January 2026

Current's

LAND AND PROPERTY JUDGEMENTS

(Supreme Court and Bombay High Court)

Mode of Citation : MLPJ

CURRENT DIGITECH

Published and Printed by:
Amit Nanda
for CURRENT DIGITECH
Ground Floor, Karanjia Building, 651 J.S.S Road,
Marine Lines (E), Mumbai - 400 002
Tel.: 9323540291
E-mail: jainabook@gmail.com

Yearly Subscription : Rs. 3600
Registered Post Charges : Rs. 240 (Optional)

Web Store : www.currentpublications.com
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LAPSING OF RESERVATION

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LAND AND PROPERTY JUDGEMENTS

2026(1)MLPJ1

IN THE SUPREME COURT OF INDIA

(Hon'ble Judge: J B Pardiwala; K V Viswanathan)

Civil Appeal No 13835 of 2025 **dated 19/11/2025**

Rajeswari & Ors

Versus

Shanmugam & Anr

ASSIGNMENT REGISTRATION

Specific Relief Act Sec. 28 Sec. 15 - Registration Act Sec. 17 - Assignment Registration - Appellants challenged execution after assignment deed remained unregistered - Legal heirs contended assignment of decree for specific performance attracted compulsory registration - Assignee sought execution based on assignment claiming right to obtain sale through process of law - Executing authority accepted objection and rejected execution holding assignment unenforceable - Appellants argued decree created interest in immovable property which required registration of assignment - Respondent contended decree only conferred right to seek conveyance through procedure and did not create interest in property - Higher forum examined nature of decree for specific performance and clarified such decree did not create any right or title in immovable property - Held contract continued till conveyance through registered instrument and decree merely recognized right to seek enforcement - It held Section 17(1)(e) applied only if decree created or assigned interest in immovable property - Held assignment of decree did not require registration - Upheld view of revisional Court and set aside finding of executing authority - Appeal Dismissed

Law Point: Assignment of decree for specific performance does not require registration since decree does not create right or interest in immovable property and Section 17(1)(e) applies only where decree itself purports to create or assign such interest

Acts Referred:

Specific Relief Act, 1963 Sec. 28, Sec. 15

Registration Act, 1908 Sec. 17

Counsel:

Jayanth Muth Raj (Senior Advocate), Malavika Jayanth, Isha Singh, R Ganesh, G Balaji, Arzu Paul, Neeleshwar Pavani, V Puneedhan, D Naveena

JUDGEMENT

K.V. Viswanathan, J.- [1] Leave granted.

[2] Should a deed assigning a decree for specific performance of an agreement of sale of immovable property, be registered under the provisions of the Registration Act, 1908, is the question that presents itself for consideration in this case.

BRIEF FACTS: -

[3] The appellants are the legal heirs of the judgmentdebtor. Their predecessor suffered an ex-parte decree on 13.09.1993 in O.S. No.100/1989 before the First Additional Sub Court, Erode, Tamil Nadu. The first Respondent hereinShanmugam claims to be the assignee of the decree dated 13.09.1993. The assignment deed is dated 17.07.1995.

[4] The first Respondent-assignee filed E.P. No.150/2004 in O.S. No.100/1989 seeking to recognize the assignment and seeking directions to execute the sale deed and deliver possession.

[5] On 13.03.2008, the Executing Court ordered the execution of the sale deed in favour of the first respondent.

[6] When the matter stood thus, on 31.10.2009, the appellants herein, who were the legal heirs of the deceasedjudgment debtor filed E.A. No.180/2009 under Section 47 of the Code of Civil Procedure, 1908 (for short 'CPC') seeking to set aside the execution of the sale deed dated 13.03.2008 in favour of the first respondent. They also prayed for the dismissal of the Execution Petition primarily on the ground that the assignment deed in favour of the first respondent was not registered and, hence, unenforceable in law. By an order of 08.04.2010, the Executing Court allowed E.A. No.180/2009 and on the aspect of the need for registration of the assignment, the Court recorded the following finding, after relying on the judgment of the High Court of Andhra Pradesh in **K. Bhaskaram and another vs. Mohammad Moulana (died) and others**, 2005 AIR(AP) 524:-

