

(2014) 09 BOM CK 0071

In the Bombay High Court

Case No : Writ Petition Nos. 9116 and 10356 of 2013

Farhat Co-op. Housing Society Ltd.

APPELLANT

Vs

Malkani Enterprises
 Hasham Esa Dathawala Vs Farhat
Co-op. Housing Society Ltd.

RESPONDENT

Date of Decision : 23-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 345, 347
Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 — Section 10, 11, 11(1), 11(3), 12A
Penal Code, 1860 (IPC) — Section 193, 228

Citation : (2015) 3 BomCR 587 : (2014) 6 MhLj 358

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : Ravi Kadam, Senior Advocate, Jyoti Sinha i/b. Negandhi Shah, Himaytullah, Milind Sathe, Senior Advocate and Sanjeev R. Singh, Advocate for the Appellant; Ravi Kadam, Senior Advocate, Jyoti Sinha i/b. Negandhi Shah, Himaytullah, A.Y. Sakhare, Senior Advocate, Bhavin Bhatia and A.I. Patel AGP, Advocate for the Respondent

Judgement

R.M. Savant, J.—Rule, in both the Petitions, with the consent of the learned Counsel appearing for the parties, made returnable forthwith and heard.

2. The above Writ Petitions, which are cross Writ Petitions, filed under Articles 226 and 227 of the Constitution of India, take exception to the order dated 6th May, 2013 passed by the Competent Authority and District Deputy Registrar, Co-operative Societies (3), Mumbai, by which order, the application filed by the Petitioner in Writ Petition No. 9116 of 2013 for deemed conveyance u/s 11(3) of the Maharashtra Ownership of Flats (Regulation of the Promotions of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as "the MOFA"), came to be allowed and resultantly, the unilateral deemed conveyance/assignment of right, title and interest of the developers in respect of the land being Plot No. B CTS No. 68/B, Mauje Bandivali, Taluka Andheri, Mumbai

Suburban District, admeasuring 3380.50 square meters, came to be granted, however the said deemed conveyance was made subject to the final decision in T. E. & R. Suit No. 4/4 of 2013 filed by the Respondent Nos. 3 to 11 in the said Writ Petition No. 9116 of 2013 against the Respondent No. 1.

3. Insofar as the Petitioner in Writ Petition No. 9116 of 2013 is concerned, it is challenging the said order to the extent of it being made conditional to the final decision in the said T. E. & R. Suit No. 4/4 of 2013. Insofar as the Petitioners in Writ Petition No. 10356 of 2013 are concerned, they are challenging the said order insofar as it grants deemed conveyance to the Petitioner in Writ Petition No. 9116 of 2013. The Petitioner in Writ Petition No. 9116 of 2013 would be hereinafter referred to as the "Society" and the Petitioners in Writ Petition No. 10356 of 2013 would be referred to as the "owners" and the Respondent No. 12 would be referred to as the "Competent Authority" for brevities sake.

4. The factual matrix involved in both the Petitions is common and can be stated thus:

The Petitioner in Writ Petition No. 9116 of 2013 is a Co-operative Housing Society formed by the flat purchasers of the building constructed by the Respondent No. 1 herein i.e. M/s. Malkani Enterprises. The said building consist of two wings having 60 residential flats. All the flat purchasers are the members of the Petitioner Society.

5. At this stage, it would be necessary to refer to certain antecedent facts prior to the construction of the building by the respondent No. 1 herein. Insofar as the plot of land, on which the building is situated is concerned, the said plot of land is amongst one of the lands which were leased out by M/s. Byramjee Jeejibhoy Pvt. Ltd. by a registered lease dated 8th May, 1953 to one Haji Esmail Aziz Dathawala, whose estate came to be popularly known as the Dathawala Estate (it appears that Dathawala was also known and recognized by the surname "Malkani"). It appears that between M/s. Byramjee Jeejibhoy Pvt. Ltd. and the said Haji Esmail Aziz Dathawala, there was an agreement and memorandum of understanding, whereby, it was agreed that Haji Esmail Aziz Dathawala would purchase some portion of the lands, which were leased out to him and in consideration was to surrender some portion of the lands. The said Haji Esmail Aziz Dathawala expired sometime around 1961-62 leaving behind his wife Khatijabai, sons and daughters, who are the Respondent Nos. 3 to 11 in the Petition i.e. the "owners". It appears that in pursuance of the said understanding between the said M/s. Byramjee Jeejibhoy Pvt. Ltd. and Haji Esmail Aziz Dathawala, after the death of the said Haji Esmail Aziz Dathawala, his widow Khatijabai and his sons and daughters i.e. the owners Respondent Nos. 3 to 11 herein executed a deed of conveyance dated 27th June, 1982 and purchased some portion, from lands which were numbered as old Survey Nos. 22-1 part, 23-3 part, 23-4 part and 24-1 part. It is out of the said old survey numbers that the plot of land, of which deemed conveyance is granted is a part. It is pursuant to the said conveyance that in the record of rights, the names of Khatijabai i.e.

the widow of Haji Esmail Aziz Dathawala and the Respondent Nos. 3 to 11 came to be entered into as Kabjedars, as per Mutation Entry No. 577 on 13th September, 1963. This is how the Respondent Nos. 3 to 11 can be said to have acquired title to the land in question, in respect of which, deemed conveyance has been granted.

