

(2023) 04 BOM CK 0021
In the Bombay High Court
Case No : Writ Petition No. 325 Of 2019

K. V. Satyamurthy And Others

APPELLANT

Vs

Golden Beach Co-Op Housing Society Ltd And Others

RESPONDENT

Date of Decision : 05-04-2023

Acts Referred:

Maharashtra Ownership Flats (Regulation Of The Promotion Of Construction Sale Management And Transfer) Act, 1963 — Section 2(a1), 2(ii), 2(iii), 2(c), 11, 11(3)

Citation : (2023) 04 BOM CK 0021

Hon'ble Judges : Arif S. Doctor, J

Bench : Single Bench

Advocate : Avinash Hari, Vishal Kanade, Saahil Bijaliwala, Nishith Sharma, Hemant Haryan

Final Decision : Dismissed

Judgement

Arif S. Doctor, J

1. The present Writ Petition impugns an order dated 10th August 2018 ("impugned order"), passed by Respondent No. 2 allowing an application for deemed conveyance filed by Respondent No. 1. By the impugned order, Respondent No.2 has directed that a deemed conveyance in respect of land bearing Survey No.44, Hissa No. 1(p) and 2(p), CTS No.72-A, Juhu Ville Parle, Taluka Andheri, Mumbai-Suburb District, admeasuring 8361 Sq. Yards ("the said land") be granted to Respondent No.1 in the circumstances more particularly stated below.

Brief Facts

2. The Petitioners are the owners and developers of the said land on which the Petitioners have constructed and sold 36 'bungalows' under various Agreements for Sale. The Agreements for Sale inter alia provide as follows viz.

"AND WHEREAS the Builders have agreed to register a Pvt. Ltd. Co. or a Co-operative Housing Society, or Association of Apartment owners and transfer the

property in the name of the Registered Co. or a Co-operative Housing Society, or Association of Apartment owners and allot the bungalows and the land appurtenant thereto to the intending acquirer of bungalows/Apartments to be constructed by the S.M. Builders as aforesaid in accordance with the layout of scheme in Annexure 'A' as aforesaid inspection whereof has been taken by the Acquirer prior to his signing this agreement and on the Acquirer contributing towards the cost of the construction of the bungalows and of the land on which the said bungalow will be situated and on the Acquirer agreeing to pay proportionate costs for and common facilities as set out in Annexure 'B' hereto.

10. It's agreed that after all bungalows on the said property as per the layout plans attached herewith once sold out to various acquirers and as and when the same are nearing completion the Builders agree to transfer the property in the name of a Private Limited Company or a Co-operative Housing Society or Association of Apartment Owners and at that stage the Acquirer together with the other acquirers of these bungalows agree to sign the required papers and documents for the above purpose.

11. The open area around the said bungalow agreed to be allotted to the acquirer shall be kept by the Acquirer open and unbuilt in accordance with the rules and regulations of the incorporated body or other association in whose favour ultimately the conveyance in respect of the said property described in the first Schedule thereunder written shall be executed.

24. The Acquirer hereby covenants with Company or Housing Society and/or with the Acquirers of other bungalows in the said scheme in whose favour the Conveyance of the said portion of the land described in the Schedule hereunder written shall have been executed as follows: -

(a) The Acquirer shall observe and perform the terms conditions and covenants herein contained and shall keep the Company or Housing Society or the Association and the Acquirer of other bungalows indemnified against non-observance and/or non-performance of such terms covenants and provisions to be observed and performed by the Acquirer herein individually and/or collectively."

3. Respondent No.1-Society was formed in the year 1981. Since despite the passage of over thirty years, the said land was not conveyed in the manner contemplated in the Agreements for Sale, Respondent No.1 in the year 2014, filed an application for deemed conveyance (First Application). The First Application came to be rejected by an order dated 18th July 2014. Respondent No.1 then, in the year 2016, filed a Second Application i.e., Application No.7 of 2016 (Second Application) for the same purpose. The Second Application also came to be rejected, by an order dated 26th July 2017 (the Second Order). Respondent No.1 was however granted liberty to file a fresh application for a deemed conveyance.

4. Respondent No.1, then in the year 2018, pursuant to the liberty granted, filed

a Third Application for deemed conveyance. Pleadings in the said Application were filed up to the stage of Sur-Rejoinder, after which, a detailed hearing was held, and the Impugned Order came to be passed. Respondent No.2, by the Impugned Order, allowed the Third Application and granted a deemed conveyance in favour of Respondent No.1. It is thus that the present Writ Petition has been filed impugning the order passed by Respondent No.2.

