 15<sup>th</sup> October 1997 to the Petitioner thereby restricting the number of tenements to be allotted to Government nominated allottees to 5% instead of 30% as directed by the Scheme dated 19<sup>th</sup> May 1989 sanctioned by Respondent No.1;”*

4. We have heard the learned Advocate General, Dr. Saraf along with the Government Pleader, Ms. Bhide, on behalf of the

State of Maharashtra, and the learned Advocate, Mr. Datar, on behalf of the Petitioner.

5. When the Division Bench passed the Reference order dated 11<sup>th</sup> June, 2009, it noted the prayer of the Petitioner that the State be directed to restrict the allotment of tenements to the extent of 5%, which was based on the decision rendered by the Hon'ble Supreme Court in the case of *M/s. Shantistar Builders V/s. Narayan Khimalal Totame And Others, (1990) 1 SCC 520*. It also noted the prayer for exempting him from penalty for his failure to implement the scheme within the stipulated period.

6. The Petitioner was the owner of the land bearing City Survey No. 775 at Kasba, Karveer, District Kolhapur. The said land was subjected to an inquiry under Section 8 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred as ULCR Act, 1976). By an order dated 19<sup>th</sup> May, 1989, an area admeasuring 4796 sq. mtrs. out of the total land, was declared as surplus. The Petitioner sought exemption under Section 20 of the ULCR Act, 1976, and submitted a scheme which was Scheme No.146. As per the conditions imposed on the scheme, the Petitioner was supposed

to construct 81 tenements on the surplus land and commence and complete the construction work as per the schedule set out in that scheme. What is relevant to our Full Bench is, that the Petitioner was directed to handover 30% of the total constructed area of the said tenements to the Government for housing the nominees of the Government, belonging to the weaker sections.

7. The Petitioner applied for permission for developing the said land to the Kolhapur Municipal Corporation (K.M.C.). The K.M.C. granted sanction to the lay out. By an order dated 27<sup>th</sup> August, 1990 it also granted Commencement Certificate/Building Permission. On 13<sup>th</sup> November, 1990, the Petitioner applied for permission for non-agricultural use of the said land, which was granted by the Collector, Kolhapur. Subsequently, the Petitioner developed the land and was issued with an Occupation Certificate in respect of the structures constructed on the said plot.

8. In view of the Government Resolution dated 15<sup>th</sup> October, 1997 (G.R.) and the fact that the Petitioner was granted sanction by the K.M.C. for construction of the tenements, the Petitioner applied for extension of time as the scheme could not be

completed within the time line. The Petitioner also made a representation dated 11<sup>th</sup> July, 2001 to the State of Maharashtra seeking permission to restrict the number of tenements to be handed over to the Government, to 5% instead of 30%. One more representation was made on 10<sup>th</sup> April, 2002. Another representation was made renewing the same request, on 10<sup>th</sup> May, 2005. The Petitioner sought parity in view of the Government decision dated 7<sup>th</sup> January, 2002, vide which, a similar request was granted in favour of Shri. Pravinsingh Jaisingh rao Ghatge, in view of the G.R. dated 15<sup>th</sup> October, 1997, which granted such benefit as the scheme was sanctioned prior to 30<sup>th</sup> January, 1990. Respondent No.1, Deputy Collector and Competent Authority, Kolhapur Urban Agglomeration, Kolhapur, recommended the case of the Petitioner for grant of such parity.

9. On 8<sup>th</sup> January, 2007, Respondent No.2 passed an order levying a fine at the rate of Rs.5% per sq. foot per year, upon the Petitioner for the delay caused in implementing the scheme and based on the condition of payment of such a fine, extension of time was proposed to be granted. However, the Petitioner's request for restricting the tenements to be allotted to the Government allottees

up to 5%, was rejected.

10. On 16<sup>th</sup> June, 2007, the Petitioner received an extension of one year with a direction to pay a sum of Rs.20,65,000/- towards fine, for not completing the said scheme in time, failing which, the scheme was to be cancelled. Respondent No.1 also registered an offence against the Petitioner under Sections 38(4) and 39 of the ULCR Act, 1976 r/w Sections 406, 418 and 420 of the Indian Penal Code, for not making 30% tenements available to the Government and for disposing of the said tenements in the open market. Hence, the Petitioner approached this Court with the request to restrict the number of tenements to be allotted to the Government nominees @ 5%, in view of the G.R. dated 15<sup>th</sup> October, 1997.

