IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8287 OF 2026

Sterling Apartment Co-operative Housing Society Ltd. ***...Petitioner***

: Versus :

The Competent Authority and District Deputy Registrar, Co-operative Societies, Mumbai City (3) & Ors. ***...Respondents***

Mr. G.S Godbole, Senior Advocate *with Mr. Dhruv S. Malhotra, Ms. Chandrakala Singh and Mr. Devansh Malhotra, for the Petitioner.*

Mr. Rohan Savant *i/b Ms. Mariyah Khatkhatay, for Respondent No. 30(a), 30(b) & 32*

Mr. Rohan Savant *i/b Mr. Umar Khan, for Respondent No. 31*

Mr. Vincent D'silva *with Mr. Ved Mishra for Respondent Nos. 3 to 7.*

Mr. Suresh Sabrad *with Ms. Jessy Payne, Mr. Pratik Sabrad, Mr. Amey Sawant, Ms. Neha Parte and Ms. Eshwari Kuldalkar for Respondent Nos.2(a), 2(d), 2(e) and 2(f).*

Mr. R.A. Shaikh *with Mr. Hasan Sayed, for Respondent No.8.*

Mr. P.G. Sawant, *AGP for State.*

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

CORAM: SANDEEP V. MARNE, J.

JUDGMENT RESD ON : 29 OCTOBER 2026.

JUDGMENT PRON. ON : 5 NOVEMBER 2026.

JUDGMENT :

1) By this Petition, the Petitioner-Society has challenged order dated 28 March 2016 passed by the District Deputy Registrar, Co-operative Societies (3), Mumbai and Competent Authority **(Competent Authority)** rejecting its application for issuance of certificate of unilateral deemed conveyance of the land and the building.

2) Petitioner is a co-operative housing society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**) in respect of the building constructed by Respondent No.29-Developer on land bearing CTS. No. 6519 to 6523 (Part), Village, Kolekalyan, Taluka-Andheri in Mumbai Suburban District. The building comprises of 38 flats and 7 shops. Members of the Petitioner have purchased their respective flats/units from Respondent No.29 by executing Agreements for Sale under Section 4 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 **(MOFA)**.

3) Petitioner-society was registered on 16 February 1994. It appears that several notices have been issued to the partners of Respondent No.29-developer by Municipal Corporation of Greater Mumbai **(MCGM)** alleging unauthorized construction carried out on the

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

building of the Petitioner-society on 13 June 1997, 14 May 1999 and 20 July 1999. According to the Petitioner-society, initially plans were sanctioned for construction of the building. However, Respondent No.29-developer has apparently carried out construction in excess of the sanctioned plan but the same is regularisable. Petitioner contends that proposals have been submitted in the past for regularization of the building and that the same have been approved by the Municipal Corporation.

4) It appears that in addition to the building of the Petitioner-society, there are 11 other structures in the land which are in the form of individual houses/huts. Several persons own title in respect of the land and the land owners contend that the building has been unauthorizedly constructed without any consent from most of the land owners.

5) In the above background, Petitioner-society filed application for deemed conveyance of the entire land and the building bearing Application No.60 of 2015 before the Competent Authority. The application was rejected by the Competent Authority by order dated 28 March 2016 on various ground such as the land being declared as slum area, illegality in construction of building, issuance of notices by MCGM, rival claims of title by several persons etc. The society failed to challenge the order dated 28 March 2016. The reason for doing so is attributed by the Petitioner to several decisions relating to management of the society. Instead of challenging the order dated 28 March 2016 rejecting the application for deemed conveyance, the Society was advised to file a fresh application for deemed conveyance and accordingly Application

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

No. 197 of 2024 was filed once again seeking conveyance of the entire land and the building. The application was allowed by the Competent Authority by order dated 29 September 2025 conveying in favour of the Petitioner-society the entire land admeasuring 2666.80 sq.mts and the building.

6) Some of the original land owners filed Writ Petition Nos. 16950 of 2025, 15952 of 2025 and 17855 of 2025 challenging the order dated 29 September 2025. This Court allowed the Petitions by order dated 17 March 2026 and set aside the order dated 29 September 2025 granting liberty to the Petitioner to institute separate civil proceedings in accordance with law. Petitioner has accordingly filed the present petition challenging the original rejection order dated 28 March 2016.

7) Mr. Godbole, the learned senior advocate appearing for the Petitioner submits that the Competent Authority has grossly erred in rejecting Society's first application for deemed conveyance. He submits that the reasons recorded for rejecting Society's first application for deemed conveyance are clearly unsustainable. That mere existence of title claims of original land owners cannot be a reason for not conveying the land in favour of the Petitioner-society. That the land has not been acquired by the Slum Rehabilitation Authority, nor SRA has assumed the role of a planning authority. The mere illegality in the construction of the building by Respondent No. 29–Developer cannot be a ground for depriving the Petitioner-Society of its title to the land. That the building is not in a habitable state and needs to be pulled down and reconstructed.

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

8) Mr. Godbole further submits that the Petitioner is entitled to challenge the first order of deemed conveyance in view of the liberty granted by this Court while allowing the Writ Petitions vide order dated 17 March 2026. That the liberty is granted to file appropriate civil proceedings which would include filing of a Writ Petition challenging the first order of rejection of deemed conveyance. That this Court has repeatedly granted liberties to the Societies to challenge earlier orders of rejection while setting aside subsequent orders of deemed conveyance/corrigendum. In support, he relies on judgments of this Court in ***M/s. Aakanksha Constructions Company Versus. State of Maharashtra and others***[1] and ***B.K. Corporation Versus. State of Maharashtra and others***[2]**.** He submits that even in the judgment in ***Kashish Park Reality Pvt. Ltd. Versus. State of Maharashtra and others***[3] liberty was granted to challenge the earlier order of deemed conveyance by the Apex Court in the order dated 9 April 2021. That the societies in ***Kashish Park Reality Pvt. Ltd.*** subsequently challenged the earlier certificate of deemed conveyance and by judgment in ***Ganesh Krupa CHSL Versus. State of Maharashtra and others***[4], this Court has partly allowed the petition of the society. He also relies on judgment of this Court in ***Shree Rasraj Heights CHSL Versus. Devendra CHSL*** [5] in support of his contention that this Court granted liberty to challenge 2017 order of Competent Authority while setting aside the corrigendum/subsequent order of Competent Authority. That the affected society filed Special Leave Petition before the Apex Court

1 Writ Petition No.14917/2025 decided on 5 May 2025
2 Writ Petition No.2453/2018 decided on 9 June 2026
3 Writ Petition (L) No. 93044 of 2020 decided on 11 December 2020
4 Writ Petition No.13685 of 2022 decided on 21 April 2026
5 Writ Petition No.6008 of 2026 decided on 15 July 2026

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

challenging the grant of liberty and the Apex Court has dismissed the Special Leave Petition. That therefore the Petitioner-society is perfectly justified in challenging the order dated 28 March 2016 by filing the present petition.

9) Mr. Godbole further submits that the principle of delay and laches cannot come in the way of this Court entertaining the present petition as the same is filed in pursuance of specific liberty granted by this Court on 17 March 2026. Even otherwise, since MOFA violations give rise to a continuous cause of action, the principles of delay and laches cannot be invoked so as to deny title in the land in favour of the housing societies.

10) Mr. Godbole further places on record a compilation of documents to demonstrate as to how the proposal for regularization of Petitioner-society's building has been processed and how the building is certified to be fit for regularization. He submits that, although the Petitioner-Society had sought conveyance of the entire land, it would be content with conveyance of only its proportionate share of the land, i.e., land proportionate to the Built-Up Area **(BUA)** utilised for construction of its building. He submits that in the File Noting of MCGM dated 12 March 1999, the exact figures of BUA actually utilized in construction of Petitioner’s building, as well as the total BUA of structures are available. He submits that the land be divided proportionately and that the Petitioner-Society be granted land proportionate to the Built-Up Area utilised for the construction of its building.

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

11) Mr. Rohan Savant, the learned counsel appearing for Respondent Nos. 30 to 32 has strenuously opposed the Petition submitting that the same is grossly barred by the principles of delay and laches. That the Petition is filed after a delay of 10 years. That even a Writ Petition would normally be rejected if the same is filed beyond the period specified for filing of a Suit. In support, he relies on judgment of this Court in ***Valentine Co-operative Housing Society Ltd. Versus. District Deputy Registrar, Co-operative Societies and Ors.***[6].

12) Mr. Savant further submits that the order dated 28 March 2016 has attained finality and parties have adjusted and altered their positions during the past 10 years. That there is absolutely no explanation for the delay. He relies on judgment of this Court in ***Maryland Apartment Co-operative Housing Society Limited Versus. District Deputy Registrar, Co-operative Societies (2) & Ors.***[7].

13) Mr. Savant further submits that the Petitioner has exhibited dishonest conduct and has not disclosed the material facts. That both the applications for deemed conveyance filed by the Petitioner claim the entire area of land suppressing the position that there are several other structures on the land. That structure of the Petitioner has been constructed without a valid commencement certificate. That the structure has not been regularised till date. That documents directly sought to be tendered during the course of hearing by the Petitioner-society cannot be taken into consideration. That the disputes between

6 2026 SCC Online Bom 1833

7 Writ Petition No. 13930-2024 dated 24 March 2026.

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

the parties involve several complicated questions of fact and law, including the effect of the Slum Notification, the unauthorised construction of the Petitioner's structure, and the rights and entitlements of the landowners and structure owners, which can only be adjudicated in a Civil Suit. That order dated 17 March 2026 grants liberty only to file Civil Suit. That judgments of this Court in ***M/s. Akanksha Constructions*** and ***Kashish Park Realty Pvt. Ltd.*** are inapplicable as specific liberties were granted to file Writ Petitions in those cases. Without prejudice, he submits that even if liberty is granted, the second proceedings need to be decided in accordance with law by considering all objections including the objection of delay, laches etc.