6. It appears that the said Khatijabai and the Respondent Nos. 3 to 11 being the owners, applied for commencement certificate on 26th December, 1974 to the Municipal Corporation of Greater Mumbai (for short "MCGM") to construct a building on the specially divided plot of land bearing CTS No. 68B admeasuring 3375 square meters. The said permission sought was applied in the name of the Respondent No. 6 herein, who is the son of the said Khatijabai. The Respondent No. 6 accordingly submitted plans and specifications. The MCGM issued a notice of requisition dated 31st January, 1975, pursuant to which, the Respondent No. 6 furnished an undertaking on 20th February, 1975. The MCGM thereafter issued the IOD on 21st March, 1975 and the commencement certificate dated 7th March, 1975. It appears that after the IOD and the commencement certificate were issued, the owners i.e. the Respondent Nos. 3 to 11 found it necessary to induct some third party to help and assist them in the construction and completion of the building, and accordingly brought in the Respondent No. 2 herein i.e. Ibrahim Essa as a contractor/partner. The Respondent Nos. 3 to 11 herein, along with the said Ibrahim Essa and Hasam Esmail formed and constituted a partnership firm in the name of M/s. Malkani Enterprises i.e. the Respondent No. 1 herein, having two partners i.e. the outsider Mr. Ibrahim Essa and Mr. Hasam Esmail Malkani, who is the Respondent No. 3 herein. It is pursuant thereto that the owners i.e. the Respondent Nos. 3 to 11 agreed to grant a lease of the plot of land in favour of the Respondent No. 1 M/s. Malkani Enterprises, which, as indicated above, was a partnership firm therefore having a separate legal entity and having two partners. Accordingly, the agreement for lease between the owners i.e. Khatijabai and others and Ibrahim Essa and another (partners of M/s. Malkani Enterprises), came to be executed on 8th March, 1975. It is pursuant to the said agreement for lease that the said M/s. Malkani Enterprises developed the said plot of land and were therefore the Developers insofar as the provisions of the MOFA are concerned.

7. In the standard agreement for sale, which was printed, the same contained a title certificate being Exhibit-A annexed to the said agreement, wherein, the Advocate concerned has certified the title of M/s. Malkani Enterprises as a Developer and as per the title certificate, Khatijabai and others were the Lessors and that there was an agreement of lease dated 8th March, 1975 between the Lessors on one part and Ibrahim Essa and another (partners of M/s. Malkani Enterprises) on the other part in respect of the plot of land in question i.e. the land bearing CTS No. 68/B. It appears that simultaneously, standard agreement for sale with the flat purchasers under the provisions of the MOFA came to be printed along with title certificate issued on 23rd February, 1975, which, inter alia, contained recitals and clauses which make it clear that M/s. Malkani

Enterprises was a partnership firm. The agreements for sale which came to be printed in the year 1975 came to be printed on stamp papers of Rs. 5/- and curiously, the same were signed by the Respondent Nos. 3, 6 and 7 representing the said M/s. Malkani Enterprises. It appears that the building "Farhat" got completed after a delay of about 2 years and most of the flats were sold by agreements executed under the signatures of the Respondent Nos. 3, 6 and 7 singly/jointly in presence of each other under the name of M/s. Malkani Enterprises, without any seal or stamp of the partnership firm or as partner thereof.

8. Though the flats in the building were sold on the basis of the standard agreement printed in the year 1975, the Respondent Nos. 3 to 11 being the owners and developers themselves, did not take any steps to form a Society of the flat purchasers for about 15 years and ultimately, the Society was formed by the flat purchasers themselves coming together and was got registered on 21st November, 1988. In the proposal for registration, the Respondent No. 6 herein was shown as the Chief Promoter of the Society. The Respondent Nos. 3 to 6 herein, after the Society was formed, were the Managing Committee Members in the first Committee and issued share certificates to the members, however, the owners failed to perform their obligations under the MOFA. Since the Respondent Nos. 3 to 6 were not discharging their duties as the Managing Committee Members in the interest of the Society, a new Managing Committee took over the Society. On account of the negligence of the Managing Committee, there was no maintenance of the building of the Society and at present the building is in a bad shape and it is the case of the Society that it requires immediate attention. It seems that the Society obtained the report of a Structural Engineer and Architect, who advised it to go for reconstruction rather than repairs, costing huge funds. Accordingly, the Managing Committee resolved to opt for redevelopment and entered into agreement and memorandum of understanding for redevelopment of the property of the Society with a developer. It is in November, 2012 that the Society, to facilitate redevelopment, applied for deemed conveyance under the provisions of Section 11(3) of the MOFA by filing an application before the Competent Authority, who is the authority appointed by the State Government for the same.

9. It was the case of the Society in the said application that it was a registered Co-operative Society and the building of the Society has two wings "A" and "B" having 30 flats each and total 60 members of the Society. It was further averred that the agreement with the flat purchasers were under the MOFA and in terms of the MOFA, the Respondents to the said application have not fulfilled their obligation of conveying the property to the Society within four months of the registration of the Society. The Society highlighted clause No. 25 in the flat purchasers agreement, a copy of one of such agreements was produced before the authority. In terms of the said clause 25, it was the case of the Society that the Society was entitled to the lease from the Respondents. It was further averred that though the Society has issued notices to the Respondents on 8th

December, 2006 and 13th December, 2006 calling upon them to fulfill their obligation under the MOFA, they have failed to do so and therefore, the Society was left with no alternative but to file the said application. The fact that the Society has filed a criminal case against the Respondents for not fulfilling their obligation to convey the property was also mentioned in the said application.

10. Pursuant to the said application, notices came to be issued by the Competent Authority to all the Respondents and also to the public at large, by publishing the said notices in the local newspapers. It appears that initially the Respondent Nos. 1 to 11 were represented by the same Advocate and did not take any steps to file their Written Statement or reply to the said application filed by the Society. It is after the commencement of the proceedings u/s 11(3) that the owners, through their Advocate, issued a notice dated 24th November, 2012 to the Respondent No. 1 i.e. M/s. Malkani Enterprises, terminating the monthly tenancy in respect of the open plot of land, on which the building with the Society is situated, on the ground of arrears of rent for about 20 years. A copy of the said notice was also endorsed to the Society, however, significantly without making any grievance or allegation of whatsoever nature against the Society. After the notice period was over, the Respondent Nos. 3 to 11 filed an Eviction Suit being No. T. E. & R. Suit No. 4/4 of 2013 in the Small Causes Court at Bandra, Mumbai, against the Respondent No. 1 for possession of the plot of land in question, on the ground of breach of the conditions of the lease in the matter of non payment of the lease rent.