11. When this matter was heard by the Division Bench on 11<sup>th</sup> June, 2009, *M/s. Shantistar Builders (Supra)*, was cited by the Petitioner. It was argued by the Respondents that the G.R. dated 15<sup>th</sup> October, 1997 purports to follow the law laid down in *M/s. Shantistar Builders (Supra)*, albeit prospectively, to those schemes sanctioned on or after 31<sup>st</sup> January, 1990, which is the date on which the said Judgment was delivered by the Hon'ble Supreme Court. It

was also canvassed that in *Mandke Construction Company (Supra)*, this Court has taken a view that the Judgment in *M/s. Shantistar Builders (Supra)*, would be applicable prospectively and the G.R. dated 15<sup>th</sup> October, 1997 would not apply to the case of the Petitioner.

12. The Division Bench referred to the order of rejection of the Petition in the case of *Mandke Construction Company (Supra)* and concluded in Paragraph No.7 of the Reference order dated 11<sup>th</sup> June, 2009, as under :-

*“7] We are unable to agree with the view taken by the Division Bench of this Court in Mandke Construction Company's case on the ground that in so far as the facts of the case of the petitioner being identical with the facts of the case of Shantistar Builders (cited supra) there is no reason why the petitioner should not get the benefit of the directions given by the Supreme Court in paragraph 18 of the reported judgment of Shantistar builders because otherwise it will not only be unjust and unfair but also discriminatory in nature and is directly in conflict with the principle enshrined in Article 14 of the Constitution of India and, therefore, government resolution dated 15/10/1997 placing reliance in Mandke Construction Company's case that it will apply prospectively cannot be upheld as valid for the reasons firstly its reasoning will be applicable in another case based on the Doctrine of parity of reasoning and secondly there is nothing like any prospective operation alone of the law laid down by the Supreme Court; but such law applies to all*



*pending proceedings as well.”*

It is in the above circumstances that the Division Bench formulated the three issues reproduced in Paragraph No.2, herein above.

13. The learned Advocate General, Dr. Saraf, has placed reliance upon an order passed on 3<sup>rd</sup> December, 1992 by the Division Bench of this Court in Writ Petition No.2629 of 1992 (*Karmarahi Kanji Chandan V/s. State Of Maharashtra*), wherein this Court noted the submissions of the Petitioner and concluded in Paragraph No.1, as under :-

*“The scheme of the Petitioner has been sanctioned as far back as 1985. The Learned Advocate for the Petitioner have drawn out attention to the Judgment of the Supreme Court in the case of M/s. Shantistar Builders V/s. Narayan Khimlal Gotama and others, reported in (1990) in Supreme Court Cases 520. In paragraph 15 onwards of this judgment, the Supreme Court has laid down certain guidelines adding to and/ or amending the guidelines laid down by the Government of Maharashtra. These guidelines provide inter alia for builders maintaining a register of applicants chronologically submitting a copy of the application with its number simultaneously by the builder to the Committee and so on. One of the observations of the Supreme Court is to be effect that the number of the Government Nominee belonging to weaker sections should not*

*exceed to 5% of the total accommodation available in any scheme. It is submitted by the Respondents that this sentence in the judgment must be given retrospective operation and hence in respect of all schemes which have been sanctioned and implemented prior to the judgment. The reservation for weaker sections should be reduced from 10% to 5%. This submission cannot be accepted. The further guidelines which are laid down by the Supreme Court to the judgment have to be read as a whole. These require various acts to be performed the Builder from the time to received applications looking to the nature of the directions given by the Supreme Court in our view, they can only be prospective, we have been informed by Mr. Saraf, the learned Asst. Government Pleader, that the Supreme Court itself has orally clarified that the Judgment in question would be prospective that the Supreme Court itself has orally clarified that the Judgment in question would be prospective.”*

He submits that this order was not cited before the Division Bench when the Reference order was passed.

14. The learned Advocate General, then adverts to an order passed by the Division Bench of this Court on 11<sup>th</sup> February, 1998 in Writ Petition No.1174 of 1997 (*Sardar Dalip Singh & Others V/s. The State of Maharashtra & Others*), wherein the observations in *Karmarahi Kanji Chandan (Supra)*, were noted and it was concluded that the issue as regards the applicability of the law laid

down in *M/s. Shantistar Builders (Supra)*, is settled and the Judgment would operate prospectively.

Dr. Saraf, points out that even this order was not cited before the Division Bench when the Reference order dated 11<sup>th</sup> June, 2009, was passed.

15. Dr. Saraf, then referred to an order dated 6<sup>th</sup> November, 2001, passed by the Division Bench of this Court in *Review Petition No.26 of 1999 (State of Maharashtra & Anr. V/s. Shantiniketan (AIR India) Co-op. Housing Society Ltd. And Ors.)* in *Writ Petition No.2165 of 1998 (State of Maharashtra & Anr. V/s. Shantiniketan (AIR India) Co-o. Housing Society Ltd. And Ors.)*. The Division Bench referred to *M/s. Shantistar Builders (Supra)* and considering the facts of the case, reviewed its order dated 9<sup>th</sup> November, 1998, concluding that the law laid down in *M/s. Shantistar Builders (Supra)*, would apply prospectively and recalled its earlier order by allowing the Review Petition. The Writ Petition was, therefore, dismissed.