14) Mr. Savant further submits that Respondent No.30 has acquired rights in the land alongwith the structure admeasuring 150 sq.yard (125.40 sq.mtrs) vide Agreement dated 5 February 1963. That Respondent No.30 acquired further rights in the land admeasuring 50 sq.yards (41.6 sq.mtrs) vide Indenture of Sale dated 17 August 1973. That her name has been entered into the Property Register Card vide mutation dated 1 July 1988. That Respondent No.30 has been issued Occupiers Card dated 4 July 1978 in respect of her superstructure. That the land on which Petitioner's building is located belongs to Respondent No.30. That Respondent No.31 has also acquired right and title in respect of the land vide consent decree dated 30 January 2019 in Suit No. 727 of 2015. That Respondent No.30 has already filed an application for de-registration of Petitioner-society, which is pending. Mr. Savant therefore submits that in the light of serious title disputes relating to the land, the

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

Competent Authority is otherwise not a fit forum for deciding the disputes between the parties. He prays for dismissal of the petition.

15) Mr. D'silva, the learned counsel appearing for Respondent Nos.3 to 7 also opposes the petition. In addition to adopting the submissions of Mr. Savant, he submits that the grounds raised in the petition do not deal with the reasons for rejection in the impugned order. He submits that the Petition challenging the original rejection order is not maintainable, particularly when this Court has already granted liberty to the parties to institute a Civil Suit. He further submits that the Petition does not disclose any justification for delaying the adjudication of issues relating to the alleged illegality in the construction of the building, rival claims of title, the status of the land as a slum area, and other related disputes. He submits that in exercise of jurisdiction under Article 227 of the Constitution of India, such disputed questions cannot be decided. That the correct remedy for the Petitioner is to file a Civil Suit. He prays for dismissal of the Petition.

16) Mr. Sabrad the learned counsel appearing for Respondent Nos.2(a), 2(d), 2(e) and 2(f) also opposes the petition submitting that in the entire Petition, there is absolutely no whisper to explain the inordinate delay of 10 years in filing the petition. He further submits that in absence of any pleaded justification, this Court cannot entertain the present petition. That even an invalid order needs to be challenged within a reasonable time. That even suit now filed would be barred by limitation and that therefore the question of entertaining the Writ Petition does not arise. He submits that his client has title in the land

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

and the disputed questions of title can be resolved only by a Civil Court and not by the Competent Authority. He prays for dismissal of the petition.

17) Mr. Shaikh, the learned counsel appearing for Respondent No.8 also opposes the petition by adopting the submissions canvassed by Mr. Savant, Mr. D'silva and Mr. Sabrad. He prays for dismissal of the petition.

18) Rival contentions urged on behalf of the parties now fall for my consideration.

19) The building of the Petitioner-society has been constructed by Respondent No.29 (M/s. National Developers). Respondent No.29 had apparently secured development rights from persons claiming to be the land owners and in exercise of those development rights, it has constructed the structure of the Petitioner. It appears that Respondent No.29 did not construct the building by securing all the due permissions from the planning authority. However, it is not that the building is totally unauthorised and that there is absolutely no building permission. It appears that the plans for residential building comprising of part ground + part stilt + 6 upper floors were approved by the Municipal Corporation on 29 March 1986. The Commencement Certificate for part of the building was also issued on 26 May 1986. It appears that the Architect of the Developer thereafter submitted fresh plans, which were not approved by the Municipal Corporation. Without ensuring that the revised plans were approved, Respondent No.29 went ahead and completed

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

construction of the building and its Architect submitted building Completion Certificate on 10 April 1991. The Municipal Corporation however refused to grant Occupancy Certificate to the building. Thus, the building of the Petitioner-society is without Occupancy Certificate. The Municipal Corporation has also issued several notices for demolition of the building during 1997 to 1999 under Section 53 of the Maharashtra Regional Town Planning Act, 1966. The building comprises of 38 flats and 7 shops. Respondent No.29 has sold the flats and the shops to the purchasers by executing Agreements under Section 4 of MOFA. After selling the flats and shops, Respondent No.29 apparently did not fulfill its obligations under MOFA to secure Completion Certificate/Occupancy Certificate in respect of the building. Resultantly, members of the Petitioner-society are facing a situation where the structure does not have Occupancy Certificate.

20) The flat purchasers of the building however came together and registered a co-operative housing society (Petitioner) on 16 February 1994. Respondent No.29-developer did not even bother to secure Occupancy Certificate of the building nor completed the further obligation of conveying his right, title and interest in the land and the building in favour of the Petitioner-society. Thus Respondent No.29 failed to perfect its title in the land and also failed to convey the same in favour of the Petitioner-society under Section 11(1) of MOFA. Respondent No. 29 has now gone missing from the scene.

21) The Society accordingly approached the Competent Authority by filing application under Section 11(1) of MOFA for securing

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

unilateral deemed conveyance of the entire land and the building in its favour. The application was opposed primarily by persons claiming rights and interests in the land. It appears that Respondent No.29 did not appear before the Competent Authority in Application No. 60 of 2015. However, persons claiming rights in the land, as well as, the occupiers of the 11 structures on the land strongly opposed Application No. 60 of 2015, which came to be dismissed by the Competent Authority by order dated 28 March 2016. As observed above, Petitioner did not challenge the order dated 28 March 2016. It claims that there were disputes relating to its management and only after the same got resolved, the society decided to take steps for securing conveyance. However, instead of challenging the order dated 28 March 2016, they were advised to approach the Competent Authority once again and accordingly they filed a fresh Application No. 197 of 2024 before the Competent Authority once again seeking conveyance of the entire land and the building in its favour. Despite the application being opposed by the persons claiming title in the land, the Competent Authority repelled the said objections and allowed Application No. 197 of 2024 by order dated 29 September 2025 and issued certificate of unilateral deemed conveyance of the entire land admeasuring 2666.80 sq.mts. in favour of the Petitioner-society.

22) When the order dated 29 September 2025 was challenged before this Court, the same was set aside by this Court vide order dated 17 March 2026. The sole ground for setting aside the order dated 29 September 2025 was that a successive application for deemed conveyance was not maintainable. This Court held that the first application of the Petitioner-society was rejected by a reasoned order

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

dated 28 March 2016 and therefore it was impermissible to maintain fresh application. The order dated 17 March 2026 passed by this Court reads thus:

> 1. Since all these writ petitions arise from the same background and raise an identical question of law and fact, it is convenient to consider them together.
>
> 2. For deciding the present controversy, it is not necessary to recount every factual detail placed on record by the parties. The question is whether the matter had already been finally decided in earlier proceedings and therefore cannot be reopened again. For that reason, only those facts which have direct bearing on this legal question are being stated here.
>
> 3. The petitioners before this Court claim their rights through the original owners of the property. They have approached this Court as heirs and legal representatives of those owners. Their case is that the property in question belonged to their predecessors and that the rights flowing from such ownership now stand vested in them. Apart from this, the petitioner in Writ Petition No.17855 of 2025 has placed reliance on certain consent terms which were recorded in earlier proceedings. Those consent terms are annexed along with the order dated 4 July 2016. According to that petitioner, the consent terms recognise and protect his interest in the property and therefore he claims entitlement to challenge the present order. Thus the petitioners assert their locus on the basis of succession as well as contractual arrangements which have been placed on record.
>
> 4. Certain facts are not disputed between the parties. The record shows that respondent No.1, which is the housing society, had earlier approached the Competent Authority seeking conferment of unilateral deemed conveyance. That application was numbered as Application No.60 of 2015. The Competent Authority considered the said application and by order dated 28 March 2016 rejected it. The reason for rejection was clearly recorded. The authority found that the land bearing CTS Nos.6519 to 6523 had already been acquired by the Slum Rehabilitation Authority. It was also declared as a slum area. In view of such declaration and acquisition, the Competent Authority came to the conclusion that unilateral deemed conveyance in respect of that area could not be granted. Thus the earlier application was adjudicated upon and rejected after considering the relevant circumstances.

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

5. After the rejection of the earlier application, it appears from the record that respondent No.1 subsequently filed another application before the Competent Authority seeking conferment of deemed conveyance. While filing this subsequent application, the fact that an earlier application had been rejected was not disclosed before the authority. The Competent Authority proceeded to consider the fresh application and ultimately passed the impugned order. It is this order which has given rise to the present batch of writ petitions. The petitioners contend that the subsequent application itself could not have been entertained in view of the earlier rejection and therefore the impugned order suffers from legal error.

6. Learned advocates appearing for the parties have addressed the Court mainly on the question whether the doctrine of res judicata would apply to proceedings under Section 11 of the Maharashtra Ownership Flats Act, 1960. In support of their submissions, reliance has been placed upon the decision of the Supreme Court in Faime Makers (P) Ltd. v. Cooperative Societies, reported in (2025) 5 SCC 772. According to the learned advocates, the Supreme Court has recognised that the principle of res judicata applies even to proceedings of this nature. They submitted that when a matter has been finally decided by a competent authority on merits, the same issue cannot be reopened by filing another application. In the present case, according to them, the earlier order dated 28 March 2016 was a decision on merits. Therefore the Competent Authority could not have entertained another application seeking the same relief.

7. On the other hand, the learned advocate appearing for respondent No.1 opposed these submissions. He argued that the principle of res judicata would not apply in the present situation. According to him, the parties involved in the earlier application were different from those in the present proceedings. It was submitted that the original owner had subsequently created third party rights in favour of the petitioner in Writ Petition No.17855 of 2025. Because of this change in the parties, it was contended that the earlier decision cannot operate as a bar. In essence, the submission of respondent No.1 is that the presence of new parties and creation of subsequent rights has altered the nature of the proceedings and therefore the doctrine of res judicata cannot be invoked.