11. In the said Suit, it appears that writ of summons came to be issued upon the Respondent No. 1 herein and thereafter, the Respondent Nos. 3 to 11 filed an application for stay against the Respondent No. 1. It is after filing of the said Eviction Suit that a Written Statement came to be filed on behalf of the Respondent Nos. 3 to 11 in the deemed conveyance proceedings. It was stated in the Written Statement that the Respondent No. 2 has expired, however, no efforts have been made to bring his legal heirs on record. It was stated that the necessary documents as per Circular dated 2nd November, 2010 and 28th February, 2011 have not been produced. It was stated that the application is not in the prescribed Form No. VII. It was further stated that the Respondent No. 1 M/s. Malkani Enterprises has constructed the building known as Farhat and the applicant Society has been registered in the year 1988. It was stated that the applicant Society has been informed that the property is given on monthly tenancy of Rs. 1750/- to the Respondent No. 1. It was further stated that the Society has not paid rent to the Respondent Nos. 3 to 11. It was stated that the Respondents have cancelled the tenancy and that they have filed a Suit in the Small Causes Court against the Respondent No. 1 and the application is therefore liable to be dismissed.

12. In the said proceedings, one Mushtaq H. Malkani, the son of the Respondent No. 3 and claiming to be the partner/authorized signatory of the Respondent No. 1, appeared before the Competent Authority and filed an application for being

permitted to file a Written Statement. The said application was opposed to on behalf of the Society. It appears that inspite of the opposition of the Petitioner Society to the intervention of the said Mushtaq H. Malkani, his application was entertained by the Competent Authority and he was permitted to file his Written Statement. The said Mushtaq H. Malkani filed the Written Statement on behalf of the Respondent No. 1 herein. It was stated in the Written Statement that the Respondent Nos. 3 to 11 have cancelled the tenancy of the Respondent No. 1 by a letter dated 24th November, 2012, copy of which was also endorsed to the Society. It was further stated in the said Written Statement that the Society i.e. the applicant has not paid the lease rent and that the Respondent No. 1, after the said termination, has no right of any nature in the said property. It was stated that the Respondent Nos. 3 to 11 have filed a Suit for eviction, for recovery of arrears of rent in the preceding three years together with interest at 15% till disposal of the Suit. It was stated that since the Suit is pending, the claim made in the application cannot be granted. It was also stated that the applicant Society has not produced necessary documents and that whatever documents have been produced are not authenticated as required by the rules. It was further stated that the property is not in possession of the Society and that the Respondent No. 1 has never agreed to transfer/convey the lease in respect of the said property to the applicant Society. It was therefore prayed that the application be dismissed.

13. The Society in turn filed its reply to the Written Statements filed on behalf of the Respondents. It was stated in the said reply by the Society that the Developers and owners are one and the same party. The Society stated that the plot is not vacant and that there is a building thereon. It was further stated that the said fact has been suppressed from the Small Causes Court, wherein, the Respondent Nos. 3 to 11 have filed a Suit. The Society questioned the maintainability of the Suit on the ground that such a Suit was not maintainable under the provisions of the Maharashtra Rent Control Act, 1999. The Society in its reply traced how the owners had acquired title. The Society also stated that the commencement certificate has been obtained by one Abdul Sattar on behalf of the owner Khatijabai and the undertaking to the MCGM has also been given by Abdul Sattar. The Society pointed out that the flat agreements could not be registered earlier in view of the non co-operation of the owners, but have been registered later on under the Amnesty Scheme. It was stated that the proposal for formation of the Society has been signed by the land owners as different Promoter and that the Respondent No. 6, who is from the family of the land owners was the Chairman of the Society for a long time.

14. To the reply filed by the Society, the Respondent Nos. 3 to 11 filed their rejoinder, wherein, the sum and substance was that the entertaining the application filed by the Society would amount to interfering with the proceedings pending in the Small Causes Court. The application for deemed conveyance was heard on 4th April, 2013 and inspite of the objection of the Society to the filing of the pleadings on behalf of the Respondent No. 1 on account of non verification of

pleadings and the locus standi of the Respondent No. 1, the Competent Authority overruled the said objections and closed the matter for orders. It is thereafter that the impugned order came to be passed on 6th May, 2013, by which order, as indicated above, the application for deemed conveyance was allowed by the Competent Authority, however, the same was made subject to the final decision in T. E. & R. Suit No. 4/4 of 2013. The Competent Authority, whilst allowing the application, has inter alia held that the applicant Society has complied with the requirement by filing the necessary documents. The Competent Authority held that in view thereof, there is no propriety in the said technical defects, which are sought to be highlighted by the Respondents. The Competent Authority held that the flats have been sold under agreements on ownership basis to different persons by the Respondent No. 1 and that the said agreements are executed under the MOFA. The Competent Authority held that in view thereof, the rights in the said property have been transferred from the land owners to the applicant Society. The Competent Authority held that the full FSI has been utilised to construct a building having six floors. The Competent Authority adverted to clause 25 of the flat purchasers' agreement and in view thereof, held that the Society of the flat purchasers would be entitled to the lease being executed in favour of the Society by the Respondents. The Competent Authority held that the same was required to be done within four months of the registration of the Society but has not been done till date, though the Society has been registered on 21st November, 1988. The Competent Authority held that the Respondent Nos. 3 to 11 are required to execute a lease agreement in favour of the Society and that it was the obligation of the Developer under the MOFA to transfer/convey the lease rights in respect of the plot of land in favour of the Society. The Competent Authority held that the Respondents cannot avoid their statutory obligation and that the Respondent Nos. 1 to 11 are all Developers and are obliged to comply with clause 25 of the flat purchasers agreement. The Competent Authority, however, thereafter, by observing that since the Suit is pending in the Small Causes Court, the order of deemed conveyance would have to be passed making it subject to the final decision of the said Suit and accordingly passed an order to the said effect. As indicated above, it is the said order, which is impugned in the present Petitions.

15. Heard the learned Counsel appearing for the parties.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL

SHRI. R.M. KADAM FOR THE PETITIONER IN WP/9116/2013:

16. (i) That the Competent Authority, after allowing the application for deemed conveyance filed by the Petitioner Society has thereafter erred in making the deemed conveyance conditional i.e. making it subject to the result of the Suit being T. E. & R. Suit No. 4/4 of 2013, thereby rendering the order ineffective.

