

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

WRIT PETITION NO. 1435 OF 2017

Girnar (Santacruz) Co-operative	}	
Housing Society Limited	}	
having its address at Plot Nos. 61B, 61C and 63A,	}	
Chappell Lane, Santacruz (West), Mumbai – 400 054.	}	... Petitioner

V/s.

- | | | |
|--|---|------------------------|
| 1. District Deputy Registrar, | } | |
| Co-operative Societies Mumbai City (3), | } | |
| Office of the Competent Authority, | } | |
| having his address at Room No. 69-A, | } | |
| Ground Floor, MHADA Building, | } | |
| Bandra (East), Mumbai – 400 051. | } | |
| | | |
| 2. Radheshyam Constructions, | } | |
| a partnership firm, | } | |
| having its address at 19/21, Hamam Street, | } | |
| Fort, Mumbai – 400 001 and also at 556, Brindavan, | } | |
| 16 th Road, Khar (West), Mumbai – 400 052. | } | |
| | | |
| 3. Hanifa Turab Aarsiwala | } | |
| having her address at 79, Raudat Tahera Street, | } | |
| 5 th Floor, Bhendi Bazar, Mumbai – 400 003. | } | |
| | | |
| 4. Ruksana Yusuf Harianawala, | } | |
| having her address at 79, Raudat Tahera Street, | } | |
| 5 th Floor, Bhendi Bazar, Mumbai – 400 003 | } | ... Respondents |

Dr. Sanjay Jain a/w Mr. Nishant Sasidharan, Mr. Kalpesh Mehta, Ms. Sandhya Jain and Mr. Vasim Shaikh i/b M/s. Pravin Mehta & Mithi & Company for Petitioner.
Mr. S. B. Gore, AGP for Respondent no. 1 – State

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Judgment dated 30th July 2026

Mr. Vivek Kantawala a/w Mr. Vivek M. Sharma i/b M/s. Vivek Kantawala & Company
for Respondent nos. 3 and 4.

CORAM : FARHAN P. DUBASH, J.

RESERVED ON : 30th APRIL 2026
PRONOUNCED ON : 30th JULY 2026

JUDGMENT:

1. By the present Writ Petition under Article 226 of the Constitution of India, the Petitioner, a co-operative housing society, challenges the order dated 31st January 2017 (**“the impugned order”**) passed by the Competent Authority / District Deputy Registrar, Co-operative Societies, Mumbai City, under Section 11 of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**“MOFA”**), whereby the Petitioner’s application for unilateral deemed conveyance came to be partly allowed and a certificate of partial unilateral deemed conveyance was granted.

RELEVANT FACTS

2. The facts, to the extent relevant for deciding the present Petition, are briefly set out below:
 - a. One Mohsinbhai Hasanali (**“the deceased”**) was the owner of lands bearing Survey No. 61B corresponding to CTS No. H-394, Survey No. 61C corresponding to CTS No. H-386, Survey No. 63A, Hissa No. 1 corresponding to CTS Nos. H-393, H-404 and H-405, and Survey No. 63A, Hissa No. 2 corresponding to CTS No. H-403, admeasuring in the

aggregate approximately 2,409.8 square metres (**“the said Land”**).

- b. By an Agreement dated 16th September 1970 (**“the Agreement”**), the deceased agreed to sell and transfer the said Land together with the structures standing thereon in favour of M/s. Radheshyam Constructions / Respondent No. 2 (**“the Developer”**). At the material time, the property comprised, inter alia, a chawl occupied by monthly tenants and an incomplete structure.
- c. On the same day, the deceased and the Developer executed a Supplementary Agreement (**“the Supplementary Agreement”**) recording the consideration payable in respect of the incomplete structure, the parties noting that the same had inadvertently not been incorporated in the Agreement.
- d. Thereafter, on 5th December 1970, the Developer entered into Articles of Agreement for Sale (**“the AFS”**) with the Chief Promoter of the proposed Petitioner Society, whereby the Developer agreed to construct a building on the said Land and subsequently convey the land together with the building in favour of the proposed society.
- e. In or about the year 1971, the Developer constructed a building consisting of a ground floor and five upper floors comprising 37 flats and two garages. The said Land together with the residential building and the existing chawl are hereinafter collectively referred to as **“the said Property”**. It is the Petitioner’s case that its members have been in occupation of the building since its construction.
- f. The Petitioner Society came to be registered on 2nd January 1971 under the provisions of the Maharashtra Co-operative Societies Act, 1960.

Admittedly, no conveyance of the said Property was thereafter executed in favour of the Petitioner.

- g. Consequently, the Petitioner instituted Application No.75 of 2016 under Section 11(3) of MOFA before the Competent Authority appointed under Section 5A of MOFA, seeking a certificate of unilateral deemed conveyance in respect of the said Property.
- h. By the impugned order dated 31st January 2017, the Competent Authority partly allowed the application and granted a certificate of unilateral deemed conveyance in respect of lands bearing CTS Nos. H-394, H-403 and H-404, admeasuring approximately 1,383.8 square metres. The Competent Authority, however, declined to grant deemed conveyance in respect of the remaining portion of the property, including the chawl known as “Jalal House” standing on CTS No. H-405 admeasuring approximately 388 square metres (**“the Balance Portion”**). Insofar as CTS Nos. H-393 and H-386, admeasuring approximately 352 square metres and 286 square metres respectively, are concerned, the Competent Authority granted only a joint right of way in favour of the Petitioner instead of directing conveyance thereof (**“the Access Portion”**).
- i. Aggrieved by the exclusion of the Balance Portion and the Access Portion from the certificate of deemed conveyance, the Petitioner has preferred the present Writ Petition.
- j. During the pendency of the present Writ Petition, and pursuant to the certificate issued under the impugned order, a Deed of Unilateral (Deemed) Conveyance dated 6th February 2025 came to be executed and registered in favour of the Petitioner in respect of the portion

covered by the certificate.