8. In reply to these arguments, the learned advocate for the petitioners clarified the factual position. He pointed out that the agreement to sell in favour of the petitioner in Writ Petition No.17855 of 2025 was executed even before the earlier application for deemed conveyance was rejected. In other words, the rights of the said petitioner had already come into existence prior to the earlier decision dated 28 March 2016. Therefore, according to him, the legal position is that the transferee

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

steps into the shoes of the transferor. Once such transfer takes place, the transferee inherits both the rights as well as the liabilities of the transferor. On this basis it was submitted that merely adding the petitioner as a party in the later proceedings does not change the legal position. The earlier decision would still bind the parties claiming through the original owners.

9. After carefully examining the rival submissions and the material placed on record, this Court finds substance in the contention raised by the petitioners. The record clearly shows that the earlier application filed by respondent No.1 was rejected by a reasoned order dated 28 March 2016. That order was a decision rendered after examining the status of the land and the legal consequences flowing from its acquisition by the Slum Rehabilitation Authority. The developer and the owners were parties to that proceeding. Thus the matter had been finally adjudicated between the concerned parties.

10. The argument that the principle of res judicata would not apply because certain agreements to sell were executed earlier cannot be accepted. When a person derives title from another, he necessarily takes the property subject to the legal consequences which already exist. The petitioner in Writ Petition No.17855 of 2025 claims through the original owners who were parties to the earlier proceeding. Therefore he cannot assert a position better than that of the persons through whom he claims. Once the issue regarding grant of deemed conveyance had already been decided, the same issue could not have been reopened through another application. The addition of new parties who derive their rights from the original parties does not remove the binding effect of the earlier decision. For these reasons, the impugned order cannot be sustained and it is liable to be quashed and set aside.

11. In view of the above discussion, the rule is made absolute in terms of prayer clauses (a) and (b) in each of the writ petitions.

12. At the same time, it is necessary to clarify that the present decision does not take away any independent remedy which may be available to the petitioner. If the petitioner seeks enforcement of his statutory rights under Section 11 of the Maharashtra Ownership Flats Act, it will remain open for him to institute appropriate civil proceedings in accordance with law. The observations made in this judgment are confined to the issue which has arisen in the present writ petitions.

23) Thus, though the order dated 29 September 2025 is set aside by this Court, it granted liberty to the Petitioner to seek enforcement of statutory rights under Section 11(1) of MOFA by instituting proper civil

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

proceedings in accordance with law. According to the Petitioner, this Court, by order dated 17 March 2026, has granted it liberty to file a Petition challenging the initial rejection order dated 28 March 2016. Accordingly, the Petitioner has filed the present Petition. On the other hand the contesting Respondents content that the liberty granted by this Court was only to file a civil suit.

24) Respondent Nos.2 to 8 and 30 to 32 have questioned maintainability of the present petition, particularly on the ground of delay and laches. According to them, there is delay of 10 years in challenging the order dated 28 March 2016 and that the petition deserves to be dismissed on this ground alone. Alternatively, it is contended that liberty granted by this Court by order dated 17 March 2026 was only to file a suit and even that liberty needs to be exercised in accordance with law subject to all objections, including the objection as to delay and laches. I accordingly proceed to examine the objections raised by the contesting Respondents.

25) MOFA is a beneficial piece of legislation enacted for the protection and benefit of flat purchasers, who were recognised by the Legislature as being vulnerable to the vagaries and malpractices of unscrupulous developers. One of the well-known mischiefs committed by the developers is to deny title in the land in favour of the organisation of flat purchasers and to retain it endlessly with the objective of milking further and future development potential for the purpose of carrying out additional construction. Keeping in mind these mischiefs committed by the developer, the Legislature has consciously amended MOFA in the

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

year 2008 and has introduced a remedy of seeking deemed conveyance from the Competent Authority under Section 11(3) and 11(5) of the Act. The remedy of unilateral deemed conveyance ensures that organisations of flat purchasers do not have to undergo lengthy and costly remedy of filing civil suits for seeking conveyance of land and building from the Promoter/land owner. The Competent Authority conducts a summary enquiry and enforces promoter's obligation under Section 11(1) of MOFA by issuing a Certificate of unilateral deemed conveyance, which when registered, vests title in the land and building in favour of the organisation of flat purchasers.

26) In the present case, Petitioner-society is denied title in the land as Respondent No. 29-developer committed the mischief of not conveying his right, title and interest in the land and the building in favour of the Petitioner. Accordingly, Petitioner-society was required to approach the Competent Authority under Section 11(3) of MOFA. Its Application No. 60 of 2015 was however rejected on 28 March 2016 by the Competent Authority by taking note of objections of persons claiming title in the land relating to issuance of slum notification, existence of title disputes and illegalities in construction of the building. The Petitioner-society ought to have challenged the order dated 28 March 2016 but was erroneously advised to file second application for deemed conveyance (Application No. 197 of 2024) before the Competent Authority.

27) It is contended by the contesting Respondents that the Petitioner acquiesced in the order dated 28 March 2016 by failing to take

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

any contemporaneous steps to challenge the same. On the other hand, the Petitioner-Society has pleaded the following reasons to explain its inability to challenge the order dated 28 March 2016 at the relevant time:

> 6. That as there was a huge mistrust regarding the finance of the society between the members, the members never made aware of the said impugned order.
>
> 7. That finally when the said financial cheating done by the erstwhile Chairman and Secretary was brought before the Assistant Registrar, Co-operative Society H (east), the said Assistant Registrar, Co-operative Society H (east) passed an order dated 03-10-2016 under section 77A and removed the erstwhile managing committee and appointed an administrator being Mrs. Abhilasha Goem as the government appointed administrator, hereto annexed and marked as Exhibit D is the order dated 03-10-2016 passed by the Assistant Registrar, Co-operative Society H (east).
>
> 8. Further which the general elections took place in the Petitioner society and a new committee came to be elected and was appointed as the new committee by way of an order of the Assistant Registrar, Co-operative Society H (East) dated 20-02-2018.
>
> 9. That in the year 2023 the Petitioner society received many complaints of seepages of water from the ceiling and walls. On getting the same checked from experts the Petitioner society was advised either to get structural repairs done or to go in for redevelopment of the said building.
>
> 10. As redevelopment was a favourable option the Petitioner society and its members in process of initiated the redevelopment process with a developer known as M/s Ashi Bliss Homes.
>
> 11. On-going through the revenue records the Petitioner society was made aware that the said and had not been conveyed on to the name of the Petitioner society and since no previous files or records were handed over to the present committee members by the erstwhile committee the Petitioner society was left with no other option but to apply for Unilateral Deemed Conveyance before the Competent Authority being the Respondent no. 1.

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

12. Thus Petitioner filed an application for Unilateral Deemed Conveyance before the Competent Authority being the Respondent no. 1 vide an application bearing Application no. 197 of 2024.

28) The Petitioner has thus pleaded the reason of disputes relating to management of affairs of the Society for its failure to challenge the order dated 28 March 2016 in a reasonable time. It appears that immediately after passing of order dated 28 March 2016, an Administrator was appointed on the society on 3 October 2016. The elections to the society were thereafter held on 20 February 2018. True it is that atleast after 20 February 2018, the Petitioner-society ought to have taken steps for challenging the order dated 28 March 2016. Here, the Petitioner-society may be accused of slight negligence in not taking effective steps for challenging order dated 28 March 2016. However, one must also bear in mind the fact that on account of Covid-19 pandemic restrictions for almost 2 long years between March 2020 to February 2022, the Petitioner-society may have been incapacitated in taking effective steps for seeking conveyance of the land and the building. Though this reason is not specifically pleaded, the Court would be justified in taking judicial note of the orders passed by the Apex Court excluding the period of limitation from 15 March 2020 to 28 February 2022. Petitioner-society has also pleaded the reason of necessity to carry out structural repairs in the building in the year 2023.

29) It must also be borne in mind that the usual principles of delay and laches cannot be made strictly applicable in respect of the right of organisation of flat purchasers to secure conveyance of the land and the building. The combined reading of Section 11 of MOFA, read

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

with Rule 9 of the MOFA Rules, indicates that the obligation to execute conveyance of the land and building arises upon the expiry of four months from the formation of the society, company or association of flat purchasers. However, it does not mean that the Legislature has contemplated any particular period for the society to apply for deemed conveyance from the date on which the obligation triggers. The application for deemed conveyance cannot be rejected on the ground that the same is filed after several years of triggering of the obligation. This is because MOFA obligations give rise to continuous cause of action. The Apex Court in ***Samruddhi Coop. Housing Society Ltd. v. Mumbai Mahalaxmi Construction (P) Ltd***[8] as well as this Court in ***Sushama Tulsidas Adhav vs. Pradeep D. Shah and Ors***[9] have held that violation of MOFA obligations gives rise to continuous cause of action. In ***Satellite Garden I Cooperative Housing Society Ltd. Versus. The State of Maharashtra and others,***[10] this Court has taken note of ratio of judgment of the Apex Court in ***Samruddhi Coop. Housing Society Ltd.*** and of this Court in ***Sushama Tulsidas Adhav*** and has held in paragraphs 179 to 181 as under:

> **179)** To answer the conundrum involved in the Petitions, it needs to be examined as to whether it is necessary for a society to apply for conveyance within any fixed time? MOFA obligations give rise to continuous cause of action. The statutory right under Section 11 of MOFA to seek conveyance does not have any prescribed period of limitation for exercise of remedy. The right of organisation of flat purchasers to secure conveyance does not get extinguished on account of expiry of any particular period of limitation. In ***Samruddhi Coop. Housing Society Ltd. v. Mumbai Mahalaxmi Construction (P) Ltd***, the Apex Court has held that MOFA obligations give rise to a continuous cause of action. It is held thus:

8 2022 (4) SCC 103

9 2024 SCC Online Bom 4325

10 WRIT PETITION NO.1128 OF 2026 decided 16.09.2026

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

20. Sections 3 and 6 of the MOFA indicate that the promoter has an obligation to provide the occupancy certificate to the flat owners. Apart from this, the promoter must make payments of outgoings such as ground rent, municipal taxes, water charges and electricity charges till the time the property is transferred to the flat owners. Where the promoter fails to pay such charges, the promoter is liable even after the transfer of property.