"18. While perusing the above decision, it can be noticed that it is not in dispute that there can be oral transfer of property without writing in every cases in which writing is not exclusively required under law. But if it is an immovable property, the value of which is more than Rs.100/- such transfer deed will have to be reduced in writing and also it requires compulsory registration. After analyzing section 17 of the Indian Registration Act the Hon'ble High Court categorically held that u/s.17(1)(e) and (f) of the Registration Act the assignment and transfer of the decree relating to immovable property of the value of Rs. 100/- and upwards is compulsorily registrable. Further it was held that the transfer of the right in a decree by way of assignment in immovable properties require stamp and registration and if there is a valid assignment of decree by operation of law, then the assignee is entitled to get the decree executed in his favour after issuing a notice to the transferors and the Judgment-Debtors. Further it was held that the non-compliance with provisio regarding notice under Order 21 Rule 16 C.P.C. renders all subsequent proceedings void. The above decision was also rendered in a case

of specific performance relating to immovable property. Therefore, this court finds that the principles and the decision reported above is squarely applicable to the facts of the present case also. No other decision or the principle laid down in any other case has been pointed out and produced by the respondents so as to reject or over-look the contentions raised by the petitioners herein or the decision reported in 'A.I.R. 2005- Andhra Pradesh- Page 524'. Therefore, this court has no other go except to accept the principles laid down in the above decision.

19. Since this court comes to the conclusion that the assignment deed executed by the 2nd respondent in favour of the 1st respondent has not been recognised prior to the execution of the sale deed and that the assignment deed Ex. Bl is bad for want of registration as per Section 17(1) of the Registration Act, this court finds that the execution proceedings initiated by the 1st respondent cannot be proceeded further."

[7] The first respondent herein filed a Revision Petition before the High Court which was allowed after holding that what has been assigned by the decree holder was only a right to derive benefits from the decree passed by the Court and nothing more and as such the deed of assignment was not compulsorily registrable. The High Court relied on the judgment of High Court of Judicature at Allahabad in Mumtaz Ahmad and Another vs. Sri Ram and others,1913 11 ALJR 815 .

[8] We have heard Mr. Jayanth Muth Raj, learned senior counsel for the appellants and Mr. R. Ganesh, learned counsel for the assignee-respondent No.1. Respondent No.2, though served, is not appearing. We have perused the records, including the original records of the High Court and the Trial Court, which we called for.

CONTENTIONS OF THE APPELLANTS: -

[9] Mr. Jayanth Muth Raj, learned senior counsel, after drawing our attention to Section 17(1)(e) of the Registration Act, as amended in 1929, contended that assignment of decree is compulsorily registrable when the decree purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property. According to the learned senior counsel, the Executing Court rightly relied upon the judgment of **K. Bhaskaram** (supra) wherein it was held that the assignment and transfer of the decree relating to immovable property of the value of one hundred rupees and upwards is compulsorily registrable and if it was unregistered and unstamped then there is no assignment of the decree in the eye of law.

[10] Mr. Jayanth Muth Raj, learned senior counsel, contends that a decree passed in a suit for specific performance of a sale agreement on immovable property creates an interest in the immovable property. Learned senior counsel refers to the Black's Law Dictionary for the meaning of the word "interest" as "a legal share in something; all or part of a legal or equitable claim to or right in property".

[11] Learned senior counsel submits that if the assignment of the decree of specific performance is not registrable, parties will get a specific performance decree

and instead of executing a sale deed, they will assign the decree multiple times for 12 years thereby they can avoid the registration charges which will defeat the purpose and object of the provisions of the Registration Act, 1908. No other submission has been canvassed before us.

CONTENTIONS OF THE RESPONDENT NO.1: -

[12] Mr. R. Ganesh, learned counsel for the assignee, submitted that the decree itself does not create or transfer any right as regards the suit property but only confers a right to obtain sale through the process of law. Hence, it is submitted that the contention of the appellants, that the assignment of decree warrants registration, is incorrect. Learned counsel relied on the judgment of the High Court of Judicature at Bombay in Amol and others vs. Deorao and others,2011 SCCOnLineBom 11 wherein it was held that assignment of a decree for specific performance does not require registration.