SUBMISSIONS OF THE PETITIONER

3. Dr. Sanjay Jain, learned Counsel appearing on behalf of the Petitioner, submits that the project in question is governed by the provisions of MOFA. According to him, Respondent No. 2 / Developer derived rights in the entire property, comprising the land together with the structures standing thereon, including the chawl, under the Agreement dated 16th September 1970 read with the Supplementary Agreement executed on the same day. Thereafter, by the AFS dated 5th December 1970 executed with the Chief Promoter of the proposed Petitioner Society, Respondent No. 2 expressly agreed to construct the building and convey the entire property in favour of the Society.
4. Inviting attention to the Agreement and the Supplementary Agreement, Dr. Jain submits that the deceased owner agreed to transfer the entire property to Respondent No. 2 or its nominee. According to him, the Supplementary Agreement merely supplemented the principal Agreement by incorporating the consideration payable in respect of the incomplete structure, which had inadvertently not been included therein, and did not in any manner curtail or modify the subject matter of the original transaction. He submits that, when read together, the two agreements unequivocally demonstrate that the parties intended to transfer the entire property, including the chawl.
5. Dr. Jain thereafter relies upon the provisions of the AFS to submit that Respondent No. 2 agreed to construct a residential building together with garages on the said land in accordance with the sanctioned plans and to sell the flats together with the land to the members of the proposed Society as part of a

composite transaction. According to him, the AFS clearly envisages execution of a conveyance in favour of the Society in respect of the entire property and not merely the portion occupied by the newly constructed building.

6. It is further submitted that the Agreement, the Supplementary Agreement and the AFS constitute a continuous chain of transactions, all of which deal with the same property. Dr. Jain contends that none of these documents reserve or exclude either the existing chawl standing on CTS No. H-405, the land beneath it, or the portions bearing CTS Nos. H-393 and H-386. On the contrary, the recitals and operative provisions of the AFS expressly recognise the existence of the chawl and its tenants, contemplate attornment of such tenants in favour of the Society upon completion of the transaction, and provide that the Society would thereafter become entitled to receive the rents payable by them. According to him, had it been intended to exclude the chawl or any part of the land from the proposed conveyance, the AFS would not have incorporated such provisions.
7. Placing reliance upon Section 11 of MOFA and the decisions rendered thereunder, Dr. Jain submits that the promoter is under a statutory obligation to convey its right, title and interest in the land and building to the co-operative society of flat purchasers. Where the promoter fails to discharge such obligation, the Competent Authority is empowered to issue a certificate of unilateral deemed conveyance. He submits that the extent of the deemed conveyance must ordinarily correspond to the property agreed to be conveyed under the agreement contemplated by Section 4 of MOFA. In the present case, according to him, the AFS constitutes the agreement referable to Section 4 and, therefore, the Competent Authority was bound to give effect to the contractual obligation undertaken therein.

8. Proceeding on this basis, Dr. Jain submits that the Petitioner was entitled to a certificate of unilateral deemed conveyance in respect of the entire property admeasuring approximately 2,409.8 square metres, including the chawl standing on CTS No. H-405 as well as the lands bearing CTS Nos. H-393 and H-386. He therefore contends that the Competent Authority committed a manifest error in restricting the deemed conveyance to only a part of the property and in confining the Petitioner's rights over CTS Nos. H-393 and H-386 to a mere joint right of way.
9. Dr. Jain submits that the Competent Authority committed a manifest error in excluding the Balance Portion, comprising the land bearing CTS No. H-405 together with the chawl standing thereon, from the certificate of unilateral deemed conveyance. According to him, the reasons assigned in the impugned order, namely, that Respondent Nos. 3 and 4 continued to collect rent from the chawl tenants, instituted tenancy proceedings and exercised rights of management over the chawl, do not constitute legally sustainable grounds for refusing conveyance. He submits that once the governing agreements contemplated transfer of the entire property, such subsequent acts could not dilute the contractual or statutory obligations arising under MOFA. It is further submitted that the sanctioned plans and other development documents also demonstrate that the development was conceived with reference to the entire property and that the Agreement as well as the AFS expressly contemplated attornment of the chawl tenants upon completion of the transaction.
10. Insofar as the Access Portion is concerned, Dr. Jain submits that the Competent Authority erred in restricting the Petitioner's rights to a mere joint right of way over CTS Nos. H-393 and H-386. According to him, neither the Agreement nor

the AFS contemplates reservation of ownership in respect of those lands. On the contrary, the contractual arrangement envisaged conveyance of the land itself. He submits that where the agreement executed under Section 4 of MOFA includes roads, passages or access areas within the property agreed to be conveyed, the promoter cannot retain ownership thereof while conferring only easementary rights upon the Society.

11. Dr. Jain further submits that although proceedings under Section 11 of MOFA do not finally adjudicate questions of title and do not preclude the parties from establishing their respective rights before a competent Civil Court, that principle cannot justify refusal to give effect to the contractual obligations undertaken by the promoter. According to him, the Competent Authority has failed to correctly identify the property agreed to be conveyed under the Agreement and the AFS and has consequently declined relief in respect of portions which form part of the very subject matter of those documents. He therefore submits that the present Petition is maintainable in exercise of this Court's supervisory jurisdiction under Articles 226 of the Constitution of India.
12. In support of these submissions, Dr. Jain places reliance upon the decision of the Supreme Court in *Arunkumar H. Shah HUF v. Avon Arcade Premises Co-operative Society Ltd.*¹ and the decision of this Court in *Haresh Vijay Singh Bhatia & Ors. v. District Deputy Registrar & Ors.*². He submits that these decisions recognise the supervisory jurisdiction of this Court to interfere where the Competent Authority, while exercising powers under Section 11 of MOFA, has failed to give effect to the promoter's statutory obligation to convey the property agreed to be transferred. According to him, the impugned order, in

¹ (2025) 7 SCC 249

² 2025 SCC OnLine Bom 1981

refusing deemed conveyance in respect of the Balance Portion and in limiting the Petitioner's rights over the Access Portion to a joint right of way, frustrates the beneficial object underlying MOFA.

