

(2025) 04 SC CK 0303

In the Supreme Court Of India

Case No : Civil Appeal No. 4650 Of 2025 (@ Special Leave Petition (Civil) No.26654 Of 2023) With Contempt Petition (C) No. 684 Of 2024

M/s Faime Makers Pvt. Ltd

APPELLANT

Vs

District Deputy Registrar, Co Operative Societies (3), Mumbai & Ors

RESPONDENT

Date of Decision : 01-04-2025

Acts Referred:

Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 — Section 5, 11

Citation : (2025) 04 SC CK 0303

Hon'ble Judges : Vikram Nath, J;Prasanna B. Varale, J

Bench : Division Bench

Advocate : Dama Seshadri Naidu, Aman Vachher, Amar Khanna, Dhiraj, Ashutosh Dubey, Anshu Vachher, Abhiti Vachher, Akshat Vachher, Nandni Sharma, Amit Kumar, Jasvinder Choudhary, M/S. Vachher And Agrud, Piyush Dwivedi, Aaditya Aniruddha Pande, Abhikalp Pratap Singh, Aagam Kaur, Utkarsh Kumar, Shubhangi Agarwal, Kartikey, Aditya Bharat Manubarwala, Sarvagnya P Trivedi, Bharat Thakorlal Manubarwala, Tanishka Grover

Final Decision : Allowed

Judgement

Vikram Nath, J

1. Leave granted.

2. The appellant has assailed the correctness of the judgment and order dated 10.11.2023, passed by the High Court of Bombay, whereby the appellant's Writ Petition No. 8186 of 2022, assailing the correctness of the order dated 05.10.2021 passed by the District Deputy Registrar, Co-operative Societies, Mumbai/Competent Authority, was dismissed. By the order dated 05.10.2021, the competent authority had allowed Application No. 101 of 2021, filed by Prakash Apartment Co-operative Housing Society Limited (respondent No.2-Society) under Section 5/11 of the Maharashtra Ownership of Flats (Regulation of

the Promotion of Construction, Sale, Management and Transfer) Act, 1963 "1963 Act", directing the execution and registration of a unilateral deed of assignment with respect to 1321.36 square meter area of land and the building situated thereon along with 198.20 square meter on the recreational ground in the name of respondent No.2-Society.

3. Briefly stated, the facts relevant for the present controversy are as follows:

3.1. The subject land of the dispute comprises Survey No. 22, Hissa No. 1, corresponding to C.T.S. No. 75/B, admeasuring 1,321.36 square meters, along with 198.20 square meters in the Recreational Ground, totalling 1,519.56 square meters, out of a larger parcel of 2,752.9 square meters, situated at Bandivali Hill Road, Jogeshwari (West), Mumbai – 400102, within the Village Bandivali, Taluka Andheri.

3.2. The larger property, which includes the subject land, was transferred to Byramjee Jeejeebhoy Private Limited (hereinafter, "BJPL") through a Deed of Conveyance dated 24.07.1951, executed between Nanabhoy Byramjee Jeejeebhoy and BJPL

3.3. On 29.10.1952, BJPL, as the lessor, executed an Indenture of Lease in favour of Ramkishor Singh Kunjbihari (respondent No.3) as the lessee. Subsequently, respondent No.3 granted development rights over the leased land to M/s Prakash Builders (respondent No. 4).

3.4. Respondent No.4 constructed an unauthorized building on the land, without approved plans, comprising approximately 27 flats. These flats were sold to various purchasers, who later formed respondent No.2-Society.

3.5. On 07.07.2010, BJPL executed a Deed of Conveyance in favour of the appellant, whereby it sold its right, title, interest, and share in the larger property—including the subject land—to the appellant. Consequently, the appellant became the landowner as per the provisions of the 1963 Act.

3.6. On 06.09.2012, the legal heirs of the late Ramkishor Singh (respondent No. 3) filed a suit against the appellant and BJPL. The dispute was eventually settled through Consent Terms, wherein the parties agreed to divide the larger property into two portions.

3.7. Pursuant to the Consent Terms, a Deed of Surrender of Leasehold Rights was executed on 30.12.2012 between the appellant and respondent No.3. Through this deed, the appellant surrendered 3,596 square meters of land from the larger property in favour of respondent No.3, while respondent No.3 relinquished his leasehold rights over 2,786 square meters in favour of the appellant. As a result, the appellant became the owner of 2,768 square meters of land within the larger property.

3.8. The respondent No.2-Society applied for a Unilateral Certificate of Deemed Conveyance under Section 11 of the 1963 Act before the Competent Authority

which was registered as Application No.53 of 2020.