[13] Learned counsel contends that upon passing of a decree for specific performance the contract between the parties is not extinguished; that the parties to the contract continue to bear their rights and obligations to complete the contract in accordance with the terms and conditions of the contract; that the decree is subject to the further process, upto the stage of execution of the sale deed and its registration. It is submitted that the grant of specific performance is an equitable relief and merely because a decree for specific performance is passed, it cannot be presumed that a decree-holder is bound to get the sale deed executed in his favour. It is submitted that a decree for specific performance does not elevate the status of a decree-holder to that of an owner since no right, title or interest in or charge on the immovable property is created in favour of the decree holder.

DISCUSSION AND ANALYSIS: -

[14] We need to first set out the text of the decree for specific performance obtained by the second respondent which was the subject matter of the assignment. The decree dated 13.09.1993 reads as under: -

"1. The defendant is to receive the balance sale consideration and execute the sale of suit schedule property without any encumbrance in favour of the plaintiff.

2. Failing to do so as aforementioned, the plaintiff can execute and obtain a sale deed through the court.

3. The defendant should pay the plaintiff the costs Rs. 4,317.50.

4. The plaintiff is given a time of 1 month to execute the sale deed."

[15] We have also gone through the original records obtained from the High Court and the translated version of the assignment deed (Ex.B1) executed by the second respondent in favour of the first respondent herein. The assignment deed reads as under:-

"Ex.B.1 - Decree Made Over Decree Made over for Rs.20,000/-
The Decree Made over Deed, that is entered into, by me, K.T.Natarajan,

S/o.Thirumalaisamy Gounder, residing at Kanagapuram village, Erode Taluk,
TO AND IN FAVOUR OF
Shanmugam, S/o. Palanisamy Gounder, residing at Murungakaadu Thottam, Poondurai Semur village, Erode Taluk, on 07.07.1995 [The assignment deed is undisputedly dated 17.07.1995] (sic.), recites as hereunder:-
As the plaintiff, I obtained a decree in O.S. No. 100 of 1989 on the file of the I Additional Subordinate Court, Erode, against the defendant Kuppusamy Gounder, son of Chellappa Gounder, residing at Ayyagoundanpalayam, Elumathur Village, Erode Taluk, stating that according to the sale agreement dated 01.03.1988, the defendant Kuppusamy Gounder received a balance sale consideration of Rs.15,000/- from me in respect of the suit property and agreed to execute a sale deed in favour of me, the plaintiff, free from encumbrances, and to deliver possession thereof and in default of such execution, it was ordered that I, the plaintiff, shall be entitled to have the sale deed executed through court and the defendant was also directed to pay the costs of the suit, amounting to Rs.4,817/-. Also, according to the aforesaid decree, I had deposited the balance sale consideration of Rs.15,000/- before the Hon'ble Court on 03.09.1991. Since the aforesaid Defendant had not executed the sale as per the decree, I was constrained to file an Execution Petition.
In this situation, I am having received from you a total sum of Rs. 20,000/- (Rupees Twenty Thousand only) in cash, being the consideration towards the decree and costs awarded to me in the said suit, had executed the made over, the rights and interests of aforesaid suit, appeal, and decree, in full and absolute manner, into your favour, through this. Henceforth, all rights and interests arising out of the said suit, appeal, and decree shall belong solely to you. Hence, you shall execute the sale deed from the court through the Execution Petition in accordance with the aforesaid decree.
Hereafter, neither I nor my heirs shall have any claim or succession over the said decree. Thus, it is the Made Over Deed executed with my full consent. Henceforth, you shall file the Execution Petition and recover the costs along with the purchase of the property as per the agreement."

NATURE AND CHARACTER OF A DECREE FOR SPECIFIC PERFORMANCE: -

[16] As will be seen, what has been the subject matter of the assignment is a decree for specific performance of an agreement of sale. It will be trite at this stage to consider what exactly is the nature and legal character of a decree for specific performance.