13. Dr. Jain also submits that the residential building was completed in or about the year 1971 and that the Petitioner Society came to be registered on 2nd January 1971. Despite the lapse of more than five decades, no complete conveyance has been executed in favour of the Society. According to him, the absence of such conveyance has seriously prejudiced the members of the Society, particularly in undertaking redevelopment of the property, the existing building having substantially deteriorated with the passage of time.
14. Summing up his submissions, Dr. Jain contends that the continued collection of rent from the chawl tenants or the management of tenancy proceedings by Respondent Nos. 3 and 4 cannot override either the contractual stipulations contained in the governing Agreements or the statutory obligation cast upon the promoter under MOFA. He accordingly submits that the impugned order deserves to be modified by directing issuance of a certificate of unilateral deemed conveyance in respect of the Balance Portion and the Access Portion also, together with all consequential directions necessary for execution and registration of the conveyance.
15. Dr. Jain next submits that the jurisdiction of the Competent Authority under Section 11 of MOFA is confined to enforcing the promoter's statutory obligation to convey its right, title and interest in the property in accordance with the agreement executed under Section 4 of MOFA. While exercising such jurisdiction, the Competent Authority is required to ascertain the property agreed to be conveyed and give effect to the contractual obligations undertaken

by the promoter. It cannot, however, adjudicate disputed questions relating to title, ownership or the validity of the underlying documents, which are required to be decided by a competent Civil Court. In support of this proposition, reliance is placed upon the decisions of this Court in *Dhuri Co-operative Housing Society Ltd. v. State of Maharashtra & Ors.*³, *New Sonal Industries Premises Limited v. District Deputy Registrar (2) Co-operative Societies & Ors.*⁴, *Blue Heaven CHSL v. Punit Construction Co. Pvt. Ltd.*⁵ and *M/s. K.G. Associates & Anr. v. District Deputy Registrar, Co-operative Societies, Pune City*⁶.

16. Dr. Jain further submits that while considering an application under Section 11(3) of MOFA, the Competent Authority is not confined to the agreement executed with the flat purchasers alone but is also required to consider other contemporaneous documents governing the transaction. In this regard, reliance is placed upon the decisions of this Court in *Mazda Construction Company & Ors. v. Sultanabad Darshan CHS Ltd. & Ors.*⁷ and *Shree Siddharth Construction Builders & Developers Mumbai v Shree Saraswati Apartment Co-operative Housing Society Ltd. & Ors.*⁸ to contend that the Agreement, the Supplementary Agreement and the AFS were all relevant documents which ought to have been read together while determining the extent of the property liable to be conveyed.
17. It is further submitted that the continued occupation of the chawl by tenants could not, by itself, furnish a valid ground for excluding the chawl from the

³ 2025 SCC OnLine Bom 1877

⁴ 2025 SCC OnLine Bom 391

⁵ 2024 SCC OnLine Bom 3618

⁶ 2023 SCC OnLine Bom 2132

⁷ 2012 SCC OnLine Bom 1266

⁸ 2014 (1) Mh.L.J 784

deemed conveyance. Placing reliance upon the decisions in *Gani Mia & Ors. v. Wajid Ali*⁹, *Md. Mehmood & Ors. v. Nargis Begum & Ors.*¹⁰, *Ratanlal Ghalabhai (Org. Plaintiff) v. Amarsing Rupsang & Anr.*¹¹ and *Sadashiv Shyama Sawant (Dead) Through LRS. & Ors v. Anita Anant Sawant*¹², Dr. Jain submits that where premises are in the occupation of tenants, delivery of possession may be constructive and need not necessarily be by actual physical delivery. According to him, upon attornment, the landlord's interest and juridical possession stand transferred notwithstanding the continued occupation of the tenants. He therefore submits that the existence of the chawl tenancy could not have constituted a legitimate basis for excluding the Balance Portion from the certificate of unilateral deemed conveyance.

18. Dr. Jain accordingly submits that the impugned order proceeds on an erroneous understanding of the scope of Section 11 of MOFA and the contractual documents governing the transaction. According to him, once the Agreement, the Supplementary Agreement and the AFS are read together, the only conclusion possible is that the promoter had undertaken to convey the entire property in favour of the Petitioner Society. The Competent Authority, therefore, ought to have directed issuance of a certificate of unilateral deemed conveyance in respect of the entire property, including the Balance Portion and the Access Portion.
19. Dr. Jain finally submits that since proceedings under Section 11 of MOFA do not result in a final adjudication of title, no prejudice would be caused to Respondent Nos. 3 and 4 if the certificate of deemed conveyance is granted in

⁹ 1935 SCC OnLine Cal 14

¹⁰ 2015 SCC OnLine Cal 2096

¹¹ ILR 1929 (53) Bombay 773

¹² (2010) 3 SCC 385

favour of the Petitioner. According to him, all rival claims relating to ownership, title or other proprietary rights would remain open to be agitated before the competent civil forum.

20. On these submissions, Dr. Jain prays that the impugned order be modified by directing Respondent No.1 to issue a certificate of unilateral deemed conveyance in favour of the Petitioner in respect of the Balance Portion as well as the Access Portion, together with such consequential directions as may be necessary for execution and registration of the conveyance.