3.9. By an order dated 22.02.2021, the Competent Authority dismissed the respondent No.2-Society's application, observing that the Society was eligible to seek the relief of unilateral conveyance of assignment of leasehold rights. The application was also rejected due to legal uncertainties and complications regarding the identity of the land's promoter and on account of transfers. The order directed that the parties should first seek appropriate relief from a competent Civil Court, following which the Society was granted liberty to file a fresh application. This order attained finality as it was not assailed before any superior forum/Court.

3.10. Despite the Registrar's directive, the respondent No.2-Society did not approach the Civil Court to resolve the legal complications. Instead, on 24.03.2021, it submitted a fresh application to the Competent Authority, seeking a Unilateral Assignment of Leasehold Rights which was registered as Application No.101 of 2021.

3.11. On 05.10.2021, the Competent Authority passed an order granting the unilateral assignment of leasehold rights in favour of the respondent No.2-Society.

3.12. Aggrieved by this order, the appellant challenged it by filing Writ Petition No. 8186 of 2022 before the High Court of Bombay and by the impugned order dated 10.11.2023, the High Court dismissed the appellant's writ petition, leading to the present appeal.

4. We have heard Shri Dama Seshadri Naidu, learned senior counsel appearing for the appellant and learned counsel appearing for respondent No.2-Society as also the intervenors.

5. Mr. Naidu, learned senior counsel appearing for the appellant made the following submissions:

(i). The Competent Authority had dismissed the first application filed by the respondent No.2-Society under Section 11 of the 1963 Act by order dated 22.02.2021, on the finding that the issues involved were complicated and the respondent No. 2-Society ought to get the same sorted out by a competent Civil Court and only thereafter apply afresh. A further finding recorded was that no conveyance of sale could be directed. However, only conveyance of assignment of leasehold rights could be granted, but that too after sorting out of the issues. The said order dated 22.02.2021 was never assailed by the respondent No.2-Society. Respondent No.2-Society thereafter did not take any steps to approach the appropriate forum for sorting out or resolving out the issues mentioned in the order dated 22.02.2021 and instead, within a month, it moved a second application before the Competent Authority on 24.03.2021, registered as Application No. 101 of 2021, seeking relief for the unilateral assignment of leasehold rights in favour of respondent No.2-Society. The submission was that

the second application was not maintainable without the issues being resolved by the competent Civil Court as directed in the order dated 22.02.2021. The second application for leasehold rights could have been filed only after the issues resolved by the competent Civil Court. The second application was thus barred by the principle of *res judicata*, and the Competent Authority, while allowing the second application, committed a serious error in entertaining the same.

(ii). The Competent Authority is a statutory authority and would fall within the category of quasi-judicial authority as it decides the application as per the statutory provisions after providing due opportunity of hearing to the concerned parties, as such until and unless specifically provided by Statute, it would not have power of review. The order dated 05.10.2021, passed by the Competent Authority allowing Application No. 101 of 2021, clearly amounted to a review of the first order dated 22.02.2021. No power was vested in the said authority by the Statute i.e. the 1963 Act as such was without jurisdiction or authority of law.

(iii). Even on merits, the Competent Authority erred in granting the relief for unilateral assignment of leasehold rights, as the constructions made were not authorised, and no commencement certificate for raising the construction of building in question was ever obtained, and as such no benefit could be extended to the respondent No.2-Society under Section 11 of the 1963 Act for the inaction of the builder in transferring the ownership rights in favour of the members of the respondent No.2-Society.

(iv). It was next submitted that even assuming for the sake of argument that unilateral assignment of leasehold rights could be extended to the respondent No.2-Society, there was no justification for granting the same for an area of 1,361 square meter, whereas the building in question was situate, enclosed within a boundary wall, covering only 870 square meters.

(v). The High Court committed a manifest error by not correctly reading the first order of the Competent Authority dated 22.02.2021. The High Court went on the premise that the first order dated 22.02.2021 was little vague and confusing. Which was not correct in as much the first order of 22.02.2021 was very clear that the respondent No.2-Society needed to get the complications resolved by the competent Civil Court and only thereafter apply afresh for assignment of leasehold rights.

(vi). On such submissions, it was prayed that the appeal deserves to be allowed, the impugned orders deserve to be set aside, and the application No. 101 of 2021, filed by respondent No.2-Society under Section 11 of the 1963 Act before the Competent Authority, deserves to be rejected.