(ii) That the Competent Authority failed to appreciate that the Suit filed by the Respondent Nos. 3 to 11 against the Respondent No. 1 was a collusive Suit, and

was also filed malafide so as to frustrate the application for deemed conveyance filed by the Petitioner Society.

(iii) That the application filed for deemed conveyance against the Respondent Nos. 3 to 11 i.e. the owners was maintainable in view of the fact that the owners can be said to have caused the development by agreeing to grant a lease to the Respondent No. 1, which is a partnership firm of the owners themselves.

(iv) That the Respondent No. 1 is a partnership firm where one of the partners is belonging to the family of the Respondent Nos. 3 to 11 and since there is an Agreement to Lease in favour of the Respondent No. 1 from the Respondent Nos. 3 to 11, the Society is entitled to get the right of the Respondent No. 1 conveyed in its favour.

(v) Since the owners can be said to have caused the development, the Petitioner is entitled to a deemed conveyance of the owners' rights in respect of the plot of land in question, having regard to the definition of Promoter/Developer in the MOFA.

(vi) That the Society cannot be deprived of its entitlement for deemed conveyance on the ground that Respondent No. 1 who is the developer had only a right to an Agreement to Lease.

(vii) That there is a compliance of rules insofar as the filing of the application for deemed conveyance is concerned, as the Competent Authority has observed so in the impugned order and therefore the contentions urged on behalf of the Respondents that the application was incomplete cannot be accepted.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL

SHRI. M.R. SATHE FOR THE PETITIONERS IN WP/10356/2013:

17. (i) That the Competent Authority has erred in granting deemed conveyance to the Petitioner Society when there is no privity of contract between the Petitioner Society and the Respondent Nos. 3 to 11.

(ii) That the application filed by the Petitioner Society is incomplete as the MOFA agreements were not annexed to the application nor is the statement filed along with the application in respect of the various flat purchasers complete and therefore, the Competent Authority has erred in entertaining the said application.

(iii) In terms of the Section 11(1) of the MOFA, the deemed conveyance has to be in respect of the rights of the Promoters/Developers in the plot of land. In the instant case, the Developer i.e. the Respondent No. 1 has only an Agreement to Lease in his favour, whereby, the Respondent Nos. 3 to 11 have agreed to grant lease to it, however, till such time, as lease is executed, the Respondent No. 1 is a monthly tenant and therefore, at the highest the Petitioner Society would therefore have the right to monthly tenancy.

(iv) That the impugned order discloses that the Competent Authority was not

sure as in respect of which right of the Promoter/Developer deemed conveyance is granted and therefore, the direction in the operative part of the impugned order contains alternatives. This could not have been done by the Competent Authority whilst exercising the power u/s 11, as the deemed conveyance has to be granted in respect of an ascertainable right, which is in the Developer/Promoter.

(v) Since the Respondent No. 1 is a monthly tenant, the Petitioner Society could only be entitled to the right of the Respondent No. 1 namely the monthly tenancy and could not have been given the deemed conveyance of the assignment of the lease.

(vi) That though the Respondent No. 2 had expired, which fact was brought to the notice of the Advocate appearing for the Society, the application was not amended so as to bring his heirs on record. The impugned order is therefore passed against a dead person and therefore a nullity.

SUBMISSIONS OF THE LEARNED SENIOR COUNSEL

SHRI. A.Y. SAKHARE FOR THE RESPONDENT NO. 1 IN WP/9116/13:

18. (i) The learned Senior Counsel appearing for the Respondent No. 1 reiterated the submissions urged on behalf of the Respondent Nos. 3 to 11 as regards the incompleteness of the application filed by the Petitioner Society u/s 11 of the MOFA. The learned Senior Counsel sought to point out the rationale behind the documents which are to be submitted along with the application for deemed conveyance and which are mentioned in the circular dated 21st March, 2011 issued by the Competent Authority.

(ii) He further submitted that the Competent Authority could have granted deemed conveyance only of a ascertainable right/interest of the Promoter/Developer and could not have passed the order which can be said to be vague insofar as the subject matter of deemed conveyance, as in the operative part, the Competent Authority has mentioned alternatives.

CONSIDERATION:

19. Before proceeding to deal with the issues which arise in the light of the contentions urged on behalf of the parties, it would be apposite to refer to the objects and reasons behind introducing the amendments in the MOFA and especially Section 5A i.e. to setup the machinery of the Competent Authority for the purposes of exercising powers and performing the duties under Sections 10 and 11 of the MOFA. The objects and reasons spell out, that it is on account of sundry abuses and malpractices, which were on the increase on account of acute shortage of housing in several parts of the State, that the State felt a need to curb the said malpractices and to see to it that the purposes for which MOFA was introduced were fulfilled. It was felt that the provisions of the MOFA were required to be made more effective, so as to safeguard the interest of the flat purchasers. It is with the said intent that the amendments were introduced. The

intent being to see to it that the Promoters fulfill their obligations under Sections 10 and 11 of the MOFA. The objects and reasons behind introducing the amendment in the MOFA read thus:

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

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

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

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

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

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

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

20. In the context of the challenge raised in the above Petitions, it would be

apposite to reproduce Sections 5A, 10 and 11 of the MOFA, which read thus:

"5A. Competent Authority

The State Government may, by notification in the Official Gazette, appoint an officer, not below the rank of the District Deputy Registrar of Co-operative Societies, to be the Competent Authority, for an area or areas to be specified in such notification and different officers may be appointed as Competent Authority for different local areas, for the purposes of exercising the powers and performing the duties under Sections 5, 10 and 11 of this Act.

10. Promoter to take steps for formation of co-operative society or company

[(1) As soon as a minimum number of persons required to form a co-operative society or a company have taken flats, the promoter shall within the prescribed period submit an application to the Registrar for registration of the organisation of persons who take the flats as a co-operative society or, as the case may be, as a company; and the promoter shall join, in respect of the flats which have not been taken, in such application for membership of a cooperative society or as the case may be of a company. Nothing in this section shall effect the right" of the promoter to dispose of the remaining flats in accordance with the provisions of this Act.