5. After the filing of the Writ Petition, the Petitioners filed an Additional Affidavit dated 14th February 2019, in which, the Petitioners, for the first time, contended as follows viz.

"I say that on perusal of the layout plan it is crystal clear that each bungalow is having independent access/entry with wall compound. I say that each bungalow consist ground plus one upper floor having one hall, one kitchen, sitting room and three bedrooms on upper floor with terrace attached thereto. I say that each bungalow was numbered independently and the Petitioner no.2 has executed a separate agreement with the purposed purchaser/buyer independently. I say that there is only one bungalow which is sold by each independent agreement as such there is only one owner of each bungalow. I say that the said bungalow are not dividable since it is having only one kitchen at ground floor. I say that the bungalow is sold to individual purchaser along with land on which the said bungalows is situated. I say that the BMC has issued property tax independently to each bungalow. I say that therefore each bungalow owner is having rights of specific performance subject to limitation of law against the Petitioner no.2. I say that at no stretch of imagination the said bungalows can be construed as a Flat within the meaning of Sec. 2(a-1) of Ownership of Flats and Apartment act. I say that the bungalows is not part of any building and is an independent structure. I say that the said bungalow is neither a block nor a building consisting flats as contemplated u/s. 3 of the said act. I say that on going through the scheme of the said act it is clear that the legislature intended to apply the provisions of the said act to a Flat as defined u/s. 2(a-1) of the said act to a building consisting Flat or a Block only. I say that the definition of Flat is an inclusive definition and therefore it has to be read in that sense only. I say that the bungalow does not form part of any building but it is an independent structure and therefore it cannot be termed as Flat within the meaning of Sec. 2(a-1) of said act and therefore the provisions of the said act is not applicable in facts of present case. I say that in view of the aforesaid facts the said impugn order is liable to quashed and set aside."

Respondent No.1 filed an Affidavit-in-Reply and had inter alia contended as follows, viz.

"The Petitioner No. 2 floated a scheme for construction of 36 Bungalows and the said bungalows are constructed sometime in the period from 1973-1978 in a manner such that it comprises of 12 structures/buildings each of which comprises of 3 bungalows in one conjoint structure. I crave leave to refer and rely upon the photographs of the bungalows evidencing that most of them are

conjoint structure without any walls separating the said bungalows in one given structure/building, as and when produced.”

It is not in dispute that the contentions taken by the Petitioners in the Additional Affidavit were never raised before Respondent No.2 hence Respondent No.1 did not have occasion to deal with these contentions and naturally Respondent No.2 did not have occasion to consider them. However, the Petitioners’ entire basis to assail the Impugned Order was effectively based on the contentions raised in the Additional Affidavit. The Petitioners’ challenge to the Impugned Order and based on which arguments were advanced were essentially fourfold (i) that the Agreements for Sale were in respect of bungalows and not flats (ii) that bungalows are independent standalone structures and not buildings as contemplated in Section 2(a-1) of MOFA (iii) that a flat under Section 2(a-1) of MOFA must necessarily form part of a building and (iv) res judicata.

Submissions of Mr. Fatangare on behalf of the Petitioners

6. Mr. Fatangare learned counsel submitted that Respondent No.2 did not have jurisdiction to entertain an Application for deemed conveyance since the Agreements for Sale pertained to the sale of bungalows and not flats. He then invited my attention to the definition of flat under Section 2(a-1) of MOFA to submit that a flat, as defined therein must necessarily form part of the building. In support of his contention, he placed reliance upon the following two judgments viz., (i) Nahalchand Laloochand Pvt. Ltd. Vs. Panchali Co-op Housing Society Ltd. (2010) 9 SCC 536 and (ii) Dr. K. R. Agarwal Vs. Balkrishna Jawar 1972 Mh.L.J. 474 . He then placed reliance upon the meaning of bungalow as given in the Concise Oxford English Dictionary (12th Edition) and Advanced Law Lexicon (6th Edition) to submit a bungalow was an independent premises itself as a building and not one which formed part of a building. He therefore submitted that bungalows being independent structures, which did not form part of a building could never therefore be construed to be flats as contemplated under MOFA. Mr. Fatangare then submitted that the legislature had, in its wisdom by an amendment in the year 1971, included “Apartment” to the definition of flat but had not included bungalow. He therefore submitted that the definition of flat under Section 2(a-1) of MOFA specifically excluded bungalow/s. He submitted that since the Agreements for Sale were in respect of bungalows and not flats, an Application under Section 11 of MOFA for deemed conveyance was itself not maintainable and consequently Respondent No.2 did not have jurisdiction to entertain the Application for deemed conveyance.