[17] In **Babu Lal vs. M/s Hazari Lal Kishori Lal and others**, 1982 1 SCC 525 this Court in the context of examining the question, whether in a suit for specific performance, the relief of possession could be claimed at a subsequent stage, discussed the nature of the decree of specific performance in the following terms: -

"**6.** It would be appropriate to refer to the state of law as it existed prior to the amendment of the Specific Relief Act in 1963. One view was that the decree-holder does not acquire title or right to recover possession unless a sale deed is executed, in execution of the decree for specific performance. In **Hakim Enayat Ullah v. Khalil Ullah Khan**, 1938 AIR(All) 432 a Division Bench of the Allahabad High Court dealing with the question observed:

"A decree for specific performance only declares the right of the decree-holder to have a transfer executed in his favour of the property covered by the decree. The decree by itself does not transfer title. That this is so is apparent from the fact that in order to get title to the property the decree-holder has to proceed in execution in accordance with the provisions of Order 21 of the Code. So long as the sale deed is not executed in favour of the decree-holder, either by the defendant in the suit or by the court, the title to the property remains vested in the defendant and till the execution of the sale deed the decree-holder has no right to the possession of the property. It is only the execution of the sale deed that transfers title to the property."

7. In **Kartik Chandra Pal v. Dibakar Bhattacharjee**, 1952 AIR(Cal) 362 a Division Bench of the Calcutta High Court, however, after reviewing a number of reported cases, viz., **Ranjit Singh v. Kalidasi Debi**, 1910 37 ILR(Cal) 57 Madanmohan Singh v. Gaja Prasad Singh,1911 14 CrLJ 159 , Deonandan Prasad v. Janki Singh,1920 5 PatLJ 314 and **Atal Behary Acharya v. Barada Prasad Banerji**, 1931 AIR(Pat) 179, observed:

"...It is incontestable that in a suit for specific performance of contract for the sale of land it is open to the plaintiff to join in the same suit two prayers, one for the execution of the deed of transfer and another for recovery of possession of the land in question....

* * *

We ought to remember in this connection that no special form of decree in a suit for specific performance is supplied by the Civil Procedure Code. Chapter II, Specific Relief Act, deals with the various circumstances under which a contract may be enforced specifically and where it cannot be allowed. When a contract is to be specifically enforced, it means simply this that when the parties do not agree to perform the contract mutually the intervention of the Court is required and the Court will do all such things as the parties would have been bound to do had this been done without the intervention of the Court. A sale of a property after payment of the consideration and upon due execution of the deed of sale presupposes and requires the vendor to put the purchaser in possession of the property. It cannot be suggested that when a party comes to Court for the specific performance of a contract he is to be satisfied with simply the execution of the document on payment of the consideration money. The Court when allowing the prayer for specific performance vests the executing court with all the powers which are required to give full effect to the decree for specific performance. By the decree for specific performance, the Court sets out what it finds to be the real contract between the

parties and declares that such a contract exists and it is for the executing court to do the rest.

It may be noticed further that a decree in a suit for specific performance has been considered to be somewhat in the nature of preliminary decree which cannot set out in the fullest detail all the different steps which are required to be taken to implement the main portion of the order directing specific performance of the contract. The executing court is in such a case vested with authority to issue necessary directions."

***

21. If once we accept the legal position that neither a contract for sale nor a decree passed on that basis for specific performance of the contract gives any right or title to the decree-holder and the right and the title passes to him only on the execution of the deed of sale either by the judgment-debtor himself or by the court itself in case he fails to execute the sale deed, it is idle to contend that a valuable right had accrued to the petitioner merely because a decree has been passed for the specific performance of the contract. The limitation would start against the decree-holders only after they had obtained a sale in respect of the disputed property. It is, therefore, difficult to accept that a valuable right had accrued to the judgment-debtor by lapse of time. Section 22 has been enacted only for the purpose of avoiding multiplicity of proceedings which the law courts always abhor."

(Emphasis supplied)

[18] It will be seen from the above judgment that neither an agreement of sale nor a decree passed on the basis of specific performance of the contract gives any right or title to the decree holder and the right and title passes to him only on the execution of the deed of sale either by the judgment debtor himself or by the Court itself in case the judgment debtor fails to execute the sale deed.