21. Based on these provisions, it is evident that there was an obligation on the respondent to provide the occupancy certificate and pay for the relevant charges till the certificate has been provided. The respondent has time and again failed to provide the occupancy certificate to the appellant Society. For this reason, a complaint was instituted in 1998 by the appellant against the respondent. Ncdrc on 20-8-2014 directed the respondent to obtain the certificate within a period of four months. Further, Ncdrc also imposed a penalty for any delay in obtaining the occupancy certificate beyond these 4 months. Since 2014 till date, the respondent has failed to provide the occupancy certificate. Owing to the failure of the respondent to obtain the certificate, there has been a direct impact on the members of the appellant in terms of the payment of higher taxes and water charges to the municipal authority. This continuous failure to obtain an occupancy certificate is a breach of the obligations imposed on the respondent under the MOFA and amounts to a continuing wrong. The appellants, therefore, are entitled to damages arising out of this continuing wrong and their complaint is not barred by limitation.

22.NCDRC in its impugned order has held [Samruddhi Coop. Housing Society Ltd. v. Mumbai Mahalaxmi Construction (P) Ltd., 2018 SCC OnLine NCDRC 1711] that the cause of action arose when the municipal authorities ordered the payment of higher taxes in the first instance. Further, the impugned order [Samruddhi Coop. Housing Society Ltd. v. Mumbai Mahalaxmi Construction (P) Ltd., 2018 SCC OnLine NCDRC 1711] also states that the present complaint is barred by limitation as there is no prayer for supply of occupancy certificate. We are unable to subscribe to the view of Ncdrc on both counts. Undoubtedly, the continuing wrong in the present case is the failure to obtain the occupancy certificate. Against this act of the respondent, the appellant Society has taken appropriate action by filing a complaint before the consumer forum. The appellant is currently pursuing the execution of the order of Scdrc arising from that complaint. However, that itself does not preclude it from claiming compensation for the consequences which have

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

arisen out of this continuing wrong. The failure to obtain the occupancy certificate has resulted in the levy of higher taxes on the members of the appellant Society repeatedly by the municipal authorities. Despite the order of 20-8-2014, the respondent has failed to obtain the occupancy certificate. This has resulted in a situation where the appellant, despite having followed the correct course of litigation in demanding the furnishing of an occupancy certificate, will continue to suffer the injury inflicted by the respondent merely due to the delay in the execution of the order against the respondent. Rejecting the complaint as being barred by limitation, when the demand for higher taxes is made repeatedly due to the lack of an occupancy certificate, is a narrow view which is not in consonance with the welfare objective of the Consumer Protection Act, 1986.

(emphasis added)

180) This Court in ***Sushama Tulsidas Adhav vs. Pradeep D. Shah and Ors***., has held that breach of statutory obligations under MOFA gives rise to a continuous cause of action. It is held in paras 36 to 38 as under:

36. In the instant case the Plaintiff seeks enforcement of the statutory obligations imposed by Section 3 and 4 of MOFA. Under Section 4 of MOFA the agreement with the flat purchaser is required to be in prescribed form i.e. Form V prescribed by Rule 5 of MOFA Rules. It may be noted that, in that prescribed form, there is an explanatory note which inter alia states that certain clauses shall be statutory and shall be retained. Note 1 clarifies that a model form of agreement has been prescribed which could be modified and adapted in each case depending upon the facts and circumstances of each case but, in any event, certain clauses including clauses 9 and 22 shall be treated as statutory and mandatory and shall be retained in each and every individual agreements between the promoter and the flat taker. Clause 9 provides for the agreement to specify the date on which the possession of the flat shall be given to the flat purchaser and on demand by the flat purchasers to refund the amount already received along with interest. Clause 22 provides that the flat purchasers agreement to be presented for registration within the time limit prescribed by the Registration Act and imposes obligation on the Promoter to attend the office and admit execution thereof.

37. The Plaintiff was thus seeking enforcement of Clause 9 and 22 of the Model Agreement which are non derogable and constitutes continuing wrong till the obligations are complied with. The reliance placed by Mr. Joshi on Clause 7 of the Model

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

> Agreement pertaining to termination is mis placed as Clause 7 does not find mention as being statutory and mandatory in the Note 1 to the Model Agreement. Coming to the agreement dated 1st February, 2001 executed between the parties in respect of Shop No. 4, there is no termination clause in the said agreement and it appears that the absence of termination clause is for the reason that the total consideration agreed was Rs. 10,03,460/- out of which the plaint pleads payment of Rs. 9,10,000/- which amounts to substantial payment.
>
> 38. The Defendant No. 1 has admittedly neither registered the agreement executed between the parties nor specified the date on which possession is to be handed over and has not handed over possession which amounts to a continuous breach of obligations imposed by MOFA and is thus a continuing wrong.

181) Since MOFA obligations give rise to a continuous cause of action, merely because a society does not apply for deemed conveyance immediately after expiry of period prescribed under Rule 9 of MOF Rules, such inaction does not mean that its right to secure conveyance of the land gets extinguished. The right to have conveyance of the proportionate land, as frozen/crystallised upon expiry of period of 4 months prescribed in Rule 9, can be exercised at any point of time. What needs to be conveyed when right to seek conveyance accrues must also be conveyed when the application/suit is filed for conveyance after expiry of few years. Therefore, mere delay in applying for deemed conveyance or in filing a suit for conveyance would not mean that the frozen/crystallised land entitlement would get reduced with passage of time. The land entitlement gets frozen/crystallised for all times to come and the remedy for its enforcement can be exercised at any time. Additional construction put up by violating the disclosures and in contravention of provisions of Section 7 of MOFA during the time the first society does not apply for conveyance does not result in automatic reduction of its land entitlement.

30) Thus, mere delay does not defeat the right of a housing society to secure title in the land. This is principally because MOFA is a beneficial piece of legislation enacted to protect the interests of flat purchasers. Further, the right of the organisation of flat purchasers to seek conveyance of the land and building is not merely a contractual right that is required to be exercised within any prescribed period of

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

limitation. It is also a statutory right which remains valid till the land and the building is finally conveyed. In my view, therefore, it would not be appropriate to apply rigid principles of limitation, delay and laches, so as to negate the right of a society to secure conveyance of land and the building. What needs to be borne in mind is the fact that if remedy to seek conveyance is denied by applying rigid principles of limitation, delay and laches, organization of flat purchasers would remain without any title in the land and the beneficiaries would be the developer and the original land owner who have already milked the development potential by constructing the buildings and selling the flats. If the remedy for conveyance is not permitted to be exercised, the organization of flat purchasers would not be able to undertake redevelopment of the building and the earlier promoter, as well as the land owners, would have a stake in the redevelopment process and would seek to earn further profits from the land even though they have milked the entire development potential in the land at one point of time. It must also be borne in mind that when the home buyer purchases a flat, he/she does not purchase just a superstructure, but also proportionate share in the land. His/her proportionate share in the land ultimately gets conveyed in the name of organization of flat purchasers. With sale of each flat in the building, title of the promoter and the land owner gets diluted. Once all flats in the building are sold, the promoter and the land owner gets completely divested of the title in the land. What remains is mere obligation to execute an instrument which would vest such lost title in favour of the organization of flat purchasers. When promoter/land owner fails to perform that obligation, the Competent Authority steps in their shoes and performs that obligation. Thus, what is effectively undertaken

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

by the Competent Authority under Section 11(3) of MOFA is merely the performance of the obligation to execute an instrument of transfer on behalf of the promoter/landowner, who has already divested himself of title in the land. In such circumstances, if organization of flat purchasers is denied an opportunity to exercise remedy to secure conveyance, the errant promoter/land owner would reclaim the lost interest in the land. This is not the legislative objective and such kind of situation can always not be countenanced in the Court of law by applying rigid principles of limitation, delay or laches. If the remedy of ogranisation of flat purchasers to secure title in the land is denied, the ultimate beneficiary would be the errant promoter or the land owner who would continue to claim title in the land.

31) In my view therefore, it would not be appropriate to deny opportunity to the Petitioner-society to exercise remedy to secure title in the land merely because it did not act with necessary alacrity to challenge the order dated 28 March 2016. Therefore even though there may be some negligence on the part of the Petitioner-society in not taking contemporaneous steps in challenging the order dated 28 March 2016, it would be inappropriate to shut the doors of this Court on the Petitioner-society, as doing so would result in disastrous consequences where the original land owners, who have already milked the entire potential in the proportionate land would continue to claim title in the land and flat purchasers will not be able to redevelop their own building.

32) In view of the above discussion, I am not inclined to accept the contention raised by the contesting Respondents that the Petition

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

cannot be entertained by applying the principles of limitation, delay or laches.