7. He submitted that even though the issue of jurisdiction had not been raised at any stage before Respondent No.2, the same could be raised for the first time in these proceedings since the same went to the root of the matter. In support of his contention that an issue of jurisdiction could be raised at any stage, he placed reliance upon the judgments in the case of Saurav Jain & Anr. Vs. A.B.P. Design & Anr. 2021 SCC Online SC 552 and Navratan Premises Co-op Society Ltd. Vs. Ms. Padma B. Shivalkar Writ Petition No.2558 of 2012. He submitted that

Agreements for Sale which reserved the right of the promoter on the balance FSI could not be adjudicated in proceedings under Section 11(3) of MOFA. He placed reliance upon a judgment of this Court in the case of Ganga Bhaskar Builders & Ors. Vs. Competent Authority and DDR, Thane & Anr. 2015 (4) Mh.L.J. 721. He additionally submitted that the impugned order recorded that Respondent No.1 had agreed to pay Rs.78,00,000/- for transfer of the said land which made evident the fact that Respondent No.1 accepted that the Agreements for Sale would not be governed by MOFA. He thus submitted that the issue of jurisdiction went to the root of the matter and the Impugned Order were therefore liable to be set aside on this ground alone.

8. Mr. Fatangare then submitted that when the words of a statute were plain, unambiguous and reasonably susceptible of only one meaning, then that one meaning alone must be given, irrespective of the consequences. He submitted that Courts are not concerned with the policy involved or the results which may follow from giving effect to the language as used in the statute in question. In support of his contention, he placed reliance upon a judgment of the Hon'ble Supreme Court in the case of Nathi Devi Vs. Radha Devi Gupta (2005) 2 SCC 271 . He submitted that the definition of flat under MOFA was thus required to be construed plainly as defined and not expanded to included what the legislature did not intend.

9. Mr. Fatangare submitted that the burden of proving how in the facts of the preset an Application under Section 11(3) of MOFA was maintainable would be upon Respondent No.1. He submitted that only when Respondent No.1 had discharged that burden, would the burden shift to the Petitioners to prove otherwise. He submitted that Respondent No.1 had not discharged this burden and the entire Application for deemed conveyance was silent as to how a bungalow would fall within the definition of a flat. He therefore submitted that in the facts of the present case, Respondent No.1 would have to file a Suit for specific performance and not an Application for deemed conveyance under Section 11(3) of MOFA. Mr. Fatangare also placed reliance upon a judgment of the Hon'ble Supreme Court in the case of Notified Area Committee Nangal Township Vs. Bhakra Management Board Chandigarh and Ors. (1999) 6 SCC 372 to submit that bungalows in one row separating each other cannot be construed as one building.

10. Mr. Fatangare then pointed out that Respondent No.2 had specifically recorded in the order dated 26th July 2017 (Second Order) that the Agreements for Sale had not been made as per the provisions of MOFA. He therefore submitted that this finding operated as res judicata between the parties. He submitted that Respondent No.2 could not have in the face of this finding, passed the impugned order and arrived at a conclusion which was contrary to the findings recorded in the Second Order. Basis this Mr. Fatangare therefore submitted that the Impugned Order was thus bad in law and was required be set aside on this ground alone. Submissions of Mr. Kanade on behalf of Respondent

No.1

11. At the very outset, without accepting that the contentions raised in the Additional Affidavit constituted an issue of jurisdiction, Mr. Kanade submitted that the issues were never raised before Respondent No.2. He submitted that the challenge to the jurisdiction of Respondent No.2 was one which did not even find a mention in the Writ Petition and was raised for the first time only in the Additional Affidavit filed by the Petitioners. He submitted that the same was entirely an afterthought and nothing more. He submitted that had the Petitioners raised these contentions before Respondent No.2, Respondent No.1 would have adequately dealt with them. He submitted that the contentions raised in the Additional Affidavit were not only an afterthought but also factually erroneous and deliberately misleading.