Provided that, if the promoter fails within the prescribed period to submit an application to the Registrar for registration of society in the manner provided in the Maharashtra Co-operative Societies Act, 1960, the Competent Authority may, upon receiving an application from the persons who have taken flats from the said promoter, direct the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar concerned, to register the society: Provided further that, no such direction to register any society under the preceding proviso shall be given to the District Deputy Registrar, Deputy Registrar or, as the case may be, Assistant Registrar, by the Competent Authority without first verifying authenticity of the applicant's request and giving the concerned promoter a reasonable opportunity of being heard.

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

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

(2) It shall be the duty of the promoter to file with the Competent Authority,

within the prescribed period, a copy of the conveyance executed by him under sub-section (1).

(3) If the promoter fails to execute the conveyance in favour of the co-operative society formed u/s 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 along with 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 a fit case for unilateral conveyance, register that instrument as deemed conveyance.

21. After having referred to the aforesaid provisions of the MOFA, it would now be necessary to deal with the contentions raised on behalf of the parties. It is the contention of the Petitioners in Writ Petition No. 10356 of 2013 i.e. the owners that the application filed by the Society was not complete inasmuch as the requisite documents were not annexed and therefore, the application could not have been entertained by the Competent Authority. In support of the said contention, reliance was sought to be placed by the owners on the circular dated 21st March, 2011, which sets out the documents which are required to be

annexed to an application for unilateral deemed conveyance. In the said circular, about 29 documents have been listed. A perusal of the impugned order passed by the Competent Authority, however, discloses the documents, which have been produced by the Society in the said deemed conveyance proceedings. The said documents are the Agreement to Sale entered into with one of the flat purchasers, the title certificate, the permission obtained by the Promoters for the construction of the building. The Competent Authority i.e. the Respondent No. 12 herein also observed in the impugned order that the objection raised on behalf of the owners was technical and that the matters would have to be looked into from the angle of the merits of the application. The Competent Authority has referred to the clause in the Agreement to Sale of the flat purchasers, wherein, it is mentioned that the Respondent No. 1 M/s. Malkani Enterprises has an Agreement to Lease from the owners, which is dated 8th March, 1975 and that the lease rent payable to the owners is Rs. 1750/- per month. In the context of the said technical plea raised by the owners, it would also be necessary to consider the Rules, which have been framed under the MOFA, which rules are known as the Maharashtra Ownership of Flats Rules, 1964. Insofar as the present Petition is concerned, Rule 13 is relevant Rule, which, for the sake of convenience, is reproduced hereinunder:

"13. Scrutiny of applications and notice to the parties, etc. (1) Registration of applications.

(a) On receipt of an application, the office of the Competent Authority shall endorse on it the date of its receipt and shall as soon as possible, examine it and satisfy itself that the person presenting it has authority to do so and that it conforms with all the provisions of the Act and the Rules made thereunder.

(b) If the Competent Authority is satisfied that the application is complete in all respect, it shall cause the application to be registered, as admitted, in the appropriate register maintained under these Rules.

(c) If the application is not complete, the Competent Authority may send notice in the Form VIII, to the applicant/s to rectify the defects or comply with such requirements, as it may deem fit to conform with all the provisions of the Act, and these Rules, within a period of fifteen days of the receipt of the said notice. The Competent Authority may, for sufficient cause, may give further extension of not more than fifteen days to comply with the requirements.

If the above defect in an application is rectified, the Competent Authority shall cause it to be admitted and register the application in the appropriate register.

(2) Maintenance of registers and procedure for issuing notice, etc.

The Competent Authority shall maintain the register of applications received by it in Form IX.

On admitting the application, the competent Authority shall, within a period of fifteen days thereof, issue a notice in Form X to the opponent/s requiring him/

them to file the written statement on the day, date and place as may be specified therein. Such notice shall be served on the opponents by registered post acknowledgment due or under certificate of posting on the last known address.

(3) Appearance of parties and consequences of non appearance.

(a) On the date fixed as aforesaid, the opponent shall appear either in person or through his Advocate or his authorized Representative before the Competent Authority and shall file a written statement.

(b) On the date of hearing, if the applicant appears and the opponent or any of the opponents, does not or do not appear, as the case may be, the Competent Authority shall decide the application ex-parte:

Provided that, before deciding the Application, if the Opponent appears and shows a sufficient cause for his non-appearance on the earlier occasions, he shall be heard in the matter as if he had appeared before the Competent Authority on the first day.

(c) If on the date fixed for hearing or on any other day to which the hearing may be adjourned, the applicant does not appear either in person or by his Authorised Representative, when application is called for hearing, the Competent Authority may dismiss the application.

(d) If, on the date fixed for hearing or any other day to which the hearing may be adjourned, the Opponent's does/do not appear either in person or through his/their Authorised Representative, when the Application is called for hearing, the Competent Authority may decide the same on merits after hearing the Applicant or his Authorised Representative, if present.

(4) Production and inspection of documents.

(a) The parties shall file the documents referred to in the pleadings at the time of filling application and written statement, as the case may be. If either party satisfies the Competent Authority that any document is relevant and the same is in the custody of the opposite party, the Competent Authority may, by an order in writing, direct such party to produce such document on the next date of hearing.

(b) If the party so ordered, fails to produce such documents on the next date of hearing, the Competent Authority may draw adverse inference against such party and hearing of the original application shall not be postponed till filing of such documents or for the reasons of such non compliance of the order.

(c) If the Competent Authority is satisfied that the documents required to be produced, cannot be brought before the Competent Authority for sufficient reasons like its volume or otherwise, the Competent Authority may allow the opposite party to take inspection of the documents within seven days from the date of order of such inspection.

(d) If the Competent Authority is satisfied that the opponent had no access to the documents earlier and the filing of additional statement is necessary, it may allow the filing of such additional statement.

(5) Procedure for hearing the application.

(a) On receipt of the statement of the opponent, the applicant shall prove contents of the application and also deal with the contention of defenses. The opponent likewise may file reply in support of the defense on the next date, if he so desires. No cross-examination of any of the parties shall be permitted.

(b) On receipt of the replies, the Competent Authority shall proceed to hear oral arguments of the parties and after hearing, shall close the proceedings for the order.