Dr. Saraf, points out that even this order was not brought to the notice of the Division Bench, which passed the Reference order dated 11<sup>th</sup> June, 2009.

16. He, then, refers to *Bansal Promoters & Builders V/s. State of Maharashtra & Others, (2004) 4 Bom CR 242*. The Division Bench of this Court relied on *M/s. Shantistar Builders (Supra)* and concluded that the allotments earlier made by the Respondents to a District Judge and then to a sitting M.L.A., were nothing but a mockery of the Rule of allotment of 5% of the tenements to the Government allottees. Such allottees should belong to the weaker section of the society as is understood under Article 46 of the Constitution and Section 21 of the ULCR Act, 1976.

17. Dr. Saraf, then cited the Judgment of the Hon'ble Supreme Court in *Shridhar C. Shetty (Deceased) Through Legal Representatives V/s. Additional Collector and Competent Authority and Others, (2020) 9 SCC 537*. It was specifically recorded in Paragraph No.20 that *M/s. Shantistar Builders (Supra)*, has been interpreted to be prospective in nature. A bare perusal of Paragraph Nos.21 and 22 of *M/s. Shantistar Builders (Supra)*, leaves no doubt that it was intended to operate prospectively. For brevity, we are reproducing Paragraph Nos. 21 and 22 of the *M/s. Shantistar*

*Builders (Supra), hereinunder :-*

*“21. ‘Competent authority’ has been defined in Section 2(d) of the Act. From the Code it appears that he is an officer subordinate to the Collector of the District so far as the State of Maharashtra is concerned as an appeal is contemplated from his orders to the Collector. The duties and responsibilities and powers vested in the competent authority under the Code are wide and considerable. We are of the opinion (without in any way casting any aspersion) that it would be difficult for the competent authority to exercise efficiently and to the satisfaction of everyone the duties cast upon him under the Code. In the matter of implementation of the scheme and with a view to providing satisfactory execution thereof and fulfilling the laudable purpose stipulated under the Act and undertaken by the scheme, it is necessary that there should be a committee in respect of the schemes in every urban agglomeration for weaker sections sanctioned under Sections 20 and 21 of the Act for over-seeing the implementation of every scheme, particularly in the matter of due compliance of the conditions under which exemption is granted, timely construction of the flats, appropriate advertisement as contemplated, registration of the applications in response to advertisements in a systematic manner, appropriate allotment of flats including priorities on the basis of registration, ensuring legitimate charges only being demanded and monitoring strict compliance to avoid underhand dealing or any unjust treatment. It should be handled by the competent authority in a committee consisting of himself, a judicial officer not below the rank of an Additional District Judge and a government engineer not below the rank of Superintending Engineer. In the committee, the judicial officer shall function as the Chairman.*

*22. This Committee shall have powers to*

*scrutinise all relevant documents and give appropriate directions to the builders and applicants keeping the requirements of the schemes and the Code in view. To the extent we have indicated the powers conferred on the competent authority in terms of the State Code shall stand vested in the committee. The Bombay High Court shall take steps to ensure that in respect of schemes in every agglomeration undertaken and which the State Government may in future undertake, the services of an efficient judicial officer not below the rank of an Additional District Judge on such terms as the State Government and the High Court consider appropriate shall be made available for discharging the duties indicated and/or as may be provided. We would like to impress upon every Committee that fulfilment of the laudable purpose of providing a home to the poor homeless depends upon its commitment to the goal and every effort should be made by it to ensure that the builder does not succeed in frustrating the purpose. The State Government shall suitably modify its Code in the light of this judgment and recirculate the same to all concerned within four weeks from today.”*

18. Since the law laid down in *M/s. Shantistar Builders (Supra)*, is discussed in *Shridhar C. Shetty (Supra)* and the directions in *M/s. Shantistar Builders (Supra)*, are held to be applicable prospectively, Issue Nos. [i] and [ii] stand answered in the negative.