12. Without prejudice to above, Mr. Kanade then invited my attention to definition of promoter under Section 2(c) of MOFA which reads thus, viz.

"2(c) ["promoter" means a person and includes a partnership firm or a body or association of persons, whether registered or not] who constructs or causes to be constructed a block or building of flats [or apartments] for the purpose of selling some or all of them to other persons, or to a company, co-operative society or other association of persons, or to a company, co-operative society or other association of persons, and includes his assignees; and where the person who builds and the person who sells are different persons, the term includes both;"

From the above, learned counsel pointed out that a promoter would include a partnership firm who constructs or causes to be constructed a block or building of flats or apartments. He then invited my attention to the Affidavit-in-Reply filed by Respondent No.1 and pointed out therefrom that what the Petitioners had in fact constructed were 12 structures/buildings, each of which comprised of three bungalows in one conjoint structure without any walls separating the said bungalows in one given structure/building. He submitted that each of the 12 structures/buildings were in essence a block of three units each, all of which were in one common layout. He submitted that these units were not independent standalone structures as contended by the Petitioners but why in fact a block of three structures. Mr. Kanade submitted that it was crucial to note that there was no denial to what has been stated by Respondent No.1 in the Affidavit-in-Reply. He thus submitted that the Petitioners would squarely be governed by the definition of promoter under Section 2(c) of MOFA and consequently liable for all the obligations which are required of a promoter under MOFA.

13. Mr. Kanade then invited my attention to the Agreement for Sale annexed to the Petition and pointed out therefrom that the same in terms provided viz.,

10. It's agreed that after all bungalows on the said property as per the layout plans attached herewith once sold out to various acquirers and as and when the same are nearing completion the Builders agree to transfer the property in the name of a Private Limited Company or a Co- operative Housing Society or

Association of Apartment Owners and at that stage the Acquirer together with the other acquirers of these bungalows agree to sign the required papers and documents for the above purpose.

Basis the above, Mr. Kanade submitted that there could be no manner of doubt that under the Agreements for Sale, the Petitioners had unconditionally undertaken to convey the Petitioners' right, title and interest in the said land to the entity which was to be ultimately formed by the purchasers. He submitted that there could therefore be no manner of doubt that in the facts of the present case (a) that the bungalows were not independent standalone structures as contended by the Petitioners but that they were a block of flats/apartments (b) that they were developed and sold as part of one common larger layout (c) that the Petitioners were Promoters as defined under MOFA and (d) that the Promoters had specifically undertaken to convey the said land in the manner contemplated under MOFA. Thus, he submitted that said Agreements for Sale was squarely governed by the provisions of MOFA.

14. Mr. Kanade then submitted that the Petitioners' contention that the said bungalows would not fall within the definition of flat under MOFA was both factually erroneous and legally untenable. He submitted that the definition of flat under MOFA was not an exhaustive definition as contended by the learned counsel for the Petitioners. He submitted that for the purposes of MOFA the definition of flat must be construed broadly and interpreted keeping in mind the object and purpose for which MOFA was enacted. He submitted that to read the definition of flat in a narrow and restrictive manner, would be to defeat the very object and purpose of MOFA. He submitted that in the present case, the bungalows were not independent standalone structures as sought to be portrayed by the Petitioners but in fact formed part of a block of 12 buildings/structures, each of which comprised of three units each without any walls separating the said bungalows/units in one structure/building. He submitted that the impression which was sought to be created by the Petitioners was that the said bungalows were independent standalone bungalows and were sold along with the land, on which, they were standing and/or appurtenant to as independent plots was thus plainly false and misleading. He reiterated that the bungalows were all part of one the common layout, which fact was crucial for the purposes of MOFA. He submitted that the Petitioners were deliberately attempting to take advantage of the nomenclature used in the Agreements for Sale in an attempt to resile from their obligations under the Agreements for Sale. He submitted that each bungalow/unit was (i) a separate and self-contained set of premises (ii) formed part of a building/block and (iii) was constructed and sold for residential purposes. He thus submitted that the requirements of a flat as defined under Section 2(a-1) of MOFA and the criteria laid down in the case of Nahalchand Laloochand Pvt. Ltd. (supra) were squarely met.