(c) The Competent Authority shall, within reasonable time and in any case not later than six months from the date of receipt of the application, after making such enquiry deemed necessary and after verifying the authenticity of the documents submitted by the parties and after hearing them and giving the parties sufficient opportunities as required under the Act and the principles of natural justice, pass such appropriate order as it deems fit, as provided under the Act.

(6) Signing of order and the notice and the official seal.

(a) Every Judgment, order and the certificate of the Competent Authority shall be delivered or supplied or provided to all the concerned parties.

(b) The Competent Authority shall have an Official Seal of its own, which shall be kept in the custody of the Competent Authority.

(c) Every judgment, order, certificate and the notice issued under the Act or these Rules shall be signed by the Competent Authority and shall bear the official seal on it.

(d) All the records of the Competent Authority shall be kept in its custody."

22. The said Rule therefore mandates the Competent Authority to scrutinize the application and after being satisfied that the application is complete in all respects, cause the application to be registered as admitted in the appropriate register maintained under the said Rules. If the application is not complete, then a notice is required to be issued to the applicant to rectify the defects or comply with such requirements. The aforesaid Rules therefore lay down an elaborate procedure post filing of the application for deemed conveyance upto the stage of Judgment and Order. In the instant case, it has been observed by the Competent Authority that the Society had complied with the requisitions made by the Authority and therefore, it appears that the said application made by the Society was registered and placed for adjudication. In the light of the said Rule 13, it is not possible to accept the contention raised on behalf of the owners that the application was incomplete and therefore could not have been entertained. As

indicated above, it is only after the Competent Authority is satisfied that the application is complete that the application is to be registered as admitted and thereafter to be placed for adjudication. The Competent Authority in the impugned order has referred to and in fact has listed the 16 documents which were filed by the Society in support of its application. The said 16 documents, for ready reference, are as under:

"1. A notarized application in prescribed form no. 7 under Rule 12, with Rs. 2000/- court fees stamp;

2. Copy of Resolution;

3. Copy of Agreement for sale/purchase.

4. List of members

5. 7/12 extract and village form no. 6

6. Property Tax

7. Notice for N.A. tax

8. City Survey map

9. Applicant Society's registration certificate dated 21.11.1988

10. Intimation of Disapproval (I O D) dated 31.1.1975

11. Sanctioned building plan and survey map

12. Building commencement certificate dated 7.3.1975

13. Building completion certificate dated 2.12.1978

14. Vakalatnama

15. Documents in respect of case no. 102/M/2007 before Hon''ble Metropolitan Magistrate, Mumbai

16. Applicant's Affidavit"

The learned AGP appearing in the matter was asked to produce the record insofar as the said documents are concerned, the learned AGP accordingly had produced the record and tendered the photocopies of the Agreements to Sale, which were before the Competent Authority. Having regard to the said documents, it cannot be said that the application was incomplete or that the application was lacking in any particulars. In my view, the Competent Authority was right in observing that the objection raised on behalf of the owners was technical and the matter had to be looked into in the context of the merits of the application, especially having regard to the mandate of the provisions of the MOFA. Hence, insofar as the said contention urged on behalf of the owners is concerned, there is no merit in the same.

23. The next issue that is required to be dealt with is as to whether the Suit being T. E. & R. Suit No. 4/4 of 2013 filed by the owners against the Partnership firm M/s. Malkani Enterprises is a collusive Suit and therefore, the order of deemed conveyance could not have been made subject to the result of the said Suit. Insofar as the said Suit is concerned, the facts which can be said to be germane to the said Suit are the following:

The Respondent No. 1 is a partnership firm, which was entrusted the task of carrying out the development of the plot of land in question, as the owners had already obtained the IOD and the commencement certificate from the MCGM. One of the members of the owners' family is a partner of the said partnership firm i.e. one Abdul Sattar Malkani. The notice for termination has been issued after the application for deemed conveyance was filed and it is pertinent to note that the owners and the Respondent No. 1 i.e. M/s. Malkani Enterprises had appeared in the said deemed conveyance proceedings, but had not filed their responses. The owners and the Respondent No. 1 i.e. the said M/s. Malkani Enterprises were represented by the same lawyer till just before issuance of the notice of termination of the lease. The third fact is that the Suit has been filed for eviction of the said M/s. Malkani Enterprises and for possession of the open land, without disclosing the factum of the construction of the building, the formation of the Petitioner Society and the filing of the application for deemed conveyance by the Society. The fourth fact is that the Society pertinently has not been made a party to the Suit. The fifth fact, which is required to be noted is that an order of injunction has been obtained in the said Suit against the said M/s. Malkani Enterprises when the said M/s. Malkani Enterprises has virtually no rights remaining in the property, after the completion of the construction. The sixth fact is that the owners and the Respondent No. 1 have a commonality interest, which is substantiated by the fact that the Respondent No. 1 is a family firm, the agreements with the flat purchasers have been signed by the Respondent Nos. 3, 6 and 7 either singly or jointly on behalf of the firm, and they were represented by the same lawyer in the deemed conveyance proceedings. The aforesaid facts are very eloquent and therefore unmistakably lead to an inference that the said Suit being T. E. & R. Suit No. 4/4 of 2013 has been filed by the owners merely to put obstacles in the way of the Society from getting the deemed conveyance. The said Suit, as indicated above, has been filed without disclosing the fact that a building having two wings has already been constructed comprising of about 60 flats. The fact that the Respondent No. 1 M/s. Malkani Enterprises has virtually no rights remaining in the Suit plot has been conspicuously kept away from the Small Causes Court and an order of injunction has been obtained against it. Having regard to the aforesaid facts, the inescapable conclusion is that the Suit in question being T. E. & R. Suit No. 4/4 of 2013 is a collusive Suit between the owners and the Respondent No. 1 M/s. Malkani Enterprises, filed with sole objective of frustrating the application for deemed conveyance filed by the Society. By making the said order contingent upon the decision that would be rendered in the Suit, the Competent Authority has virtually made the grant of

deemed conveyance ineffective. It is precisely on account of the machinations, which were adopted by the Developers/Promoters to deny the Society or condominium of flat purchasers the conveyance of the property that the provisions of the MOFA were amended so as to provide for the grant of unilateral deemed conveyance. In my view therefore, the order passed by the Competent Authority of making the grant of deemed conveyance subject to the result of the said Suit is therefore unsustainable and is required to be quashed and set aside.