33) The judgment of coordinate Bench of this Court in ***Valentine CHSL*** strenuously relied upon by Mr. Savant is distinguishable on facts. In that case, there were competing claims between two societies about sharing of the layout land. Respondent No.16-society had applied for conveyance before the Competent Authority in the year 2014. The application was opposed by the Petitioner-society who was Opponent No.10 in Application No. 169 of 2014 filed by Respondent No.16-society. Repelling the objection raised by the Petitioner-society, the Competent Authority by order dated 27 May 2016 issued certificate of unilateral deemed conveyance in favour of Respondent No.16-society which finally culminated into registered instrument of deemed conveyance dated 23 January 2020. The Petitioner-society thereafter filed its own application for unilateral deemed conveyance before the Competent Authority. By order dated 14 September 2023, the Competent Authority rejected the claim of the Petitioner for conveyance of land admeasuring 917.56 sq.mts in addition to certain undivided rights in the layout land essentially on the ground that deemed conveyance of land admeasuring 1500.14 sq.mts was already granted in favour of Respondent No.16-society and the Competent Authority accordingly proceeded to grant conveyance of land admeasuring only 819.26 sq.mts. After the Petitioner-society realized that the certificate earlier granted on 27 May 2016 in favour of Respondent No.16-society conveying land admeasuring 1500.14 sq.mts, was coming in its way to secure conveyance of land admeasuring 917.56 sq.mts, it sought to challenge the order dated 27 May 2016 passed in

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

favour of Respondent No.16-society by filing a petition in the year 2025. It is in these peculiar facts of the case in ***Valentine CHSL*** (supra), that the coordinate bench of this Court has held in paragraphs 11, 12, 14, 15, 16 and 19 of the judgment as under:

> **11.** At the outset, it is necessary to note that the petitioner was a party to Application No.169/2014 and did contest the same. The order of Deemed Conveyance dated 27th May, 2016 passed therein was admittedly not assailed by the petitioner either by instituting the petition before this Court or by filing a suit, till the petitioner preferred an application for Deemed Conveyance in the year 2023. A period of more than seven years elapsed between the date of the granting certificate of entitlement for Unilateral Deemed Conveyance and the filing of the application before the Competent Authority by the petitioner. The said Application No.66/2023 filed by the petitioner was allowed by the Competent Authority on 14th September, 2023. Yet, the instant petition came to be filed before this Court in the month of February, 2025, assailing both the orders. There is indeed delay in assailing the order granting a certificate of Unilateral Deemed Conveyance in favour of respondent No.16. By any standard, the delay of nine years is inordinate.
>
> **12.** It is trite the exercise of writ jurisdiction is discretionary. Though there is no prescribed period of limitation for filing a writ petition, if the petition suffers from delay and laches and no explanation is forthcoming, the Writ Court would be justified in declining to entertain the petition. A party who seeks relief from the Writ Court in exercise of its extraordinary jurisdiction is expected to approach the Court with reasonable dispatch. Undoubtedly, the reasonableness of time is a relative concept and hinges upon the facts and circumstances of the given case and the explanation offered for not approaching the Court at an earlier point in time.
>
> **14.** In the case of Mrinmoy Maity vs. Chhanda Koley and others 4 , the Supreme Court delineated the approach to be adopted by the Writ Court when its jurisdiction is invoked belatedly. The observations in paragraphs 9 to 11 read as under:
>
> > "9. ..... An applicant who approaches the court belatedly or in other words sleeps over his rights for a considerable period of time, wakes up from his deep slumber ought not to be granted the extraordinary relief by the writ courts. This Court time and again has held that delay defeats equity. Delay or latches is one

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

of the factors which should be born in mind by the High Court while exercising discretionary powers under Article 226 of the Constitution of India. In a given case, the High Court may refuse to invoke its extraordinary powers if laxity on the part of the applicant to assert his right has allowed the cause of action to drift away and attempts are made subsequently to rekindle the lapsed cause of action.

10. The discretion to be exercised would be with care and caution. If the delay which has occasioned in approaching the writ court is explained which would appeal to the conscience of the court, in such circumstances it cannot be gainsaid by the contesting party that for all times to come the delay is not to be condoned. There may be myriad circumstances which gives rise to the invoking of the extraordinary jurisdiction and it all depends on facts and circumstances of each case, same cannot be described in a straight jacket formula with mathematical precision. The ultimate discretion to be exercised by the writ court depends upon the facts that it has to travel or the terrain in which the facts have travelled.

11. For filing of a writ petition, there is no doubt that no fixed period of limitation is prescribed. However, when the extraordinary jurisdiction of the writ court is invoked, it has to be seen as to whether within a reasonable time same has been invoked and even submitting of memorials would not revive the dead cause of action or resurrect the cause of action which has had a natural death. In such circumstances on the ground of delay and latches alone, the appeal ought to be dismissed or the applicant ought to be non-suited. If it is found that the writ petitioner is guilty of delay and latches, the High Court ought to dismiss the petition on that sole ground itself, in as much as the writ courts are not to indulge in permitting such indolent litigant to take advantage of his own wrong. It is true that there cannot be any waiver of fundamental right but while exercising discretionary jurisdiction under Article 226, the High Court will have to necessarily take into consideration the delay and latches on the part of the applicant in approaching a writ court. This Court in the case of Tridip Kumar Dingal and others v. State of W.B and others., (2009) 1 SCC 768 has held to the following effect:

"56. We are unable to uphold the contention. It is no doubt true that there can be no waiver of fundamental right. But while exercising discretionary jurisdiction under Articles 32, 226, 227 or 136 of the Constitution, this Court takes into account certain factors and one of such considerations is delay and laches on the

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

part of the applicant in approaching a writ court. It is well settled that power to issue a writ is discretionary. One of the grounds for refusing reliefs under Article 32 or 226 of the Constitution is that the petitioner is guilty of delay and laches.

57. If the petitioner wants to invoke jurisdiction of a writ court, he should come to the Court at the earliest reasonably possible opportunity. Inordinate delay in making the motion for a writ will indeed be a good ground for refusing to exercise such discretionary jurisdiction. The underlying object of this principle is not to encourage agitation of stale claims and exhume matters which have already been disposed of or settled or where the rights of third parties have accrued in the meantime (vide State of M.P. v. Bhailal Bhai [AIR 1964 SC 1006 : (1964) 6 SCR 261] , Moon Mills Ltd. v. Industrial Court [AIR 1967 SC 1450] and Bhoop Singh v. Union of India [(1992) 3 SCC 136 : (1992) 21 ATC 675 : (1992) 2 SCR 969]). This principle applies even in case of an infringement of fundamental right (vide Tilokchand Motichand v. H.B. Munshi [(1969) 1 SCC 110] , Durga Prashad v. Chief Controller of Imports & Exports [(1969) 1 SCC 185] and Rabindranath Bose v. Union of India [(1970) 1 SCC 84]).

58. There is no upper limit and there is no lower limit as to when a person can approach a court. The question is one of discretion and has to be decided on the basis of facts before the court depending on and varying from

15. In the case of Rikhab Chand Jain vs. Union of India and others 5 , the Supreme Court exposited as to what would constitute reasonable period, especially when there is an alternate remedy which is required to be exhausted within a prescribed period of limitation. The observations in paragraph 13 read as under:

> "13. Although there is no period of limitation for invoking the writ jurisdiction of a High Court under Article 226, all that the courts insist is invocation of its jurisdiction with utmost expedition and, at any rate, within a "reasonable period". What would constitute "reasonable period" cannot be put in a straight-jacket, and it must invariably depend on the facts and circumstances of each particular case. Nonetheless, the period of limitation prescribed by an enactment for availing the alternative remedy provided thereunder in certain cases does provide indication as to what should be the "reasonable period" within which the writ jurisdiction has to be invoked."

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

> **16.** The decision in the case of Rikhab Chand Jain (supra) assumes importance in the facts of the case as pursuant to the grant of a certificate of Unilateral Deemed Conveyance, the Deed of Conveyance came to be executed and registered in favour of respondent No.16, on 23rd January, 2020. If the petitioner was to assail the legality and validity of the order granting certificate of Unilateral Deemed Conveyance dated 27th May, 2016 and Deed of Conveyance dated 23rd January, 2020, before the Civil Court, the period of limitation would be three years from the date the right to sue first accrued.
>
> **19.** I am, thus, inclined to hold that, on the ground of delay and laches itself, the petition does not deserve to be entertained.

34) In my view, the ratio of the judgment in ***Valentine CHSL*** is clearly distinguishable. In that case, Petitioner-society had opposed grant of conveyance of land admeasuring 1500.14 sq.mts in favour of Respondent No.16-society and its objection was rejected. It did not challenge that order and instead applied for unilateral deemed conveyance in its own name only after realizing that it cannot secure conveyance of land admeasuring 917.56 sq.mts on account of conveyance of land admeasuring 1500.14 sq.mts in favour of Respondent No.16-society. Thereafter it sought to challenge the 2016 order passed in favour of Respondent No.16-society. Therefore, the judgment in ***Valentine CHSL*** is clearly distinguishable and would have no application to the peculiar facts of the present case where Petitioner-society is specifically granted liberty by this Court to secure remedy for enforcement of rights under Section 11 of MOFA while setting aside the subsequent order of deemed conveyance dated 29 September 2025.

35) Mr. Savant has also strenuously relied upon judgment of this Court in ***Maryland Apartment CHSL.*** In that case, two writ petitions were filed by the Petitioner-society. Its earlier application for

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

deemed conveyance was rejected by order dated 31 October 2014. Instead of challenging that order, the society filed fresh application for deemed conveyance which was dismissed by applying the principles of res-judicata by order dated 18 October 2023. The society filed two petitions challenging the orders dated 31 October 2014 and 18 October 2023. In the peculiar facts of that case, this Court held in paragraphs 15 to 27 of the judgment as under:

> 15. I have heard the learned Senior Advocates for the parties and have carefully gone through the record. The controversy is narrow in form, but the consequences are wide. The petitioner seeks unilateral deemed conveyance in respect of the land and building. The respondents resist the claim by pointing out the long delay in challenging the first rejection, the finality of the earlier order, and the nature of the disputes already pending between the parties. After considering the matter in full, I find that Writ Petition No. 13930 of 2024 must fail on the ground of laches, and Writ Petition No. 13935 of 2024 must fail on the ground of res judicata. The petitioner, however, shall have liberty to pursue its remedy before the competent civil court, if so advised, in accordance with law.
>
> 16. According to the petitioner, the building in which the members are residing is constructed only on Portion "A" of the larger property. It is further pointed out that the order dated 28 November 1995, passed in the civil suit, was not for the entire land but was limited only to Portion "B". From this, the petitioner argues that the Competent Authority made a mistake when it rejected the application on 31 October 2014 by treating the injunction as if it covered the whole property.
>
> 17. In facts of the case, the Court has to examine the conduct of the petitioner. whether the petitioner approached the Court within a reasonable time, and whether after an order has become final, the same issue can again be brought before the authority by filing another application. These aspects cannot be ignored, even if some merit is found in the petitioner's submission.
>
> 18. Coming to Writ Petition No. 13930 of 2024, the position becomes more clear. The petitioner is challenging an order which was passed on 31 October 2014 in Application No. 312 of 2013. That order remained unchallenged for almost ten years. During this long period, the petitioner did not take any steps to question it. It is difficult to accept

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

that the petitioner had no knowledge about the rejection, because the order was passed in its own application. There is also no material to show that the petitioner was prevented by any sufficient cause or legal difficulty from approaching the Court earlier. The explanation now given is that only later the petitioner obtained copies of the suit papers and then understood that the injunction was only for Portion "B". Even if this explanation is taken at face value, it still leaves a gap. It does not explain why the petitioner remained inactive for such a long duration. A person who claims a statutory right is expected to act with some urgency. Waiting for years together and then approaching the Court disturbs the balance, because the other side proceeds on the footing that the matter has attained finality.