15. He then, without prejudice to the above contention, submitted that even assuming that the bungalows were independent standalone structures that by

itself would not mean they were not buildings as contemplated under Section 2 (a-1) of MOFA. He submitted that all the structures within the same layout would be buildings for the purposes of Section 2(a-1) of MOFA and flats if they contained the basic set of amenities for living. He submitted that it was immaterial if the structures were independent buildings/structures/blocks or different wings of the same building/structures/blocks as long as they were part of the same layout and contained the basic set of amenities. He submitted that it was commonplace especially in the city of Mumbai that one layout would have several buildings/structures/blocks which did not mean that MOFA would not be applicable to such a layout or that the independent structures within the same layout were not buildings. He submitted that if such an interpretation was to be accepted, the same would defeat the very object and purpose of MOFA. He submitted that the contention of the Petitioners that the said bungalows fell foul of the definition of flat under MOFA was thus entirely misconceived and untenable both in fact and in law. He submitted that the only reason for which the Petitioners were attempting to resile from their statutory obligations was because the Petitioners wanted to avail and/or exploit the FSI on the said plot to carry out further construction. He submitted that this was entirely outside the scope of the jurisdiction of Respondent No.2 and something which had to be adjudicated if at all by a Civil Court.

16. Mr. Kanade, then submitted that the Petitioners' contention of res judicata was also entirely misplaced. He submitted that Respondent No.1 had filed the Third Application for deemed conveyance pursuant to the liberty granted by Respondent No.2 to cure the defects in the previous Application. He submitted that the Petitioners' contention that the Third Application was barred by principals of res judicata, or that Respondent No.2 had concluded that the Agreements for Sale were not in accordance with the provisions of MOFA were incorrect both in fact and in law. He then invited my attention to the order passed on the Second Application and pointed out that the observation that the Agreements of Sale had not been made as per the provisions of MOFA was entirely misplaced. He pointed out that the said observation was made since the Respondent had not annexed/submitted the relevant documents to demonstrate/establish how the right, title and interest in the property had devolved upon the Petitioners. He submitted that it was only in this context that the said observation came to be made. He submitted that by the said order, Respondent No.1 was specifically granted liberty to file a fresh Application, which is what Respondent No.1 did after getting all the requisite material. Thus, Mr. Kanade submitted that the Petitioners' contention of res judicata or that Respondent No.2 had conclusively determined that said Agreements were not as per MOFA, was plainly incorrect and deliberate misleading of the order passed on the Second Application.

17. Mr. Kanade then submitted that Petitioners' real reason for challenging the Impugned Order was that the Petitioners' were seeking to claim the benefit of the balance FSI of the said land. He submitted that this was evident from a

perusal of the Agreements for Sale as also the averments made in the Writ Petition. In support of his contention, he invited my attention to paragraph Nos.21 and 29 of the said Agreement for Sale, which read thus: -

"21. The Builders shall be entitled to consume any balance floor space index that shall remain unutilised after all the bungalow shall have been constructed on the piece of land described in the First Schedule hereunder written as per the scheme drawn by the Builders or as may be amended by them. They are also entitled to use the balance floor space index in any adjacent plot as permitted by Bombay Municipal Corporation.

29. The Builders reserve to itself the right to be used in their absolute discretion to alter, amend, the layout and/or the building plan in respect of any one or more of the bungalows remaining unsold and F.S.I. remaining unutilised by construction of flats or multistoried apartments shopping centre, bank co-operative store etc. and the Acquirer shall not be entitled to object to amended lay-out development nor concerning to his allotments."

He pointed out that there was no dispute as to the obligations of the Petitioners to convey the said land to Respondent No.1 nor was it the contention of the Petitioners that the Application for deemed conveyance was incomplete or lacking in any manner. He therefore submitted that the appropriate remedy for the Petitioners was to file a Civil Suit to claim the balance FSI if they so desired. In support of his contention, he placed reliance upon a judgment of this Court in the case of Angeline Randolph Pereira and Ors. Vs. Suyog Industrial Estate Premises Co-operative Society Ltd. and Ors. 2018 SCC OnLine Bom 687 . He thus submitted that the present Petition was therefore entirely misconceived, and the objection taken for the first time in the Additional Affidavit that Respondent No.2 did not have jurisdiction to pass the Impugned Order was untenable both in fact and in law.