24. The next issue is as to what rights of the Promoter/Developer is the Society entitled to. This submission was sought to be advanced in view of the directions of the Competent Authority in the operative part of the impugned order, wherein, the direction is that the Society would be entitled to deemed conveyance/assignment/rights of the Developer i.e. the Respondent No. 1. Insofar as the rights and interest of which the Society would be entitled to deemed conveyance is concerned, there can be no gainsaying that the Society of the flat purchasers or the condominium of the flat purchasers are entitled to the right, title and interest of the Mazda Construction Company, Maredia Enterprises and Sultanabad CHS Ltd. (Proposed) Vs. Sultanabad Darshan CHS Ltd. and Others, It was sought to be strenuously urged on behalf of the owners as well as the Respondent No. 1 that since the Respondent No. 1 is a monthly tenant, the Society at best would be entitled to the conveyance of the monthly tenancy. Since the agreement with the flat purchasers can be said to be determinative as to what the Society of the flat purchasers would be entitled to, it would be apposite to refer to the recital and the relevant clause 25 of the said agreement, which was part of the record before the Competent Authority, which read thus:

"AND WHEREAS the Flat-holder has taken inspection from the Builders of the aforesaid Agreement for Lease dated 8th March 1975. AND WHEREAS the certificate of Title issued by the Builders Advocate has been inspected by the Flat-holder (a copy whereof is annexed as Ex. A. to this Agreement) AND WHEREAS the Builders will be selling the flats and other spaces in the said building named "Farhat Apartments" as also the open car-parking space, as also the garages (if constructed) on what is known as "Ownership Basis" with a view ultimately that the owners of all the flats and other spaces in such Building and the Garages (if constructed) and open car-parking spaces in the compound should form themselves into a Co-operative Society duly registered under the Maharashtra Co-operative Society's Act 1960 (or ultimately become members of such Society) or they should incorporate a Limited Company with themselves as share holders or that they should form a condominium (Association) as contemplated by the Maharashtra Apartment Ownership Act (hereinafter referred to as "the MAO Act") and upon the owners of all flats, other spaces in said Building and the open car-parking spaces and garages (if constructed) in the compound paying in full all their respective dues payable to the Builders and strictly complying with all the terms and conditions of their respective agreements with the Builders (in a form similar to this Agreement) the Builders shall obtain directly from the Lessors (and if necessary, themselves join in) in necessary Lease in favour of such Co-

operative Society or a Limited Company or Association (as the case may be) AND WHEREAS the Flat-holder has agreed to acquire from the Builders Flat No. 3 on the ground floor of the building named "Farhat Apartments" and compound (hereinafter referred to as "the said premises") with notice of the terms and conditions and provisions contained in the documents referred to hereinabove and subject to the terms and conditions hereinafter contained.

.....

25. On the completion of the said building and garages (if any) and on receipt of by the Builders of the full payment of all the amounts due and payable to them by all the Flat holders of the said building and car parking spaces and garages (if any), the builders shall co-operate with the Flat holder in forming, registering or incorporating a Co-operative Society or Limited Company or any Association the rights of members of the Cooperative Society or of the Limited Company or of the Association as the case may be, being subject to the rights of the Builders under this Agreement and the Lease to be executed in pursuance hereof, when the Co-operative Society or Limited Company or Association is registered or incorporated or formed, as the case may be, and all the amounts due and payable to the Builders in respect of all the flats and other portions of the said building and the garages (if constructed) and car parking spaces are paid in full as aforesaid, the Builders shall obtain and/or execute the necessary Lease of the said land and building in favour of such Co-operative Society or Limited Company or Association, as the case may be."

25. Hence, the Respondent No. 1, who is the Developer has an Agreement to Lease dated 8th March, 1975 from the owners, and the lease rent is Rs. 1750/- per month to be payable to the owners is also mentioned in the said flat purchasers' agreement. The obligation of the Respondent No. 1 to see to it that the lease is granted to the Society of the flat purchasers is also part of the said flat purchasers agreement. It is on account of the default committed by the Respondent No. 1 to convey its rights that the cause for filing the application for deemed conveyance arose.

26. Insofar as the aforesaid issue is concerned, certain antecedent facts, which have already been mentioned in the earlier part of this Judgment are required to be revisited. The fact that the owners had obtained IOD and commencement certificate from the MCGM on 7th March, 1975, which commencement certificate was revalidated from time to time upto the year 1979. To facilitate the construction of the building, the owners had constituted the partnership firm i.e. the Respondent No. 1, of which one of the partners was a member of the owners family. It is also pertinent to note that the flat purchasers agreements have been signed by the other family members i.e. the Respondent Nos. 3, 6 and 7 either singly or jointly representing the Respondent No. 1 M/s. Malkani Enterprises i.e. the Developer. The fact that the owners and the Respondent No. 1 were represented by the same Advocate in the deemed conveyance proceedings and that a separate Advocate started to appear for the Respondent No. 1 just before

the notice of termination of lease was issued are facts which cannot be lost sight of. The aforesaid facts therefore disclose that the Respondent Nos. 1 to 11 have common interest and it is pursuant to the said common interest that the common design appears to be to frustrate the proceedings for the grant of deemed conveyance, which are initiated by the Society. As regards the filing of the T. E. & R. Suit No. 4/4 of 2013 is concerned, this Court has already recorded findings as regards the collusive nature of the Suit. No doubt, the Society would be entitled to the right, title and interest, which the Developer/Promoter has. In the instant case, the Respondent No. 1 is undisputedly the Developer, though the owners sought to question the fact that the Respondent No. 1 is a family firm, but could not do so with any deal of conviction. In the light of the clinching documentary evidence on record, there is no escape for the owners from the acceptance of the fact that it is the Respondent No. 1 who is the Developer. The Respondent No. 1, as the record discloses, has an Agreement to Lease dated 8th March, 1975 in its favour. The Society, in terms of the provisions of the MOFA, would therefore be entitled to the assignment of the lease, to which the Respondent No. 1 would be entitled to from the owners. In my view, in the teeth of the clause in the agreement, which has been extracted hereinabove, the submissions urged on behalf of the owners and the Respondent No. 1 that the Society would only be entitled to monthly tenancy and that the order passed by the Competent Authority is vague in respect of the claim of deemed conveyance would have to be rejected.