19. Issue No.[iii] is, as to “*Whether the guidelines modified by the Supreme Court in Shantistar Builders case is binding on all*

*pending proceedings”.*

20. The answer to Issue No.[iii] lies in Paragraph Nos.21 and 22 of *M/s. Shantistar Builders (Supra)*, which have been reproduced herein above, below Paragraph No.17 of this order. Certain directions have been issued in the said two Paragraphs. Guidelines were also set out for considering as to which allottee would fall in the weaker section of the society and the test for identifying such section was also set out in Paragraph No.20. Constitution of a Committee and its powers to scrutinies the relevant documents and give appropriate directions to the builders and the Applicants, keeping the requirements of the scheme and the Code in view, were also set out. The Bombay High Court was directed to take steps to ensure that in respect of the schemes undertaken in every agglomeration and which the State Government may in future undertake, the service of an efficient Judicial Officer not below the rank of an Additional District Judge, was to be made available for discharging the duties of the Committee. The State Government was also directed to suitably modify its Code in the light of this Judgment and recirculate the same to all concerned.

21. It is in view of the directions and guidelines *M/s. Shantistar Builders (Supra)*, that this Court held in *Karmarahi Kanji Chandan (Supra)*, that *M/s. Shantistar Builders (Supra)*, would be applicable prospectively. In *Sardar Dalip Singh & Others (Supra)*, relying upon *Karmarahi Kanji Chandan (Supra)*, the Division Bench held that the modified guidelines in *M/s. Shantistar Builders (Supra)*, would be applicable prospectively. Same is the view of the Division Bench in *Shantiniketan (AIR India) Co-op. Housing Society Ltd. And Ors. (Review Petition No.26 of 1999, decided on 6<sup>th</sup> November, 2001) (Supra)*. Though these observations in the cited cases, were not brought to the notice of the Division Bench, which delivered the order dated 27<sup>th</sup> January, 2009 in *Mandke Construction Company & Ors. (Supra)*, the Division Bench recorded in Paragraph No.4, considering that the Government has issued a resolution on 15<sup>th</sup> October, 1997, that the case of the Petitioners (*Mandke Constructions*) is not covered by the said G.R. or the reported Judgment. Apparently, these observations are in view of the fact that the scheme was sanctioned in October-1987 prior to the Judgment of the Hon'ble Supreme Court in *M/s. Shantistar Builders (Supra)*, dated 31<sup>st</sup> January, 1990.



22. In *Nargis Jal Haradhavala V/s. State of Maharashtra & Ors.*, (2015) 4 SCC 259, the Hon'ble Supreme Court noted that the scheme was sanctioned prior to the pronouncement in *M/s. Shantistar Builders (Supra)*. A corrigendum was issued by the Government dated 23<sup>rd</sup> November, 1990, amending the area to be surrendered to the Government nominees and finally prescribed 20% of the floor space of the first 2000 sq. mtrs of the net permissible FSI of the land exempted. A further circular was issued on 22<sup>nd</sup> October, 1992 and the quota for the Government nominees was reduced from 20% to 10%. It was, therefore, argued that on the basis of the corrigendum and the subsequent circular, the Appellant was not liable to surrender more than 10% of the quota as fixed in the circular. Per-contra the State contended that the Appellant had executed an indemnity bond on 12<sup>th</sup> October, 1998 and had agreed to give 30% of the permissible floor space.

The Hon'ble Supreme Court recorded that the exemption under Section 20 of the ULCR Act, 1976, was granted on 17<sup>th</sup> October, 1987, with a condition to surrender 30% of the permissible floor space. The corrigendum was also considered, which reduced the floor space from 30% to 20% of the first 2000 sq. mtrs. and 10% from the balance permissible area. The authenticity

of the circular dated 22<sup>nd</sup> October, 1992, was doubted. The reduction from 20% to 10% was also considered and the indemnity bond executed by the Appellant on 12<sup>th</sup> October, 1998, agreeing to surrender 20%, was also taken into account. It was, therefore, concluded that the Appellant was bound to surrender a total of 20% of the permissible floor space to the Government, in the light of the corrigendum dated 23<sup>rd</sup> November, 1990.

23. In *Shridhar C. Shetty (Supra)*, the exemption order was passed under Section 20 of the ULCR Act, 1976, on 2<sup>nd</sup> March, 1988. The Appellant was required to surrender 20% of the constructed area to the Government nominees. Referring to the submission on the cap of 5% on the tenements to be handed over on the basis of *M/s. Shantistar Builders (Supra)*, the Hon'ble Supreme Court rejected the contention of the Appellant, concluding that *M/s. Shantistar Builders (Supra)*, is interpreted to be prospective in nature.

24. Therefore, the answer to issue no. [iii], lies in the view taken in *Shridhar C. Shetty (Supra)*.

25. In view of the above, we direct the Registry of this Court to place this Writ Petition before the Division Bench, for it's adjudication.

**(RAVINDRA V. GHUGE, J.)**

**(SANDEEP V. MARNE, J.)**

**(M.M. SATHAYE, J.)**