Submissions of Mr. Hemant Haryan on behalf of Respondent No.2

18. Mr. Hemant Haryan on behalf of Respondent No.2 essentially adopted the submissions of Mr. Kanade and defended the Impugned Order. He submitted that Respondent No.2 had the requisite jurisdiction to pass the Impugned Order and had done so in accordance with law. He submitted that the Impugned Order had been passed since Respondent No.2 was satisfied that all the requisite compliances for a deemed conveyance had been met by Respondent No.1. He therefore submitted that Respondent No.2 had acted within the scope of his jurisdiction. He submitted that the Petitioners' claim for FSI was not one which could have been either adjudicated upon or decided by the Competent Authority. He submitted that this claim/right would have to be urged in an appropriate civil proceeding before a Civil Court and not by way of Writ Petition. He submitted that passing of the order of deemed conveyance would not, in any manner, prejudice the Petitioners' civil rights and that the Petitioners were always at liberty to urge them before the Civil Court in appropriate proceedings. He

submitted that the law in this regard was now very well settled and in support of his contention, he placed reliance upon the following judgments:-

i. Ramniklal Tulsidas Kotak & Ors. Vs. M/s. Varsha Builders and Ors. AIR 1992 BOMBAY 62

ii. Mazda Construction Company & Ors. Vs. Sultanabad Darshab CHS Ltd. & Ors. 2013(2) ALL MR 278

iii. Farhat Coop. Housing Society Ltd. Vs. M/s. Malkani Enterprises & Ors. 2013(3) ALL MR 210

iv. M/s. Shree Chintamani Builders Vs. State of Maharashtra & Ors. 2016 SCC Online Bom 9343

v. Angeline Randolph Pereira & Ors. Vs. Suyog Industrial Estate Premises Cooperative Society Ltd. & Ors. 2018(6) ALL MR 729

vi. Mahanagar Housing Partnership Firm & Ors. Vs. District Deputy Registrar of Coop. Societies (Pune City) Pune & Ors. 2018 SCC Online Bom 19563

vii. Bhalchandra Gaurishankar Pandya & Ors. Vs. State of Maharashtra & Ors. Writ Petition No.2948 of 2015

viii. Sukruti Apartment Coop. Soc. Ltd. Vs. Tirumala Developers & Ors. 2022 SCC Online Bom 568

Reasons and findings

19. I have heard learned counsel, considered the case laws cited and find that the present Writ Petition is thoroughly misconceived and deserves to be dismissed. The Petitioners entire challenge to the Impugned Order is premised upon a skewed and myopic reading of the provisions of MOFA and the Agreements for Sale and nothing more. The contention that the said Agreements for Sale pertain to bungalows and not flats and thus beyond the jurisdiction of Respondent No.2 is untenable for the following reasons, viz.,

A. First, the Petitioners have, in support of their contention that a challenge to jurisdiction can be raised at any stage of the proceedings, relied upon two judgments i.e. (i) Saurav Jain & Anr. (supra) and (ii) Navratan Premises Co-op Society Ltd. (supra). However, in both the said judgments, the challenge to jurisdiction was raised as a pure question of law and did not involve any determination of facts, in the present case, it is entirely the converse. The Petitioners and Respondent No.1 are at serious variance as to the factual position qua the bungalows mentioned in the Agreements for Sale. The Petitioners' entire argument in support of the contention that Respondent No.2 did not have the requisite jurisdiction is based entirely upon the dictionary meaning of bungalows read with layout plan. Based on this, it is the Petitioners' contention that the bungalows constructed sold under the respective Agreements for Sale were independent standalone structures and did not form part of a building.

Respondent No.1, on the contrary, has set out in its Affidavit-in-Reply that what the Petitioners have in fact constructed and sold were 36 units/bungalows housed in 12 buildings/structures, each of which comprised of 3 units/bungalows, all of which were within one common layout. Thus, the Petitioners having constructed a block of flats/apartments were squarely covered by the definition of promoter under Section 2(c) of MOFA. Therefore, by no stretch of imagination can it be suggested that the question as to jurisdiction in the present case is a pure question of law as contended by the Petitioners. In view of this, it was incumbent upon the Petitioners to have raised this challenge before Respondent No.2.

B. Second, the Petitioners' contention that (i) bungalows are independent standalone structures and not buildings as contemplated in Section 2(a-1) of MOFA and (ii) that a flat under Section 2(a-1) of MOFA must necessarily form part of a building is nothing more than a red herring. The Petitioners have premised their contention solely based upon the nomenclature bungalow used in the said Agreements for Sale read with the layout plan and nothing more. Respondent No.1 has in its Affidavit-in-Reply, supported with photographs set out that what has in fact been constructed and sold by the Petitioners were not independent standalone structures but were in fact three conjoint units, each of which formed part of twelve buildings/structures. There is no denial to this. Thus the very premise, upon which the Petitioners have approached this Court is wrong.