[19] Sir Edward Fry in "A Treatise on the Specific Performance of Contracts" (Sixth Edition) graphically captures what specific performance of a contract is, in the following terms: -

"3. The specific performance of a contract is its actual execution according to its stipulations and terms; and is contrasted with damages or compensation for the non-execution of the contract. Such actual execution is enforced under the equitable jurisdiction vested in the Courts of this country by directing the party in default to do the very thing which he contracted to do, and, in the event of his disobedience, by treating such disobedience as a contempt of Court and visiting it with all the consequences of such contempt, including imprisonment; and in some cases by doing in one way the thing which the defaulter was directed to do in another way, as, e.g., by vesting by an order of the Court an estate which ought to have been vested by conveyance of the party. To say, as is above said, that the Courts enforce actual execution according to the stipulations and terms of the contract is not quite exact: for the Court rarely, if ever, interferes until the time for performance has passed and default been made:

consequently the performance enforced by the Court is almost always behind time as compared with due performance voluntarily yielded."

[20] The statutory provisions of the Transfer of Property Act, 1882 also make the same clear. The definition of sale and contract for sale which are relevant are set out hereinbelow: -

"54. "Sale" defined. -"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.-Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale. -A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property."

[21] Lucidly explaining the distinction between sale and a contract for sale, this Court speaking through (R.V. Raveendran, J.) in **Suraj Lamp & Industries (P) Limited (2) through Director vs. State of Haryana and Another**, 2012 1 SCC 656 held as under: -

"Scope of an agreement of sale

16. Section 54 of the TP Act makes it clear that a contract of sale, that is, an agreement of sale does not, of itself, create any interest in or charge on such property. This Court in **Narandas Karsondas v. S.A. Kamtam**, 1977 3 SCC 247 observed: (SCC pp. 254-55, paras 32-33 & 37)

"32. A contract of sale does not of itself create any interest in, or charge on, the property. This is expressly declared in Section 54 of the Transfer of Property Act. (See **Ram Baran Prasad v. Ram Mohit Hazra**, 1967 AIR(SC) 744). The fiduciary character of the personal obligation created by a contract for sale is recognised in Section 3 of the Specific Relief Act, 1963, and in Section 91 of the Trusts Act. **The personal obligation created by a contract of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of contract and annexed to the ownership of property, but not amounting to an interest or easement therein.**

33. In India, the word 'transfer' is defined with reference to the word 'convey'. The word 'conveys' in Section 5 of the Transfer of Property Act is used in the wider sense of conveying ownership.

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37....that only on execution of conveyance, ownership passes from one party to another ."

17. In **Rambhau Namdeo Gajre v. Narayan Bapuji Dhotra**, 2004 8 SCC 614 this Court held: (SCC p. 619, para 10)

"10. Protection provided under Section 53-A of the Act to the proposed transferee is a shield only against the transferor. It disentitles the transferor from disturbing the possession of the proposed transferee who is put in possession in pursuance to such an agreement. It has nothing to do with the ownership of the proposed transferor who remains full owner of the property till it is legally conveyed by executing a registered sale deed in favour of the transferee. Such a right to protect possession against the proposed vendor cannot be pressed into service against a third party."

18. It is thus clear that a transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance (duly stamped and registered as required by law), no right, title or interest in an immovable property can be transferred.

19. Any contract of sale (agreement to sell) which is not a registered deed of conveyance (deed of sale) would fall short of the requirements of Sections 54 and 55 of the TP Act and will not confer any title nor transfer any interest in an immovable property (except to the limited right granted under Section 53-A of the TP Act). **According to the TP Act, an agreement of sale, whether with possession or without possession, is not a conveyance. Section 54 of the TP Act enacts that sale of immovable property can be made only by a registered instrument and an agreement of sale does not create any interest or charge on its subject-matter."**

(Emphasis supplied)

DECREE FOR SPECIFIC PERFORMANCE DOES NOT EXTINGUISH THE CONTRACT

[22] It will be seen that in case of immovable property of value of one hundred rupees and upwards, transfer of ownership will occur only on the execution of a registered instrument.