SUBMISSIONS OF RESPONDENT NOS. 3 & 4

21. Mr. Vivek Kantawala, learned Counsel appearing on behalf of Respondent Nos. 3 and 4, the heirs and legal representatives of the deceased owner, supports the impugned order and submits that it warrants no interference in exercise of the writ jurisdiction of this Court. According to him, the controversy in the present Petition is confined to the Petitioner's claim for unilateral deemed conveyance in respect of CTS Nos. H-405, H-393 and H-386, the conveyance in respect of the remaining portion of the property having already been executed and registered pursuant to the impugned order.
22. Mr. Kantawala submits, at the outset, that Respondent Nos. 3 and 4 cannot be regarded as "promoters" within the meaning of Section 2(c) of MOFA. He submits that they neither constructed nor caused the Petitioner's building to be constructed, entered into any agreement with the flat purchasers under Section 4 of MOFA, nor received any consideration from the members of the Petitioner Society. Consequently, according to him, no statutory obligation under Section 11 of MOFA can be enforced against them.

23. Referring to the Agreement dated 16th September 1970, Mr. Kantawala submits that the document merely contemplated a proposed sale in favour of Respondent No. 2, subject to fulfilment of several conditions precedent, including payment of the balance consideration together with interest, ascertainment of the final area and completion of the transaction. According to him, those conditions were never fulfilled and the contemplated sale was never completed. He submits that the Agreement also contemplated attornment of the chawl tenants only upon completion of the sale and did not, by itself, effect any transfer of the landlord's interest in the chawl.
24. Developing this submission further, Mr. Kantawala contends that Respondent No. 2 neither acquired possession of the chawl nor succeeded to the rights of the landlord. According to him, no attornment ever took place and Respondent Nos. 3 and 4 have throughout continued to collect rent from the chawl tenants, pay municipal and other outgoings, and prosecute tenancy proceedings in respect of the chawl. The Petitioner or Respondent No. 2, on the other hand, never exercised any incident of ownership or *landlordship* in relation thereto. In these circumstances, he submits that Respondent No. 2 could not have conveyed to the Petitioner any right in the chawl or the land appurtenant thereto.
25. Mr. Kantawala further submits that the Petitioner's application under Section 11(3) of MOFA was itself deficient inasmuch as, it was not accompanied by several documents ordinarily required for consideration of such an application, including the agreements executed with the individual flat purchasers, the occupancy certificate, the architect's certificate, approved plans and documents evidencing possession. He also submits that neither the Agreement, the

Supplementary Agreement nor the AFS expressly states that it constitutes an agreement under Section 4 of MOFA.

26. It is submitted that while exercising jurisdiction under Section 11 of MOFA, the Competent Authority is required to examine the material produced by the applicant and determine whether the applicant has established its entitlement to the property sought to be conveyed. According to Mr. Kantawala, where the documents do not establish such entitlement, the Competent Authority cannot be compelled to grant unilateral deemed conveyance merely because the disputed land originally formed part of a larger parcel. He therefore submits that the Competent Authority rightly confined the deemed conveyance to those portions in respect of which the Petitioner's entitlement stood established.
27. Insofar as CTS Nos. H-393 and H-386 are concerned, Mr. Kantawala submits that those lands constitute a common access serving both the Petitioner's building and the existing chawl. He therefore contends that the Competent Authority rightly granted only a joint right of way instead of directing conveyance of the said lands exclusively in favour of the Petitioner.
28. Mr. Kantawala further submits that the Petitioner's claim to ownership of the chawl necessarily involves adjudication of disputed questions relating to title. According to him, the Petitioner's case proceeds on the assumption that the sale contemplated under the Agreement stood completed and that the landlord's interest in the chawl stood transferred notwithstanding the admitted absence of attornment and continued exercise of ownership rights by Respondent Nos. 3 and 4. These, according to him, are matters requiring adjudication in properly constituted civil proceedings and fall outside the limited jurisdiction of the Competent Authority under Section 11 of MOFA.

29. It is therefore submitted that the Competent Authority correctly distinguished between the land upon which the Petitioner's building stands and the portion occupied by the existing chawl and, having regard to the material placed before it, rightly declined to grant unilateral deemed conveyance in respect of the latter while confining the Petitioner's rights over the Access Portion to a joint right of way.
30. On these submissions, Mr. Kantawala submits that the impugned order discloses no jurisdictional error or perversity warranting interference and that the present Writ Petition is liable to be dismissed.

ANALYSIS, REASONS & FINDINGS

31. I have heard Dr. Sanjay Jain, learned Counsel appearing on behalf of the Petitioner, and Mr. Vivek Kantawala, learned Counsel appearing on behalf of Respondent Nos. 3 and 4. I have also perused the pleadings, the documents forming part of the record and the impugned order.
32. The principal issue which arises for consideration is whether the Competent Authority, while exercising jurisdiction under Section 11 of MOFA was justified in excluding from the certificate of unilateral deemed conveyance; the Balance Portion being land bearing CTS No. H-405 together with the chawl standing thereon and the Access Portion being lands bearing CTS Nos. H-393 and H-386, in respect of which only a joint right of way has been granted. The determination of this issue necessarily turns upon the true construction of the Agreement, the Supplementary Agreement and the AFS; and the scope and ambit of the enquiry contemplated by Section 11 of MOFA while considering

an application for unilateral deemed conveyance.