19. The principle of laches, in this context, is not some rigid or technical rule. If a party allows an order to remain unchallenged for years, and during that time the other side adjusts its position on the basis of that order, then it would be unfair to reopen the issue after a long delay. Courts, therefore, expect that a person must come within a reasonable time. In the present case, the petitioner had the rejection order since 2014. It did not challenge it. Instead, it chose to file another application in the year 2023. That later step cannot wipe out the earlier inaction. The delay is too long and not properly explained. Therefore, the present challenge to the 2014 order is clearly belated. It falls within the mischief of delay and laches.

20. The petitioner has also tried to argue that the earlier order was based on misrepresentation, as the true scope of the injunction was not properly brought on record. But even this argument does not improve the situation. Even if the petitioner later came to know certain facts in a better manner, that by itself cannot revive a challenge which had become stale over time. The law does not favour a party who first accepts an order by remaining silent, then takes a second chance by filing a fresh application, and only after failing there, comes back to challenge the old order. Such conduct shows lack of diligence. It weakens the claim for relief under Article 226, which is always discretionary in nature. For these reasons, this Court is of the clear view that Writ Petition No. 13930 of 2024 cannot be entertained and deserves to be dismissed on the ground of laches alone.

21. The position in Writ Petition No.13935 of 2024 appears slightly different on the surface, but when it is examined carefully, it is in substance the same as the earlier situation. Here, the petitioner again approached the Competent Authority by filing Application No. 54 of 2023. In that application, the relief which was claimed was essentially the same as what was earlier asked in Application No. 312 of 2013. The prayer was again for unilateral deemed conveyance of the same land and building. The foundation of the claim did not change in any

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

meaningful manner. The parties involved also remained the same in substance. Therefore, even though the application number and the year were different, the core dispute continued to be identical.

22. Once an application on the same issue has been decided, and that decision has reached finality because it was not challenged in time, the law does not permit the same party to come again before the same authority and ask for the same relief on the same set of facts. If such a course is allowed, there will be no end to litigation. A party can keep filing repeated applications until it gets a favourable order. That is not how the legal system works. Finality of decisions is an important part of justice. It gives certainty and stability to legal relations. In the present case, after the order dated 31 October 2014 was passed, the matter stood concluded at that level. The petitioner could not have bypassed that position by simply filing a fresh application in the year 2023.

23. In Faime Makers Private Ltd. v. District Deputy Registrar, (2025) 5 SCC 772 the Supreme Court in the context of applicability of Section 11 of CPC to MOFA proceedings under Section 11 has reiterated two important points. First, findings of a quasi judicial body cannot be reopened in a collateral manner or in a second round between the same parties. Second, even if the earlier decision contains an error of fact or law, it still binds unless it is set aside by a higher forum. A coordinate or successor authority cannot simply take a different view on the same issue. In the present case, these conditions are clearly satisfied. The earlier application was decided. The relief of deemed conveyance was refused. The petitioner did not challenge that decision in time. Therefore, the same issue cannot be raised again in another application.

24. When the petitioner filed Application No. 54 of 2023, it was, in effect, trying to reopen the same controversy which had already been concluded in 2014. This is not permissible in law. The bar meant to prevent repeated and unnecessary litigation. Filing a second application on the same facts is not an acceptable substitute. Therefore, the second application itself was not maintainable. Once that is so, the order dated 18 October 2023, by which the Competent Authority rejected Application No. 54 of 2023, cannot be said to be incorrect on this ground. The authority could not have ignored the earlier final order and proceeded to grant the same relief again. Doing so would have resulted in conflicting decisions on the same issue. Hence, the rejection of the second application does not call for interference.

25. Learned Senior Advocate for the petitioner has strongly argued that the earlier rejection order was based on a wrong understanding of the injunction order passed in the civil suit, and therefore such an order should not bind the petitioner at all. This submission, if it had been

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

raised at the proper time, would have required serious consideration. Because if an authority proceeds on a misunderstanding of a court order, then such an error can affect the entire decision. However, the difficulty for the petitioner is not only about correctness of the earlier order, but about the manner in which the petitioner has acted thereafter. Once the order dated 31 October 2014 was passed, the petitioner allowed it to remain unchallenged for many years. During this long period, the order gained finality. In such a situation, the petitioner cannot avoid the effect of that order by simply filing another application and asking the authority to reconsider the same issue again. Law does not permit such indirect method.

26. At the same time, it is necessary to observe that the petitioner's grievance is not entirely without substance. The dispute between the parties involves questions about the larger property, the nature of the lease, the internal arrangements between the parties, the development rights, and also the exact effect of the injunction order passed in the civil suit. These are not issues which can be decided only on the basis of limited material placed before the Competent Authority. Such questions may require detailed evidence, examination of documents, and proper trial. Proceedings under the MOFA are summary in nature and are not always suitable for deciding complicated questions of title and competing rights between several parties. Therefore, while rejecting the present writ petitions, it cannot be said that the petitioner has no remedy at all.

27. For this reason, the dismissal of these writ petitions should be understood in its proper context. The petitioner is not denied relief because its claim is wholly untenable. The petitions are dismissed because of the manner in which the remedies have been pursued. The first writ petition fails because there is long and unexplained delay in challenging the earlier order. The second writ petition fails because the same issue had already been finally decided and cannot be reopened by filing a fresh application. If the petitioner still believes that it has a valid claim in law, the proper course is to approach the civil court, where all issues relating to title, rights and obligations can be examined in detail.

36) In my view, the ratio of the judgment in ***Maryland Apartment CHSL*** would have no application to the peculiar facts of the present case. Here there is no question of opposing parties adjusting their positions after passing of order dated 28 March 2016. Furthermore, in ***Maryland Apartment CHSL,*** this Court has highlighted various

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

complicated issues relating to nature of lease, internal arrangement between the parties, development rights, exact effect of injunction order etc. in para-26 of the judgment and held that those issues can be decided only by Civil Court and not by the Competent Authority. This is not the case here. The present case does not involve complicated issues as was the case in ***Maryland Apartment CHSL***. The present case merely involves the issue of proportionate land division between the owners of the structure/balance land and the Petitioner-society by taking into consideration the BUA utilized in construction of each of the structures. The judgment in ***Maryland Apartment CHSL*** is thus clearly distinguishable and would have no application to the peculiar facts of the present case.

37) In my view therefore, it would not be appropriate to dismiss the present petition on the grounds of delay and laches. Even otherwise, the jurisdiction of this Court is invoked under Article 227 of the Constitution of India, which is not circumscribed by the principles of limitation. It is only where laches on the part of the Petitioner are gross that this Court may decline to exercise its extraordinary jurisdiction. In the facts and circumstances of the present case, exercise of extraordinary jurisdiction is clearly warranted so as to ensure conveyance of proportionate share in the land in favour of the Petitioner society and to prevent the contesting Respondents from claiming ownership of rights in the land conveyable to the society.

38) Having held that the petition need not be dismissed on the ground of delay or laches, the next issue for consideration is whether

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

filing of the present petition can be treated as a remedy exercisable in terms of liberty granted by this Court in paragraph 12 of the order dated 17 March 2026. This Court has clearly underscored the right of the Petitioner to enforce statutory rights under Section 11 of MOFA. Under Section 11(1), it is statutory duty of the promoter to convey his right, title and interest in the land and the building in favour of the organization of flat purchasers. Upon failure to perform the statutory obligation under Section 11(1), the concerned organization of flat purchasers can approach the Competent Authority under Section 11(3) of MOFA to seek enforcement of such statutory obligation. Thus, filing of the application under Section 11(3) of MOFA is a remedy available to a society for seeking enforcement of statutory obligations. In the present case, this Court has granted liberty to the Petitioner-society to institute '*appropriate civil proceedings*' and such civil proceedings are to be instituted '*in accordance with law*'. Since the remedy under Section 11(3) of MOFA to approach the Competent Authority is also a civil remedy exercisable in accordance with law, I find no difficulty in holding the present Petition as maintainable.

39) It is contended by contesting Respondents that the remedy envisaged in the order dated 17 March 2026 is only to file a Civil Suit and not a remedy to challenge the previous order dated 28 March 2016. I am unable to agree. The present case does not involve a scenario where this Court has held that it is impermissible for the Competent Authority to adjudicate the complicated questions of law or fact in the summary inquiry and that therefore a Suit before the Civil Court needs to be filed.