[23] It is also relevant to notice the fundamental principle that with the passing of a decree of the specific performance, the contract between the parties is not extinguished. Section 28 of the Specific Relief Act, 1963, statutorily recognizes this principle with regard to contracts for the sale or lease of immovable property, the specific performance of which has been decreed. Section 28 reads as under: -

"28. Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed.-

(1) Where in any suit a decree for specific performance of a contract for the sale or lease of immovable property has been made and the purchaser or lessee does not, within the period allowed by the decree or such further period as the court may allow, pay the purchase money or other sum which the court has ordered him to pay, the vendor or

lessor may apply in the same suit in which the decree is made, to have the contract rescinded and on such application the court may, by order, rescind the contract either so far as regards the party in default or altogether, as the justice of the case may require.

(2) Where a contract is rescinded under sub-section (1), the court-

(a) shall direct the purchaser or the lessee, if he has obtained possession of the property under the contract, to restore such possession to the vendor or lessor, and

(b) may direct payment to the vendor or lessor of all the rents and profits which have accrued in respect of the property from the date on which possession was so obtained by the purchaser or lessee until restoration of possession to the vendor or lessor, and if the justice of the case so requires, the refund of any sum paid by the vendee or the lessee as earnest money or deposit in connection with the contract.

(3) If the purchaser or lessee pays the purchase money or other sum which he is ordered to pay under the decree within the period referred to in sub-section (1), the court may, on application made in the same suit, award the purchaser or lessee such further relief as he may be entitled to, including in appropriate cases all or any of the following reliefs, namely:-

(a) the execution of a proper conveyance or lease by the vendor or lessor;

(b) the delivery of possession, or partition and separate possession, of the property on the execution of such conveyance or lease.

(4) No separate suit in respect of any relief which may be claimed under this section shall lie at the instance of a vendor, purchaser, lessor or lessee, as the case may be.

(5) The costs of any proceedings under this section shall be in the discretion of the court."

[24] In **Hungerford Investment Trust Limited (In Voluntary Liquidation) vs. Haridas Mundhra and others**, 1972 3 SCC 684 this Court held as follows: -

"25. We have already indicated that the contract between the parties was not extinguished by the passing of the decree, that it subsisted notwithstanding the decree. It was on implied term of the contract and, therefore, of the decree passed thereon that the parties would perform the contract within a reasonable time. To put it in other words, as the contract subsisted despite the decree and as the decree did not abrogate or modify any of the express or implied terms of the contract, it must be presumed that the parties to the decree had the obligation to complete the contract within a reasonable time."

SCOPE OF SECTION 17(1)(e) REGISTRATION ACT

[25] Section 17(1)(e) of the Registration Act, 1908 reads thus:-

"17. Documents of which registration is compulsory. -(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:-

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(e) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property."

[26] If we analyze Section 17(1)(e) of the Registration Act on which the case of the appellant pivots, it will be clear that what this section prescribes is that registration is mandatory only for non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property. In this case, when the decree itself which is for specific performance does not create or purport to create any right, title or interest in any immovable property, the question of registering an instrument assigning such a decree cannot arise.

[27] In an erudite judgment which repays study, a learned Single Judge of the Bombay High Court (R.K. Deshpandey J.) in **Amol (supra)**, held as under: -

"27. In the light of the aforesaid judgments of the Apex Court, it has to be held that the contract between the parties is not extinguished, upon passing of a decree and it subsists notwithstanding the decree. Passing of the decree does not abrogate or modify any of the express or implied terms of the contract. The parties to the contract continue to bear their rights and obligations to complete the contract in accordance with the terms and conditions of the contract. It does not confer an indefeasible right upon the decree-holder to get the property straightaway in his own name. The decree for specific performance of contract is in the nature of a preliminary decree and the Court passing the decree continues to retain its control over the entire matter and the suit is deemed to be pending, even after such a decree. Such decree is subject to the further process, upto the stage of execution of the sale-deed and its registration. The Court continues to monitor the further process and may either direct the execution of the sale-deed by the vendor or the execution of the sale-deed through the process of Court or even to refuse the execution of the sale-deed, if it is found that the decree-holder is not ready and willing to abide by his obligations, which are traceable either to the contract for sale or to the terms of such decree. In a given case, the Court may also order rescission of the agreement, to do equity. Thus, the grant of specific performance and its execution is an equitable relief and he who seeks equity can be put on the terms to ensure that the equity is done to the opposite party. Merely because a decree for specific performance is passed, it cannot be presumed that a decree-holder is bound to get the sale-deed executed in his favour.