33. A perusal of the impugned order indicates that the Competent Authority granted unilateral deemed conveyance in respect of only a part of the property described in the Petitioner's application. Insofar as the Balance Portion, comprising the land bearing CTS No. H-405 together with the chawl standing thereon, is concerned, the Competent Authority declined to grant deemed conveyance principally on the ground that the contemplated sale in favour of Respondent No. 2 had not been completed. The Competent Authority observed that the balance consideration under the Agreement remained unpaid, the chawl tenants were never attorned in favour of Respondent No. 2 and, consequently, Respondent Nos. 3 and 4 continued to exercise the rights of landlords in respect of the chawl. Insofar as the lands bearing CTS Nos. H-393 and H-386 are concerned, the Competent Authority took the view that those lands constituted a common access to both the Petitioner's building and the existing chawl. Proceeding on that basis, it granted the Petitioner only a joint right of way over the said lands instead of directing conveyance thereof.
34. The correctness of the aforesaid conclusions falls for consideration in the present Writ Petition. The controversy, therefore, is not whether the Petitioner is entitled to a certificate of unilateral deemed conveyance, that entitlement having already been recognised by the Competent Authority. The controversy is confined to the extent of the property in respect of which such certificate ought to have been issued. More particularly, the question is whether the Competent Authority, while exercising powers under Section 11 of MOFA, was justified in excluding the Balance Portion from the deemed conveyance and in restricting the Petitioner's rights over the Access Portion to a mere right of way.

35. The rival submissions principally turn upon the true construction of the Agreement, the Supplementary Agreement and the AFS. It is, therefore, necessary to examine these documents to ascertain the extent of the property which the parties intended to be conveyed. Only those clauses which bear upon the present controversy require consideration and are reproduced hereunder:

The Agreement

"1. The Vendor shall sell and the Purchaser shall purchase free from all encumbrances all those pieces or parcels of land, or ground, messuages, tenements and dwelling houses standing thereon situate lying and being at Santa Cruz, Greater Bombay and more particularly described in the Schedule hereunder written at the price and on the terms and conditions herein contained."

*"... ..
"12. On payment of the balance of the purchase price the Vendor and all other necessary parties shall execute the Conveyance in favor of the Purchaser or any person or persons as the Purchaser may nominate or such person or persons as the Purchaser may direct"*

*"... ..
"14. On completion of the sale, the Vendor will give to the Purchasers vacant possession of the entire property together with the incomplete structure thereon mentioned above save except the ground floor chawl which is standing on the said property and which is occupied by the tenants of the Vendor. As regards the said ground floor chawl, possession thereof will be given to the Purchaser by attorning the tenants of the said chawl in favour of the Purchaser. The Purchaser will be at liberty after completion of the sale of the property to deal with the tenants and occupants of the said chawl in such manner as they may deem fit. The Vendor declares that all the tenants of the chawl are monthly tenants and that there is no rent forming contract in respect thereof."*

The AFS

1. The Vendors have agreed to sell and the Purchaser has agreed to purchase the said land with the dwelling houses situate at Santa Cruz, Danda, Bombay Suburban District and in the Registration Sub-District of Bandra and more particularly described in the First Schedule hereunder written together with the building, garages duly constructed thereon as hereinafter provided free from all incumbrances. However, the Vendors and the Purchaser hereby mutually agree that they the Vendors and the Purchaser will submit to the Bombay Municipal Corporation amended plan/s in respect of the ground floor of the

building to be constructed by the Vendors; and accordingly the total number of flats in the building may increase, if such plan/s is/are approved by the Bombay Municipal Corporation."

... ..

"5. At the time of the execution of the Conveyance in favour of the Purchaser and/or the said proposed Society from the original Vendor, the Purchaser and/or the proposed Society shall pay to the original Vendor the sum of Rs. 4,40,000/- as per the said Agreement dated 16th September, 1970. That if the Purchaser needs any amount as loan for completion of the sale of the said land in favour of the purchaser and/or the proposed Society from the original vendor the Vendors shall lend and advance a loan or loans upto the maximum amount of Rs. 2 lacs with interest and the Purchaser and/or the proposed Society shall repay to the Vendors such loan or loans as soon as the members of the proposed Society make contributions and/or as soon as the funds are available with the Purchaser and/or the said proposed Society."

... ..

"11. Upon payment by the Purchaser and/or the proposed Society to the Vendors of the entire consideration as provided in Cl.2 above the Vendors shall put the Purchaser and/or the proposed Society in possession of the said building duly completed thereon as aforesaid as provided in Cl.1 hereinabove. Provided However, that after execution of the Conveyance in favour of the Purchaser and/or the said proposed Society the Vendors shall be entitled to enter upon the said land for the purpose of construction of the said building as herein provided.

12. The Vendors have already informed to the Purchaser which the Purchaser hereby acknowledges that there is a ground floor chawl which is standing on the said land and occupied by the tenants of the original Vendors. The Vendors have informed the Purchaser and the purchaser hereby acknowledges that the possession of the said ground floor chawl shall be given to the Purchaser by attorning the tenants of the said ground floor chawl in favour of the Purchaser and the Purchaser shall be entitled to receive the rent from the said tenants of the said ground floor chawl."

... ..

"THE FIRST SCHEDULE HEREINABOVE REFERRED TO :

All those pieces or parcels of land or ground with the messuages tenements or dwelling houses standing thereon situate lying and being at Santa Cruz, Danda, Bombay, Suburban District and in the registration Sub-district of Bandra and registered in the Books of the Collector of Land Revenue Bombay Suburban under Survey number etc. as follows:-

Rev. No.	S. No.	Hissa No.	CTS No.	Old S. No.	Plot No.	Area in Gun. As per record	Actual area in sq. yds. As per the District Survey & Land Records Office, Bombay	Assessment
61B	-	H-394	61	5 Pt.	3 Gun. (363 sq. yds.)	475-0	0-12-9	
61C	-	H-386	61	3 Pt.	1 ¼ Gun. (212 sq. yds.)	360-5 ½	91-12-np	
63A	1	H-393 H-405 H-404	63 63 63	13 14 15	11 ⅔ Gun. (1422 sq. yds.)	1479-8 ½	-	
63A	2	H-403	63	16 Pt.	4 ½ Gun. (514 sq. yds.)	652-4	1-4-0	

and bearing Municipal H. Ward No. 3896(2) and Street No.1A Gaspe Road and bounded as follows: that is to say on or towards the East partly by N.A.No.335,290 belonging to Bombay Catholic Housing Co-operative Society on or towards the West partly by plot No.82 of T.P.S. IV partly plot No.83 of T.P.S. IV and partly plot No.84 and a passage on or towards the North by Chapel Road and N.A. No.322 and on or towards the South by partly plot No.85 of T.P.S. IV and N.A. No.337."