27. In the said context, it would be gainful to refer to the Judgment of a learned Single Judge of this court in the matter of Ramniklal Tulsidas Kotak and others Vs. Varsha Builders and others, of the said Judgment are relevant and are reproduced hereinunder:

"16. It emerges from the scheme of the said Act read with the definition of the expression "Promoter" contained in S. 2(c) of the said Act and Rule 5 of the statutory form referred to hereinabove that the Promoter must fall in either of the following categories:-

- (1) The promoter may be the owner of freehold land; or
- (2) The Promoter may be the lessee of the land intended to be developed, provided the indenture of lease authorises the promoter to construct flats and sell the same on ownership basis;
- (3) The promoter may have entered into an agreement to purchase the land from the lawful owner thereof. In such a case, the Vendor of the promoter must have a valid title to the said land and the agreement must not be terminable by the Vendor.
- (4) The Promoter is an agent of the owner or of the authorised lessee duly entitled to construct and dispose of flats on ownership basis. In such a case, the promoter/developer must make the owner of freehold or leasehold interest as Confirming Party to the agreement of sale of flat on ownership basis so as to

bind the owner with all the terms, conditions and covenants of third party agreement. When the Promoter falls in 3rd or 4th category, the promoter has no title to the land in the sense in which the word "title" is normally understood in the property law. To this limited extent the expression "promoter's title" is used in the Maharashtra Ownership Flats Act 1963 in the special wider sense.

17. It is clear from the scheme of the Act that the promoter need not necessarily be the absolute owner of the land or a long-term lessee thereof. At the same time, it is imperative that the promoter must have sufficient entitlement and right to construct on the land and dispose of the flats on ownership basis so as to bind the owner of the freehold and the leasehold interest. If the promoter is not the owner of the land or is not the duly authorised lessee of the property but is developing the same as a mere developer under an agreement, the owner or the authorised lessee must necessarily be made a Confirming Party to the transaction in respect of agreement to sell the flat with each of the flat buyers so as to bind the owner or the lessee with the transaction and not to leave the flat buyer in a lurch later on. If the promoter is developing the land as agent of the owner, such agency must be irrevocable. The above construction follows by necessary implication and is supported by the scheme of the Act and its objects to protect the flat purchasers and check the malpractices."

The learned Single Judge in the Judgment (*supra*), having regard to the scheme and the object of the Act, which is to protect the flat purchasers and check the malpractices, has interpreted the term "Promoter" as appearing in the Act. The said Judgment can also be a guiding light insofar as the instant case is concerned, especially having regard to the fact that in the instant case the owners as well as the Developer i.e. the Respondent No. 1 seem to be interested in seeing to it that conveyance is not granted to the Society.

28. There is one more dimension to the matter. As indicated above, it is the owners, who had obtained the IOD and commencement certificate from the MCGM and it is through the medium of the Respondent No. 1 that they have commenced and completed the construction. Therefore, in terms of Section 2(c) of the MOFA, which takes within its sweep the person who has caused the construction to be the Promoter, the owners can be said to be the Promoters, as they have admittedly caused the construction. It is therefore their obligation to see to it that the Society is conveyed what it is entitled to in terms of the agreement entered into with the flat purchasers by the Respondent No. 1, which, in the instant case is the right to get a lease in its favour. In my view, since the owners having abdicated their obligation under the MOFA of conveying the property to the Society, the Competent Authority has rightly intervened in the matter by passing the impugned order. In my view, the impugned order granting the deemed conveyance has therefore to be construed in the context of the rights the Developer had i.e. the right to get a lease from the owners. Hence, the impugned order cannot be faulted with on the ground that the operative part of the order is vague or ambiguous.

29. The submission urged on behalf of the owners that though the Respondent No. 2 had expired, his heirs were not brought on record and since the proceedings were continued against a dead person, the order is a nullity, the said submission can be said to epitomize the manner in which the owners want to stall the grant of conveyance of the property to the Society. As indicated above, the Respondent No. 1 is admittedly the Developer and the Respondent Nos. 3 to 11 are the heirs of the original owner Khatijabai, the Respondent No. 1 is a firm belonging to the family. The Respondent No. 2 was a partner of the said firm, assuming that the heirs of the Respondent No. 2 are not brought on record, in my view, it would not impact the proceedings and the order passed by the Competent Authority, as the firm as well as the owners were all before the Competent Authority and have participated in the proceedings. The said submission can be said to be the final gambit of the owners. In my view, the said submission cannot be entertained and has to be rejected.

30. For the reasons aforesaid, the impugned order insofar as it makes the grant of deemed conveyance subject to the final decision of the Suit being T. E. & R. Suit No. 4/4 of 2013 would have to be quashed and set aside and is accordingly quashed and set aside to the said extent. The Petitioner in Writ Petition No. 9116 of 2013 i.e. the Society would therefore be entitled to deemed conveyance without any conditions. Resultantly, Writ Petition No. 9116 of 2013 would stand allowed, Rule is accordingly made absolute in the said Petition in the aforesaid terms. Insofar as Writ Petition No. 10356 of 2013 is concerned, the same would stand dismissed. Rule would accordingly stand discharged in the said Petition. The parties to bear their respective costs of the Petitions.

31. At this stage, the learned Counsel appearing for the Petitioners in Writ Petition No. 10356 of 2013 i.e. the owners prays for continuation of the order dated 13th January, 2014, which was in operation pending consideration of the above Petitions. By the said order, it was directed that the order passed by the Competent Authority dated 6th May, 2013 was not to be acted upon. The learned Counsel appearing for the Petitioner in Writ Petition No. 9116 of 2013 opposes the application. In the facts and circumstances of the case, the said order dated 13th January, 2014 is continued for a period of six weeks from date.