C. Third, even assuming that the said bungalows were independent standalone structures as contended by the Petitioners, that fact alone would not be enough to exclude the same from the provisions of MOFA if they were all constructed and sold as part of one common layout. In the present case, it is not even the Petitioners' contention that the said bungalows were not part of the same layout or that they were sold as individual sub plots. Additionally, there is nothing in the definition of flat or the judgment of the Hon'ble Supreme Court in the case of Nahalchand Laloochand (supra) to even remotely suggest that a single standalone structure would not be a building for the purposes of Section 2(a-1) of MOFA. Before proceeding further, it is crucial to note that one of the questions which fell for consideration before the Hon'ble Supreme Court in the case of Nahalchand Laloochand (supra) was "(i) whether stand alone "garage" or in other words "garage" as an independent unit by itself is a "flat" within the meaning of Section 2(1-a) of MOFA?". It was in this context that the Hon'ble Supreme Court held as follows, viz.

"34. Before we analyse Section 2(a-1), if we ask what the term "flat" means, apart from the statutory definition, the reply must be that though it has no uniform meaning but in its natural and ordinary meaning a "flat" is a self-contained set of premises structurally divided and separately owned for dwelling. Concise Oxford English Dictionary (10th Ed., Revised) explains "flat"-a set of rooms comprising an individual place of residence within larger building.

Webster's Comprehensive Dictionary, International Edition (Vol. 1) explains "flat" - (1) a set of rooms on one floor, for the occupancy of a family: apartment. (2) A house containing such flats.

35. In Stroud's Judicial Dictionary (5th Edn., Vol. 2), a reference has been made to the observations of Somervell, L.J., in *Murgatroyd v. Tresarden* and it is stated: the natural meaning of the word "flat" is a separate self-contained dwelling. In *Words and Phrases*, Permanent Edition (West Publishing Co.), Vol. 17, while dealing with the term "flat" generally, it is stated:

"The word 'flat' has no technical, legal meaning, so that a court can pronounce absolutely one way or the other. A building is a 'flat' or not, and, where the testimony is conflicting, the question is one of fact."

38. A set of premises is called self-contained if it has the following basic amenities available: (a) sanitary; (b) washing, bathing; and (c) other conveniences (cooking, etc.) for the use of its occupant(s) although as provided in the Explanation appended to Section 2(a-1) such provision may be common to two or more sets of premises. The nature of construction and user are important features of this definition clause. A unit or accommodation to fit in the definition of "flat" must meet twin test, namely: (i) self-contained test, and (ii) user test. The other predominant characteristic is that it must form a part of a building. Crucially, for the relevant premises to be a "flat":

- It must be separate and self-contained premises;
- It must form part of a building;
- It must be used or intended to be used for any of the uses, namely- residence, office, showroom, shop, godown or for carrying on any industry or business."

In the present case, it is not even the contention of the Petitioners that the said bungalows were not self-contained. The only contention is that since the bungalows were independent standalone structures, they were not buildings as contemplated under Section 2(a-1) of MOFA and consequently, fell foul of the definition of flat under MOFA. The Petitioners interpretation of Section 2(a-1) is really missing the wood for the trees. To accept the Petitioners' contention in the facts of the present case would result in the absurd conclusion that even though the said bungalows met both (i) the self-contained test as also (ii) the user test, the same would be excluded from the definition of flat only because the structure in which they were contained was independent and standalone. Such an interpretation would be in complete derogation of the provisions of MOFA as also the very object and purpose for which it is enacted. The definition of flat must be construed keeping in mind the very object and purpose, for which, MOFA was enacted and not to derogate from it. Therefore, I am unable to accept the Petitioners' contention that the definition of flat is an exhaustive one. The definition of flat must be construed broadly and keep in mind the purpose for

which MOFA was enacted and not in the narrow and pedantic way the Petitioners would like me to. I find that in the facts of the present case the Petitioners' reliance upon the judgment of the Hon'ble Supreme Court in the case of Nathi Devi (supra) is entirely misplaced.