36. The Agreement leaves little room for doubt that the subject matter of the transaction comprised the entirety of the immovable property described in the Schedule appended thereto. Clause 1 records the deceased owner's agreement to sell the lands together with the structures standing thereon, while Clause 12 contemplates execution of a conveyance in favour of Respondent No. 2 or its nominee upon fulfilment of the contractual obligations. Significantly, Clause 14 provides that, upon completion of the sale, vacant possession of the property

would be delivered to Respondent No. 2, save and except the existing chawl, possession whereof was to be transferred by attornment of the tenants in favour of Respondent No. 2. The clause further authorizes Respondent No. 2, upon such attornment, to deal with the tenants in such manner as it deemed fit.

37. The Supplementary Agreement does not alter the subject matter of the transaction. It merely records the additional consideration payable in respect of the incomplete structure, which had inadvertently remained to be incorporated in the principal Agreement. The Supplementary Agreement thus supplements the financial terms of the transaction but does not evince any intention to exclude the chawl or any portion of the land from the proposed conveyance.
38. The AFS, executed shortly thereafter between Respondent No. 2 and the Chief Promoter of the proposed Petitioner Society, proceeds on the same footing. It describes the very same property as the subject matter of the proposed development and contemplates construction of the residential building thereon followed by conveyance of the land together with the completed building in favour of the proposed Society. Clause 12 of the AFS again specifically recognises the existence of the chawl and provides that possession thereof would be delivered by attornment of the tenants, whereupon the Society would become entitled to receive rent from such tenants. The Schedule appended to the AFS is identical to that contained in the Agreement.
39. A conjoint reading of these documents discloses a consistent contractual arrangement. The property agreed to be conveyed remained the same throughout. Neither the Agreement, the Supplementary Agreement nor the AFS contains any reservation whereby the deceased owner retained ownership of the chawl, the land bearing CTS No. H-405 or the lands bearing CTS Nos. H-393

and H-386. Equally, none of these documents contemplates that, in the event of any alleged breach or non-performance, those portions would stand automatically excluded from the conveyance proposed to be executed in favour of Respondent No. 2 or its nominee.

40. At the same time, it is equally evident that the contractual documents contemplated certain reciprocal obligations between the parties, including payment of the agreed consideration, execution of the conveyance and attornment of the chawl tenants. Whether those obligations were duly performed and what legal consequences ensued from any alleged non-performance are matters distinct from the construction of the contractual documents themselves. Those issues fall to be considered independently while examining the scope of the enquiry contemplated under Section 11 of MOFA.
41. Respondent Nos. 3 and 4, however, contend that the contemplated sale in favour of Respondent No. 2 never culminated in a completed conveyance since the balance consideration under the Agreement remained unpaid and, consequently, the tenants occupying the chawl were never attorned in favour of Respondent No. 2. It is further submitted that Respondent Nos. 3 and 4 have, throughout, continued to exercise the rights of landlords by collecting rent from the chawl tenants, paying municipal outgoings and prosecuting tenancy proceedings in respect thereof. These assertions are disputed by the Petitioner.
42. In my view, it is neither necessary nor permissible, in proceedings under Section 11 of MOFA, to conclusively adjudicate upon these disputed questions. Whether the balance consideration stood duly paid, whether the sale contemplated under the Agreement stood fully performed, whether attornment of the chawl tenants ever took place, and what legal consequences flow

therefrom are matters bearing upon the inter se proprietary rights of the parties. Such issues fall within the province of the competent Civil Court and cannot be finally determined by the Competent Authority while exercising powers under Section 11 of MOFA.

43. What is material for the purposes of the present proceedings is that neither the Agreement nor the Supplementary Agreement contains any provision reserving the chawl or the Balance Portion from the subject matter of the proposed conveyance. On the contrary, both documents proceed on the footing that the property agreed to be conveyed comprised the entirety of the land described in the Schedule together with the structures standing thereon, including the existing chawl. The mode by which possession of the chawl was to be delivered, namely, by attornment of the tenants - does not detract from the fact that the chawl itself formed part of the property agreed to be conveyed.
44. Consequently, the disputed questions regarding payment of consideration, attornment of tenants and the continued exercise of *landlordship* by Respondent Nos. 3 and 4 could not, by themselves, furnish a valid basis for restricting the extent of the unilateral deemed conveyance. Those disputes may well survive for adjudication before the competent Civil Court. However, they could not have been conclusively assumed against the Petitioner so as to exclude the Balance Portion from the certificate issued under Section 11 of MOFA.
45. The conclusions emerging from the Agreement are reinforced by the AFS executed between Respondent No. 2 and the Chief Promoter of the proposed Petitioner Society. The AFS is of particular significance since it embodies the contractual arrangement pursuant to which the flats came to be purchased by the members of the Petitioner Society and the promoter undertook to convey the

property in favour of the Society.