6. On the other hand, learned counsel for the respondent No.2-Society has made the following submissions:

(i). The High Court correctly appreciated and interpreted the first order dated 22.02.2021 to record a finding that the said order granted unconditional liberty

to the respondent No.2-Society to file a fresh application for the assignment of leasehold rights.

(ii). It was next submitted that the second order dated 05.10.2021 would not amount to a review, as it was dealing with an application seeking a distinct relief from the first application, and in view of the liberty granted, there was no question of any review. The second application was to be dealt with on its own merits, independent of the first order rejecting the first application.

(iii). It was also submitted that the issue relating to the demarcation of boundary, with respect to the building in question covering only 870 square meter was although raised before the High Court but was completely unsubstantiated, as no supporting documents were filed in that regard. The report of the City Survey Officer which was subsequent to the judgement of the High Court cannot be looked into or relied upon by this Court in this appeal.

7. Having considered these submissions and having perused the order dated 22.02.2021, we have no hesitation to hold that there was no unconditional liberty granted to respondent No.2-Society to apply for the unilateral assignment of leasehold rights. The order dated 22.02.2021 is very clear that complications had arisen because of various transactions inter se parties at different points of time. The relevant facts have already been noted in the earlier part of this judgment.

8. The relevant extract of the order dated 22.02.2021, whereby the application was dismissed for the reasons given therein, with liberty to apply afresh after sorting out the issues, is reproduced hereunder:

"...Therefore, the petitioner has to appeal to the appropriate court in this regard. As there is a legal complication in this case, the authority will not be able to make a human transfer in the name of the applicant society. Due to this, the applicant society should only demand assignment of leasehold claim and also the competent court should resolve the legal issues related to the transfer of the name of the respondent No.3 of the rate of income.

It is not possible to transfer the leasehold right of the said property in the name of the applicant Society unless these matters are settled. Therefore, I am convinced that after the settlement of these matters, the applicant should be allowed to re-apply for the human transfer of the leasehold rights of the said property and the application submitted by the applicant Society should be rejected."

9. A plain reading of the above findings of the Competent Authority in its order dated 22.02.2021 leaves no manner of doubt that respondent No.2-Society could approach the Competent Authority afresh for the unilateral assignment of leasehold rights only after getting the complications sorted out before the appropriate Court. The order clearly indicates that the competent authority could not grant leasehold rights under the existing set of facts until and unless the

complications were sorted out.

10. There is no explanation from the side of respondent No.2-Society with respect to the above findings of the Competent Authority recorded in the order dated 22.02.2021, as to why the same was not challenged before a superior forum. Once the said order has been accepted by the parties and has attained finality, the Competent Authority would not have jurisdiction to entertain a second application contrary to the findings and directions given by the Competent Authority in the first order.

11. It has been settled by this Court that the principle of *res judicata* applies to and binds quasi-judicial authorities. This Court in *Ujjam Bai vs. State of U.P.* 1962 SCC OnLine SC 8 has taken the view that principles of *res judicata* equally apply to quasi-judicial bodies. Whenever a judicial or quasi-judicial tribunal gives a finding on law or fact, its findings cannot be impeached collaterally or in a second round and are binding until reversed in appeal or revision or by way of writ proceedings. The characteristic attribute of a judicial act or decision is that it binds, whether right or wrong. Thus, any error, either of fact or law, committed by such bodies cannot be controverted otherwise by way of an appeal or revision or a writ unless the erroneous determination relates to the jurisdictional matter of that body.

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

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

14. In our opinion, the High Court erred in giving a different interpretation to the above text of the first order dated 22.02.2021. The High Court had extracted the above findings, conclusions, and directions in its impugned order but still moves on to hold that unconditional liberty was given to respondent No.2-Society, which in our opinion, was not correct.

15. Without further burdening this order by entering into the other issues, we are satisfied that the impugned order cannot be sustained. The second application filed by the respondent No.2-Society under Section 11 of the 1963 Act before the Competent Authority, being Application No. 101 of 2021, deserves to be dismissed. However, the liberty granted in the first order of the Competent Authority dated 22.02.2021, while rejecting Application No. 53 of 2020, would

still be available to the respondent No.2-Society but only after getting the complications resolved/sorted out before the appropriate Court/Forum.

16. Accordingly, the appeal is allowed, impugned order of the High Court is set aside, the writ petition would stand allowed, and the order dated 05.10.2021 passed by the Competent Authority is quashed.

17. In view of the above findings, the Contempt Petition (C) No. 684 of 2024 would not require any further consideration. It is accordingly disposed of.

18. Pending applications, if any, stand disposed of.