D. Additionally, another factor which to my mind is crucial and has been completely glossed over is that the definition of flat under MOFA specifically includes "apartment". Apartment has been defined in the Maharashtra Apartment Ownership Act, 1970 as follows , viz.,

"apartment" whether called block, chamber, dwelling unit, flat, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in a building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified;"

While there is no manner of doubt that the Agreements for Sale use the nomenclature bungalow, the recitals to the said Agreements for Sale specifically record viz.

"AND WHEREAS the Builders have agreed to register a Pvt. Ltd. Co. or a Co-operative Housing Society, or Association of Apartment owners and transfer the property in the name of the Registered Co. or a Co-operative Housing Society, or Association of Apartment owners and allot the bungalows and the land appurtenant thereto to the intending Acquirer of bungalows/Apartments to be constructed by the S.M. Builders as aforesaid in accordance with the layout of scheme in Annexure 'A' as aforesaid inspection whereof has been taken by the Acquirer prior to his signing this agreement and on the Acquirer contributing towards the cost of the construction of the bungalows and of the land on which the said bungalow will be situated and on the Acquirer agreeing to pay proportionate costs for and common facilities as set out in annexure 'B' hereto."

Respondent No.1 has in its Affidavit-in-Reply along with photographs adequately demonstrated that what has in fact been constructed and sold are 36 units in 12 blocks comprising of 3 units each. The said units though called bungalows under the respective Agreements for Sale would clearly fall within the definition of apartment and thus be included in the definition of flat under Section 2 (a-1) of MOFA. The Petitioners have placed reliance upon a judgement of the Hon'ble Supreme Court in the case of Notified Area Committee Nangal Township (supra) to contend that bungalows in one row separating each other cannot be construed as one building. The said judgment has absolutely no applicability to the facts of the present case since the term "building" was being interpreted therein for the purpose of assessment of annual rental value under the provisions of Punjab Municipal Act, 1911. It was in this context that the Hon'ble Supreme Court, in

the facts of that case, held that since each of the bungalows and quarters had separate boundary was and were compact unit with distinct and separate house numbers, the same were liable to be independently assessed and not clubbed as one building for the purposes of assessment.

E. Crucially, in a case like the present one, when the nomenclature used in the Agreement for Sale could present a doubt as to the applicability if MOFA, it is imperative that the Agreement for Sale be read as a whole to see whether or not the same would in fact be covered by MOFA. In the facts of the present case there is no dispute that the Petitioners had (a) constructed and sold the 36 bungalows (b) that the 36 bungalows were all part of one common layout (c) that the Petitioners were the owners of the entire land which formed part of the common layout and (d) that the terms of the said Agreements for Sale in terms provided that the Petitioners would convey the said land to the ultimate entity to be formed by the bungalow purchasers. Given this, I find that there is not even a modicum of doubt that the said Agreements for Sale were squarely covered by MOFA. In these facts to permit the Petitioners to resile from their obligations under MOFA based solely on the nomenclature used in the Agreements for Sale would amount to putting a premium on dishonesty.

F. Finally, the Petitioners' contention of res judicata is also entirely misplaced. The findings of Respondent No.2 that the Agreements were not as per MOFA were rendered in the context that the Application filed by Respondent No.1 was not complete and did not annex all the relevant documents/Agreements, by which, ownership of the said land devolved upon the Petitioners. It was to enable Respondent No.1 to complete the said Application that Respondent No.2 granted liberty to file the same afresh. It was in the background of these facts that the Third Application for deemed conveyance came to be filed. In any event, it is not even the Petitioners' case that the Third Application was in any manner lacking and/or incomplete. The only contention taken as already noted and dealt with above was on the nomenclature "bungalow" used in the Agreements for Sale. The same has already been dealt with adequately above. In view thereof, there is no merit in the Petitioners' contention that the impugned order was barred by the principles of res judicata. Such an interpretation is entirely misconceived and devoid of merit.

20. In the circumstances more, particularly set out hereinabove, I therefore have no hesitation in dismissing the present Writ Petition with cost of Rs.1,00,000/- to be paid to St. Jude India ChildCare Centres, details of which are as follows;

Name	St.	Jude	India	ChildCare Centres
A/c. No.			02402320004130	
Bank Name			HDFC Bank Ltd.	
Branch	Sandoz	House,	Dr.	AB

Road, Worli,

Mumbai 400 018

RTGS/IFSC/NEFT Code

HDFC0000240

21. Writ Petition is accordingly dismissed.