46. Clause 1 of the AFS records the promoter's agreement to sell the land described in the First Schedule together with the building and garages to be constructed thereon. The First Schedule reproduces the very same property as is described in the Agreement. There is no exclusion or reservation in respect of the chawl standing on CTS No. H-405 or the lands bearing CTS Nos. H-393 and H-386.
47. Equally significant are Clauses 11 and 12 of the AFS. Clause 11 contemplates delivery of possession of the completed building to the Purchaser and / or the proposed Society upon payment of the agreed consideration. Clause 12 specifically recognises the existence of the ground floor chawl occupied by the tenants of the original owner and provides that possession thereof would be delivered by attornment of the tenants in favour of the Purchaser. The clause further stipulates that, upon such attornment, the Purchaser would become entitled to receive rent from the tenants of the chawl.
48. These provisions unmistakably demonstrate that the parties treated the chawl as forming part of the very property which was proposed to be conveyed in favour of the Society. Had it been intended that the chawl or the land beneath it would continue to remain outside the scope of the proposed conveyance, there would have been no occasion to incorporate provisions dealing with the manner in which possession of the chawl was to be delivered or the entitlement of the Society to receive rent from its tenants. The contractual scheme, read as a whole, therefore proceeds on the footing that the chawl was to accompany the conveyance and not remain with the original owner.
49. Likewise, the AFS also does not distinguish between the portions of land upon

which the newly constructed building was to stand and the remaining lands forming part of the scheduled property. The promoter agreed to convey the property described in the First Schedule as one composite unit. The contractual documents do not support a bifurcation of the scheduled property into one portion liable to be conveyed and another liable to be retained by the original owner. The distinction introduced by the Competent Authority is, therefore, not borne out by the contractual documents themselves. The AFS consistently proceeds on the basis that the property agreed to be conveyed comprised the entire property described in the First Schedule and not merely the portion occupied by the Petitioner's building.

50. Having examined the contractual documents, it is now necessary to consider the scope of the enquiry contemplated under Section 11 of MOFA. The said provision obliges the promoter to complete his title and convey to the co-operative society of flat purchasers his right, title and interest in the land and building in accordance with the agreement executed under Section 4 of MOFA. Where the promoter fails to discharge that statutory obligation within the prescribed period, the Competent Authority is empowered to issue a certificate enabling execution and registration of a unilateral deemed conveyance. Section 11 is reproduced hereunder:

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

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

property which may be in his possession or power. Page No. 40 of 79 Thursday, 08 May 2025 Neeta Sawant WP-18739-2024 with WP-4649-2025-FC

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

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

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

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

51. A plain reading of Section 11 indicates that the enquiry before the Competent Authority is directed towards identifying the promoter's obligation under the agreement executed with the flat purchasers and enforcing that obligation where the promoter has failed to perform it. The exercise is, therefore, one of statutory enforcement and not of adjudication of proprietary rights. The Competent Authority is required to ascertain the extent of the promoter's right, title and interest agreed to be conveyed and to issue an appropriate certificate in respect thereof.
52. Equally, the jurisdiction conferred by Section 11 is circumscribed. The Competent Authority is not constituted as a forum for finally determining disputed questions of title, ownership or the validity of competing claims to the property. Those questions remain within the exclusive province of the competent Civil Court. The certificate of unilateral deemed conveyance merely facilitates conveyance of the promoter's right, title and interest and does not operate as a conclusive adjudication of inter-sé proprietary rights between rival claimants.
53. The ambit of the Competent Authority's jurisdiction has been succinctly explained by this Court in *Mazda Construction Company* (supra) wherein it has been held that the Competent Authority merely steps in to perform the statutory obligation which the promoter has failed to perform. The enquiry is, therefore, guided by the agreement executed under Section 4 of MOFA and other contemporaneous documents governing the transaction. At the same time, a unilateral deemed conveyance cannot operate beyond the promoter's own right, title and interest, nor can the Competent Authority conclusively determine disputes relating to ownership or title.

54. The same principles emerge from the decisions of this Court in *Dhuri Co-operative Housing Society* (supra), *New Sonal Industries Premises* (supra), *Blue Heaven CHSL* (supra) and *Shree Siddharth Construction Builders & Developers* (supra), as also from the decision of the Supreme Court in *Arunkumar H. Shah HUF* (supra). These authorities consistently recognise that while the Competent Authority must give effect to the contractual obligations undertaken by the promoter, proceedings under Section 11 do not result in a final adjudication of disputed questions of title, all of which remain open to be determined in appropriate civil proceedings.
55. The aforesaid principles furnish the framework within which the legality of the impugned order is required to be examined. The question, therefore, is not whether Respondent Nos. 3 and 4 have ultimately established or disproved their proprietary rights in respect of the Balance Portion or the Access Portion. The question is whether the Competent Authority was justified, while exercising the limited jurisdiction conferred by Section 11 of MOFA, in excluding those portions from the certificate of unilateral deemed conveyance on the basis of disputed questions relating to performance of the Agreement and the parties' competing claims to title.
56. Tested on the aforesaid principles, the reasoning adopted by the Competent Authority cannot be sustained. As noticed earlier, both the Agreement and the AFS consistently describe the entire scheduled property as the subject matter of the proposed conveyance. Neither document carves out the chawl standing on CTS No. H-405 nor the lands bearing CTS Nos. H-393 and H-386 from the property agreed to be conveyed. On the contrary, both documents specifically contemplate that the chawl would form part of the transaction, possession

thereof being deliverable by attornment of the tenants.

57. The principal reasons assigned by the Competent Authority for excluding the Balance Portion are that the balance consideration under the Agreement was allegedly not paid, the contemplated attornment of the chawl tenants did not take place and Respondent Nos. 3 and 4 continued to receive rent from the tenants and exercise the rights of landlords. Whether those assertions are factually correct, and if so, what legal consequences follow therefrom, are matters upon which the parties are seriously at variance. Those disputed questions could not, however, furnish the basis for restricting the extent of the deemed conveyance in proceedings under Section 11 of MOFA. The Competent Authority was required to examine the promoter's contractual obligation to convey the property agreed under the Section 4 agreement. It was not exercising the jurisdiction of a Civil Court to adjudicate whether the Agreement stood fully performed, whether the consideration was duly paid, whether the sale stood completed in law, whether the contemplated attornment occurred or whether Respondent Nos. 3 and 4 consequently retained any independent proprietary rights in the Balance Portion. Each of those questions lies beyond the scope of the summary enquiry contemplated under Section 11.
58. Indeed, acceptance of the reasoning adopted in the impugned order would necessarily require the Competent Authority to pronounce upon the legal effect of the alleged non-payment of consideration, the consequences of non-attornment of tenants and the competing claims of ownership asserted by the parties. Such an exercise would travel beyond the limited jurisdiction conferred under Section 11 and encroach upon matters reserved for adjudication by the competent Civil Court.