[28] Thus, a decree for specific performance passed on the basis of an agreement to sale or a contract for sale, merely recognizes a claim for specific performance of

contract, which is capable of being specifically enforced at the instance of a decree-holder. It does not elevate the status of a decree-holder, subsisting prior to passing of such a decree, to that of the owner of the property in question. It does not create any right, title, interest in or charge on the immovable property in favour of a decree-holder. Even in respect of such a decree, the sale would be complete only upon the execution of the sale-deed in favour of the decree-holder either by the vendor/judgment-debtor or through the process of the Court. It is only upon the registration of such sale-deed upon payment of stamp duty under Item 20 of Schedule I of the Stamp Act, that any right, title and interest in such property shall validly pass on to the decree-holder, who is the purchaser of the suit property. Hence, mere passing a decree for specific performance of contract does not result in the transfer of property.

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30. Section 17(1)(e) deals with an assignment of a decree of a Court, when such decree purports or operates to create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards, to or in immovable property. What is contemplated by this provision is that the decree passed itself, should purport or operate to create, declare, assign, limit or extinguish, whether in present or in future any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards, to or in immovable property. As pointed out earlier, the decree for specific performance of contract by itself, does not create right, title or interest in or charge on the immovable property in favour of a decreeholder. Hence, the provision of Section 17(1)(e) is not at all attracted. Though the Executing Court was right in holding that neither the decree nor the Deed at Exhibit 178 required registration, it committed an error in holding that the Deed at Exhibit 114 was required to be registered." We record our concurrence to the holding in the said paragraphs.

28. What is assigned under Exhibit B1, in the present case, are the rights and interest arising out of the said decree. There is no dispute that such decrees could be assigned and in fact there could not have been any. Order 21 Rule 16 of the CPC permits the assignee of a decree to execute it in the same manner and subject to the same conditions as if the applications were made by such decree-holder. There has been no argument before us about any non-compliance with the proviso to Order 21 Rule 16. Order 21 Rule 16 reads as under:-

"ORDER XXI

EXECUTION OF DECREES AND ORDERS

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Application for Execution

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16. Application for execution by transferee of decree.- Where a decree or, if a decree has been passed jointly in favour of two or more persons, the interest of any

decree-holder in the decree is transferred by assignment in writing or by operation of law, the transferee may apply for execution of the decree to the Court which passed it; and the decree may be executed in the same manner and subject to the same conditions as if the application were made by such holder:

Provided that, where the decree, or such interest as aforesaid, has been transferred by assignment, notice of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to its execution:

Provided also that, where a decree for the payment of money against two or more persons has been transferred to one of them, it shall not be executed against the others."

[29] We may also notice here that Section 15 of the Specific Relief Act also recognizes that representative-in-interest of a party can obtain specific performance. Relevant portion of Section 15 of the Specific Relief Act reads as under.

"15. Who may obtain specific performance. -Except as otherwise provided by this Chapter, the specific performance of a contract may be obtained by-

(a) any party thereto;

(b) the representative-in-interest or the principal, of any party thereto:

Provided that where the learning, skill, solvency or any personal quality of such party is a material ingredient in the contract, or where the contract provides that his interest shall not be assigned, his representative in interest or his principal shall not be entitled to specific performance of the contract, unless such party has already performed his part of the contract, or the performance thereof by his representative in interest, or his principal, has been accepted by the other party;"

[30] Relying on Khardah Company Ltd. vs. Raymon & Co. (India) (P) Ltd.,1962 SCCOnLineSC 28 which elucidated how rights under a contract are assignable subject to certain limitations, this Court, in **Kapilaben and others vs. Ashok Kumar Jayantilal Sheth**, 2020 20 SCC 648 held as under: -

"**24.** It is well-settled that the term "representative-ininterest" includes the assignee of a contractual interest. Though the provisions of the Contract Act do not particularly deal with the assignability of contracts, this Court has opined time and again that a party to a contract cannot assign their obligations/liabilities without the consent of the other party. A Constitution Bench of this Court in **Khardah Co. Ltd. v. Raymon & Co. (India) (P) Ltd.**, 1962 AIR(SC) 1810 has laid out this principle as follows: (AIR p. 1819, para 19)].