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

40) It is also seen that whenever a housing society commits a mistake in filing successive applications for deemed conveyance or seeks a corrigendum for conveyance of higher area, this Court, while setting aside the orders passed in a subsequent applications or corrigenda, has consistently granted liberty to challenge the earlier order passed by the Competent Authority either rejecting the application or granting lesser area. Reference in this regard can be made to the judgment of this Court in ***Aakanksha Constructions Co.*** (supra) in which while setting aside the order passed by the Competent Authority, this Court granted liberty to challenge the earlier order dated 5 August 2021. Paragraphs 42 and 43 of the judgment in ***Aakanksha Constructions Co.*** read thus:

> 42) Having held that the impugned order passed by the Competent Authority on 14 November 2024 is unsustainable, the next issue is about the remedy open to Torna CHS in respect of its statutory right of conveyance of land. As observed above, the society ought to have challenged the Order dared 5 August 2021, if it believed that the same is erroneous rather than filing a fresh application for deemed conveyance. Torna CHS had filed suit seeking conveyance of land, which has been withdrawn on account of filing of third application for deemed conveyance. Therefore, if liberty is not granted to Torna CHS to challenge the order dated 5 August 2021, it would be rendered remediless in respect of its right of having the land conveyed in its favour. Therefore, while setting aside the impugned order dated 14 November 2024, the society deserves to be granted liberty to challenge the order dated 5 August 2021. Society's second application for deemed conveyance is not adjudicated on merits and the decision of the competent authority refusing to adjudicate the same on merits must be permitted to be challenged by the Society. There is a statutory right in favour of Torna CHS to apply for deemed conveyance of the land and the building. The Competent Authority has however held in the second rejection order dated 5 August 2021 that it cannot adjudicate Society's application on merits in the light of pendency of litigation between various parties. Whether the said decision of the Competent Authority is valid or nor must necessarily be permitted to be tested by the Society. In my view therefore liberty needs to be granted to Torna CHS to challenge the order dated 5 August 2021.

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

43) The petitions accordingly succeed, and I proceed to pass the following order:

(i) Order dated 14 November 2024 passed by the Competent Authority in Application No.193/2024 is set aside.

(ii) Torna CHS would however be at liberty to challenge order dated 5 August 2021 passed by the Competent Authority and such challenge would be decided on its own merits. All rights and contentions of parties on merits are expressly left open.

41) The judgment of this Court in ***Aakanksha Constructions Co.*** has been followed in ***B.K. Corporation*** (supra) in which it is held in paragraphs 47 and 48 of the judgment as under:

47. However, like in Aakansha Construction (supra), this Court is also at pains to set aside an order granting deemed conveyance in favour of an association formed by home buyers. MOFA is a beneficial legislation which has been enacted (and amended, from time to time) to prevent the mischief where Promoters and Developers were deliberately not conveying land in favour of the association of home buyers, even after exploitation of the rights in the land under the greed of further FSI being made available. MOFA is intended to protect the interests of home buyers and hence, courts have always been slow in interfering with orders granting deemed conveyance in favour of co-operative housing societies of home buyers. The Competent Authority is a Tribunal of limited jurisdiction, which adjudicates the application of a co-operative housing society for conveyance of land and building after hearing the Promoter and in some cases, even Owners. A summary and speedy remedy is made available to co-operative housing societies to have land and building conveyed in their names. The Competent Authority is therefore required to exercise jurisdiction under Section 11 of MOFA by keeping in mind the legislative objective and any complicated issue sought to be raised by Promoters (or in some cases like the present one, another co-operative housing society situated in the same layout, namely, Noble House CHSL) can be left to be agitated before Civil Courts, as such parties always have the liberty of filing a suit for asserting their rights in the land.

48. Having held that the impugned order dated 31 st May 2017 passed by the Competent Authority is unsustainable, the issue which stares me in the face is about the remedy open to Apeksha CHS in respect of its

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

> statutory right of conveyance of the land and building. As observed above, Apeksha CHSL ought to have challenged the earlier order dated 4th August 2016, if it believed that the same is erroneous rather than filing the second application for deemed conveyance. Suit No. 1481 of 2012 filed by Noble House CHSL still remains pending before the Bombay City Civil Court at Dindoshi despite it being filed almost 15 years ago. Therefore, if liberty is not granted to Apeksha CHSL to challenge the said order dated 4th August 2016, it would be rendered remediless in respect of its right of having the land and building conveyed in its favour. Therefore, while setting aside the impugned order dated 31st May 2017, Apeksha CHSL deserves to be granted liberty to challenge the said order dated 4 th August 2016. There is a statutory right in favour of Apeksha CHSL to apply for deemed conveyance of the land and building. In its earlier order dated 4th August 2016, the Competent Authority whilst recognizing such right, has however granted liberty to Apeksha CHSL to file an application for deemed conveyance only after the said civil suit is disposed of. Whether the said decision of the Competent Authority is valid or not, must necessarily be permitted to be tested by Apeksha CHSL. In my view, therefore, liberty needs to be granted to Apeksha CHSL to challenge the earlier order dated 4th August 2016. Such a direction would necessarily be in the interests of justice.

42) As a matter of fact, the law on the issue of permissibility for Competent Authority to either entertain a review application or to issue corrigenda is enunciated in ***Kashish Park Realty Pvt. Ltd.*** in which this Court held that Competent Authority does not have jurisdiction either to review its own order or to issue corrigenda. This Court accordingly set aside the impugned corrigenda. However, since the Petitioners therein had not challenged the earlier orders and certificates dated 22 July 2020 (*issued prior to corrigenda*), liberty was granted to the Respondent-society to get conveyance deed registered on the basis of those certificates. The aggrieved society filed Special Leave Petition before the Apex Court which was withdrawn with liberty to challenge the original order dated 22 July 2020. The Apex Court has granted that liberty to ***Ganesh Krupa CHSL*** by order dated 9 April 2021. Accordingly, ***Ganesh Krupa CHSL*** filed

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

Writ Petition No. 13685 of 2022 challenging the order dated 22 July 2020. Similarly, the societies who were Respondents in Writ Petition filed by Kashish Park also filed their separate Writ Petitions challenging the orders dated 22 July 2020. By judgment and order dated 21 April 2026, this Court has allowed the petitions convening in favour of those societies their rightful area of land. Thus, in the case of ***Kashish Park Realty Pvt. Ltd.*** and ***Ganesh Krupa CHSL,*** even though this Court did not grant liberty to challenge the original order dated 22 July 2020 while setting aside the corrigenda, the Apex Court granted that liberty. Grant of such liberty aided the aggrieved societies to secure their lawful entitlement of land by challenging original order dated 22 July 2020 even though they had received the same benefit through corrigenda issued in erroneous exercise of jurisdiction.

43) Thus, the decisions in ***Kashish Park Realty Pvt. Ltd.*** and ***Ganesh Krupa CHSL*** are apt illustration of how permitting aggrieved societies to challenge the original orders rejecting their applications for deemed conveyance or granting conveyance in respect of a lesser area of land facilitates the societies in securing their lawful entitlements. The same course of action deserves to be adopted in the present case by permitting the Petitioner-Society to challenge the order dated 28 March 2016.

44) There is yet another example where grant of liberty to the society to challenge initial erroneous order of the Competent Authority, after setting aside the corrigendum has assisted the society to secure its

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

lawful entitlement. In ***Shree Rasraj Heights CHSL,*** the Petitioner-society had challenged the order dated 12 January 2026 passed by the Competent Authority allowing Misc. Application filed by Devendra CHSL by which the Competent Authority had granted proportionate share in the RG in favour of Devendra CHSL. It was the complaint of Shree Rasraj CHSL that by original order dated 4 May 2017, the Competent Authority had conveyed proportionate share to Devendra CHSL in the net plot area without making any provision for share in common amenities such as RG. It was contended by Petitioner-Shree Rasraj Heights CHSL that Devendra CHSL had acquiesced in the order dated 4 May 2017. However, Devendra CHSL moved Misc. Application and secured order dated 12 January 2026 and had secured proportionate rights in the RG also. The order passed on 12 January 2026 by the Competent Authority was challenged by Petitioner-Shree Rasraj Heights CHSL on the ground that the same was in the teeth of law declared by this Court in ***Kashish Park Realty Pvt. Ltd.*** This Court upheld the contention of Petitioner-Shree Rasraj Heights CHSL and set aside the order dated 12 January 2026 passed by the Competent Authority. However, this Court granted liberty to Devendra CHSL to challenge original order dated 4 May 2017. Aggrieved by grant of liberty by this Court to challenge order dated 4 May 2017, Petitioner-Shree Rasraj Heights CHSL filed SLP before the Apex Court which was dismissed on 15 October 2026. After grant of liberty by this Court to challenge original order dated 4 May 2017 and upholding of that liberty by the Apex Court, Devendra filed a fresh petition before this Court challenging order dated 4 May 2017. Entertainability of that petition was questioned by Shri Rasraj Heights inter-alia on the ground of delay. Repealing the objection, this Court

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

upheld the right of Devendra CHSL, to file a fresh petition and has granted proportionate share in the RG area. This Court has held in ***Devendra Co-operative Housing Society Ltd. Versus. District Deputy Registrar*** [11] in paragraphs 29, 35, 36 and 37 as under:

> 29. It must be observed at the very outset that the present Petition is filed in terms of liberty granted by this Court by order dated 15 July 2026 (as confirmed by the Apex Court), and therefore the objections sought to be raised by Respondent Nos.2 to 9 about maintainability of the present Petition are totally baseless and deserve outright rejection. When the Petitioner-Society sought to secure the proportionate share in the RG through a corrigendum, the same was challenged contending that the Competent Authority does not have jurisdiction to review its own order by issuing a corrigendum. Now when a substantive petition is filed challenging the original erroneous order in terms of liberty granted by this Court as confirmed by the Apex Court, once again Petitioner's remedy is sought to be questioned by raising all sorts of objections. And all this is being done to grab the entire RG in the layout by depriving the Petitioner of any share in the RG land. Respondent Nos. 3 to 9 developers desire to carry out further development in the layout and if no specified share is granted to Petitioner society in the RG, by merely allowing them to use the RG as common amenity, they would grab the entire FSI flowing through the RG and load the same on the additional building they want to build in the layout. Unfortunately, Respondent No. 2 society has joined hands with the developers by aiding them in achieving their nefarious objective. This approach of Respondent Nos. 2 to 9 deserves to be deprecated. Though the objections to maintainability and entertainability of the present petition are totally baseless, the Court is made to spend time in dealing with and deciding the same. I proceed to do so.
>
> 35. Mr. Khandeparkar has highlighted the issue of delay in challenging order dated 4 May 2017 and has sought dismissal of the Petition on that ground. The objection on the ground of delay, I must say, is equally baseless and untenable. From the chronology of events discussed above, it is clear that Petitioner-Society realized errors in the order dated 4 May 2017 and filed Misc. Application for corrections therein in the year 2025. It succeeded in getting the order corrected on 12 January 2026, however, this Court set aside order dated 12 January 2026 and granted liberty to the Petitioner-Society to challenge the order dated 4 May 2017. Therefore, it cannot be contended that there is any delay on the part of Petitioner-Society in challenging order dated 4 May 2017.