59. The continued collection of rent by Respondent Nos. 3 and 4, the institution of tenancy proceedings by them or their assertion of ownership over the chawl may constitute circumstances capable of supporting their rival claim to title. Equally, the Petitioner disputes those consequences by relying upon the contractual stipulations relating to attornment and constructive delivery of possession. These are rival proprietary claims which remain open to be agitated before the competent Civil Court. They could not have been conclusively accepted by the Competent Authority while determining the extent of the property liable to be covered by the deemed conveyance.
60. The same reasoning applies to the Access Portion comprising CTS Nos. H-393 and H-386. The contractual documents do not indicate that those lands were to be retained by the original owner or that only an easementary right was intended to be conferred upon the Society. The grant of merely a joint right of way proceeds upon the assumption that ownership of those lands was liable to remain divided between the parties. Such an assumption again involves an adjudication upon competing proprietary rights which falls outside the scope of proceedings under Section 11 of MOFA. If the scheduled property agreed to be conveyed included those lands, the Competent Authority could not, on the basis of disputed claims of user or access, restrict the conveyance to an easementary right alone.
61. It must, however be emphasized that the issuance of a modified certificate of unilateral deemed conveyance does not amount to a declaration that the Petitioner has acquired an indefeasible title to the Balance Portion or the Access Portion. A deemed conveyance under Section 11 merely facilitates conveyance of such right, title and interest as the promoter was obliged to convey under the governing contractual documents. It does not extinguish or finally determine

any competing proprietary rights asserted by third parties, all of which remain open to be adjudicated in properly constituted civil proceedings.

62. The impugned order, therefore, suffers from a jurisdictional error. Instead of confining itself to ascertaining the extent of the promoter's contractual obligation under the governing agreements, the Competent Authority proceeded to adjudicate disputed questions bearing upon proprietary rights and, on that basis, excluded the Balance Portion from the certificate of deemed conveyance and restricted the Petitioner's rights over the Access Portion to a mere joint right of way. Such an approach is inconsistent with the scheme of Section 11 of MOFA and the principles laid down in *Mazda Construction Company* (supra), *Dhuri Co-operative Housing Society* (supra), *New Sonal Industries Premises* (supra), *Blue Heaven CHSL* (supra) and *Arunkumar H. Shah HUF* (supra).
63. The impugned order, therefore, warrants interference under Articles 226 of the Constitution of India to the limited extent indicated hereinbelow. At the same time, it is once again clarified that neither this judgment nor the modified certificate of unilateral deemed conveyance shall be construed as a final adjudication upon the rival claims of title, ownership or *landlordship* asserted by Respondent Nos. 3 and 4, all of which are expressly kept open for determination in appropriate civil proceedings which shall decide the same on their own merits and in accordance with law, uninfluenced by any observations contained in this judgment except to the extent of delineating the limited scope of proceedings under Section 11 of MOFA.
64. For all the aforesaid reasons, the impugned order cannot be sustained insofar as it excludes the Balance Portion from the certificate of unilateral deemed conveyance and confines the Petitioner's rights over the Access Portion to a

joint right of way. The exclusion of those portions is founded upon disputed questions relating to the performance of the Agreement and the parties' rival proprietary claims, matters which lie outside the scope of the enquiry contemplated under Section 11 of MOFA. The present Writ Petition is accordingly disposed of in terms of the following order:

::ORDER::

- (A) The present Writ Petition is allowed.
- (B) The impugned order dated 31st January 2017 passed by Respondent No.1 – Competent Authority is quashed and set aside insofar as it:
 - (i) excludes the land bearing CTS No. H-405 together with the chawl standing thereon from the certificate of unilateral deemed conveyance; and
 - (ii) restricts the Petitioner's rights in respect of the lands bearing CTS Nos. H-393 and H-386 to a joint right of way.
- (C) Respondent No.1 shall, within a period of eight weeks from the date on which this judgment is uploaded, issue a modified certificate under Section 11(4) of MOFA certifying the Petitioner's entitlement to unilateral deemed conveyance in respect of the entire property described in the governing contractual documents, including the aforesaid portions, namely, CTS No. H-405 admeasuring about 388 square metres and CTS Nos. H-393 and H-386 admeasuring about 352 square metres and 286 square metres respectively.
- (D) Since a unilateral deed of conveyance has already been executed

and registered pursuant to the certificate dated 31st January 2017, it shall be open to the Petitioner to present for registration such supplemental or corrective instrument as may be necessary to give effect to the modified certificate. Upon such presentation, the concerned registering authority shall process the same in accordance with law.

- (E) It is clarified that neither the modified certificate nor any conveyance executed pursuant thereto shall be construed as finally determining or extinguishing any independent right, title or interest, if any, claimed by Respondent Nos. 3 and 4 or any other person in respect of the Balance Portion or the Access Portion. All such claims are expressly kept open to be determined in appropriate civil proceedings.
- (F) Rule is made absolute in the aforesaid terms.
- (G) There shall be no order as to costs.

(FARHAN P. DUBASH, J.)

- 65. After the judgment was pronounced, Mr. Vivek M. Sharma, learned Counsel who appears for Respondent Nos. 3 and 4 seeks a stay on the effect and operation of the judgment.
- 66. Considering the above, the judgment shall remain stayed for a period of four weeks from today.

(FARHAN P. DUBASH, J.)

Shubham Gadhavepatil