11 WRIT PETITION NO.9954 OF 2026 decided on 4/11/2026

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

> 36. Even otherwise, it is well settled position that MOFA obligations give rise to continuous cause of action [SEE: Samruddhi Co-operative Housing Society Limited vs. Mumbai Mahalakshmi Construction Private Limited4 , Smt. Sushma Tulshidas Adhav vs. Mr. Pradeep D. Shah5 , and Satellite Garden-1 CHSL (supra)]. Thus, promoter's obligation to convey the entire portion of land as per entitlement of the Society continues and the remedy to enforce that obligation does not get extinguished by any event. Even if a promoter conveys land lesser than Society's entitlement and Society accepts such conveyance, it can still file Application under Section 11 of MOFA to secure conveyance of balance land. Similarly, if Competent Authority allows application of a Society under Section 11 of MOFA and conveys to it, land lesser than its entitlement, even after registration of Deed of Conveyance, the Society can challenge the order of the Competent Authority as principle of estoppel does not apply against statute as held by this Court in Prestige Garden A-1 CHSL vs. State of Maharashtra . Thus, mere delay in seeking the remedy for conveyance of due portion of land by a society does not defeat its lawful right under Section 11 of MOFA.
>
> 37. In the present case, it is the statutory obligation of Respondent Nos. 3 to 9 to convey in favour of Petitioner-Society the whole of the land as per Petitioner-Society's entitlement. If there is any deficit in area of the land conveyed in favour of Petitioner-Society, the argument of delay and laches cannot be raised for grabbing the land supposed to be conveyed to a society. This is on account of continuous cause of action created in favour of the society to secure its due entitlement in the land under Section 11 of MOFA. In my view therefore, the objection of delay sought to be raised by Respondent Nos.3 to 9 is totally baseless and is accordingly repelled.

45) Thus this Court has consistently granted liberty to the societies who commit mistakes in either filing successive applications for deemed conveyance or to seek issuance of corrigendum (*to seek higher area*) for challenging the original erroneous orders. Grant of such liberty and entertaining subsequent petitions challenging the earlier orders has assisted several societies to secure their lawful entitlement in the land. In my view, similar course of action needs to be adopted in the present case as well by entertaining the present petition.

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

46) Coming to the merits of the case, Mr. Godbole has placed on record compilation of documents, which contains copy of the file noting dated 12 March 1999 of MCGM. Though Mr. Savant has sought to raise objection to filing of the compilation of documents, he himself has tendered another compilation of documents. In any case this Court is taking note of the File Noting only for the purpose of taking cognizance of the BUA figures for proportionate land division. It would be apposite to reproduce the entire File Noting which is as under:

> Shri D.N. Darumala C.A. to Owner Mr. Larase Kini and others has submitted the proposal for construction of residential building on plat under reference. The plans for residential building comprises of part ground + part stilt+ 6 upper floors were approved on 29.03.1986 vide plan at Pg.180 to 183 bunch 1. As per approved plans the area of the plot is 2708.4 sq.mtrs. The built up area approved 2190.22 sq.mtrs. as against the permissible area as per approved plan is 2267.46 sq.atrs. The existing structures were to be demolished as shown in the approved plan at Pg.180. The C.C. for part of the bldg. viz. phase I was issued on 26.5.1986 vide Pg.229, bunch I.
>
> Thereafter Shri Tushar D. Thakkar C.A. to owner submitted a fresh applicaltion under section 44/69 of the M.R.& T.P. Act and had eppointed Shri P.P. Nalowade as his architect in the year 1999 vide Pg.273 (burich II). The amended plans submitted by new architect Shri P.P. Nalawade were not approved as well as supervision memo of Shri P.P. Nalawade was also not accepted. However new architect Shri P.P. Nalawade submitted building completion certificate on 10.4.1991 vide Pg.531 (bunch II). The same was refused mainly for the following reasons.
>
> 1. The work was not carried out as per the approved plans.
>
> 2. All the existing structures which were proposed to be demolished were not demolished.
>
> Thereafter C.A. to owner Smt. Seema Agarwal appointed new architect Shri Nitin Shah on 5.5.92 vide Pg.691 and submitted therewith the N.O.C. from Shri P.P. Nalawade dated 21.1.92 at Pq.697. The super-vision memo of Shri Nitin Shah is not accepted as the last plans are approved on behalf of Shri Tushar Thakkar C.A. to owners of National

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

Developer and documentary evidence in the name of Mrs. Seema Agarwal was not submitted.

The work of the above building is not carried out as per approved plans. On site inspection during last visit on 16.11.98 it was observed that the building is constructed consisting of ground + 5 upper floors as per the completion plans submitted on 10.4.91 except two flats on West side from Ground floor to 5th floor.

In the mean time, W.D.H/East had accorded the repair permission for one of the existing structure which was to be demolished as per approved plans at North/West corner marked as NO.12 vide plan at Pg. 539. However, the party has carried out the work beyond repair permission. As such the notice under section 351 of B.M.C. Act swas served upon by Ward office on 13.12.95. Party had approached the City Civil Court against the notice under section 351 of B.M.C. Act. Hon-ble Court had directed the party to submit the regularisation proposel in the office of Building Proposal Deptt. Accordingly the owner of suit structure submitted the proposal for regularisation on 30.4.96 vide pg.1 of bunch IV. This office has rejected the proposal because the proposal was not submitted as per B.M.C. & M.R.& T.P. Acts.

Finally the D.M.C.(Z.III) has passed the order for suit structure only vide Pg.N25 to N31 and directed W.D.H/East to demolish the said suit structure at party's cost, if the same is not demolished by party within 4 weeks from the date of receipt of order.

The details of the total built up area existing on site under reference is as under.

a) permissible built-up area as per completion plans.	2314.74 sq.mtrs.
b) Built up area of bldg. Constructed on site beyond approval but approvable.	1989.31 sq.mtrs.
c) Built up area of 11 existing structures (including the suit structures.) (One structure already demolished on site).	653.74 sq.mtrs.
Total built up area	2643.05 sq.mtrs.
Excess built-up area	320.31 sq.mtrs.

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

> Action under section 53(1) of the M.R.& T.P. Act 1966 is initiated against the developer of the building. Mr. Tushar Thakkar and Mrs. Seema Agarwal of National Developer for carrying out the work beyond approved plan and beyond C.C. on 13.6.97 vide Pg-765-767 bunch III.
>
> In order to bring down the FSI within permissible limit, it is required to demolish entire 5 floor (area 311.00 sq.mtrs.) of the building and also to demolish the excess built-up area approx of suit structure adm. About 91.40 sq.m.
>
> Ch.E. (D.P.)/Dir.(E.S.& P.)'s approval is requested to 'A' above. On reciept of orders WOH/E will be requested to take necessary action.
>
> Submitted please

47) The above File Noting would indicate the BUA utilized in construction of Petitioner-society, as well as BUA of 11 existing structures. In my view, the exercise of proportionate land division can be undertaken by taking into consideration the above figures. The permissible BUA in respect of the plot at that time was 2314.74 sq.mts out of which its BUA of 1989.31 sq.mts has been utilized for construction of Petitioner's building. The BUA of 11 structures is 653.74 sq.mts. There is balance BUA of 320.31 sq.mts. In my view therefore, the Petitioner-society can be granted conveyance of land proportionate to BUA of 1989.31 sq.mts while ownership in the rest of the land can be retained by the owners of land/structures by taking into consideration the BUA of 653.74 sq.mts + 320.31 sq.mts.

48) In my view, therefore, the Petitioner-Society cannot be granted conveyance of the entire plot of land and would, at best, be

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

entitled to conveyance of only its proportionate share of the land. Mr. Godbole has fairly accepted this suggestion.

49) In view of the above discussion, the petition succeeds in part and I proceed to pass the following order:

i. Order dated 28 March 2016 passed by the Competent Authority in Application No. 60 of 2015 is set aside.

ii. Application No. 60 of 2015 is remanded to the Competent Authority for fresh adjudication by undertaking the exercise of proportionate land division in view of the figures of BUA discussed above.

iii. Petitioners shall place before the Competent Authority certificate of architect indicating its exact land entitlement on the basis of BUA figures discussed above.

iv. Parties shall appear before the Competent Authority on 19 November 2026 and shall apply for fixation of date(s) of hearing in the remanded proceedings.

v. The remanded proceedings shall be decided by the Competent Authority as expeditiously as possible, preferably within a period of 4 months.

50) With the above order, the petition is **partly allowed** and disposed of. There shall be no order as to cost.

[SANDEEP V. MARNE , J.]

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13

51) After the Judgment is pronounced, the learned counsel appearing for the Respondent No.8 seeks stay on the judgment for a period of eight weeks. The request is opposed by the learned counsel appearing for Petitioner. Considering the nature of findings recorded in the judgment, I am not inclined to stay the judgment. The request is accordingly rejected.

[SANDEEP V. MARNE , J.]

NEETA SHAILESH SAWANT
Digitally signed by NEETA SHAILESH SAWANT
Date: 2026.11.05 21:54:32 +0530

Uploaded on - 05/11/2026 Downloaded on - 05/11/2026 23:16:13