"19. An assignment of a contract might result by transfer either of the rights or of the obligations thereunder. But there is a well-recognised distinction between these two classes of assignments. As a rule obligations under a contract cannot be assigned except with the consent of the promisee, and when such consent is given, it is really a novation resulting in substitution of liabilities. On the other hand, rights under a contract are assignable unless the contract is personal in its nature or the rights are incapable of assignment either under the law or under an agreement between the parties."

[31] We are not able to countenance the submission of Mr. Jayanth Muth Raj, learned Senior Counsel that a decree passed in a suit for specific performance of the sale agreement on immovable property creates an interest in the immovable property. As held in **Suraj Lamp (supra)** cited hereinabove, the personal obligation created by an agreement of sale is described in Section 40 of the Transfer of Property Act as an obligation arising out of a contract and annexed to the ownership of property, but not amounting to an interest or easement therein.

[32] Reliance by the learned senior counsel for the appellants on **Satish Kumar and others vs. Surinder Kumar and others**, 1969 2 SCR 244 is again misplaced. The paragraph cited from that judgment dealt with Section 17(1)(b) of the Registration Act which again prescribes for the creation or extinguishment of any right, title or interest in the immovable property. As held hereinabove, since no interest is created in the immovable property, Section 17(1)(b) also would not be applicable. We are also not able to accept the submission that if multiple assignments are permitted registration can be avoided. If a party after obtaining an assignment deed does not execute the decree, no right will enure to it in the immovable property. Hence, the argument that there will be loss of revenue to the State is not tenable.

[33] The holding to the contrary in **K. Bhaskaram (supra)** on the aspect of the need for registration of an assignment deed assigning a decree for specific performance of an agreement for sale, does not lay down the correct law. In that case, it appears that parties proceeded on an admission that the registration was required. Further in that case, the Court faulted the assignment for breach of Order 21 Rule 16 also.

[34] In any event, in view of what has been held hereinabove, the assignment deed (Exhibit B1) assigning the decree of specific performance in this case did not require registration. The Executing Court which denied execution of the decree was clearly wrong and the High Court which set aside the judgment of the Executing Court was clearly right. We uphold the judgment of the High Court for the reasons set out hereinabove.

[35] For the reasons stated above, the appeal is dismissed. No order as to costs

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2026(1)MLPJ14

IN THE SUPREME COURT OF INDIA

[From BOMBAY HIGH COURT]

(Hon'ble Judge: B R Gavai; K Vinod Chandran)

Civil Appeal; Diary No 25098 of 2025 **dated 18/11/2025**

Ashok S/o Vitthalrao Jagtap

Versus

State of Maharashtra and Ors

LAND COMPENSATION

Land Acquisition Act, 1894 Sec. 23, Sec. 28, Sec. 18 - Maharashtra Industrial Development Act, 1961 Sec. 32 - Land Compensation - Acquisition of agricultural land under industrial development scheme led to dispute regarding quantum of compensation - Lands taken under Maharashtra Industrial Development Act for creation of industrial area - Compensation awarded by Land Acquisition Officer accepted under protest and reference filed under Land Acquisition Act - Reference Court enhanced compensation considering location near town and non-agricultural potentiality - Appeal by acquiring authority dismissed by High Court - Present appeal filed by claimants contended parity with other connected matters decided by Supreme Court - Observation made that lands adjacent to town had access to highway, water facility and developmental potential - Deduction applied by earlier decision on similar facts held applicable - Appellants entitled to enhanced compensation as per highest sale exemplar adopted in earlier decision - High Court judgment set aside - Compensation re-determined following same principle as earlier decision of similarly situated landowners - Appeals Allowed

Law Point: When lands under acquisition are adjacent to developing town and possess non-agricultural potentiality, compensation must be determined applying comparable sale exemplars with reasonable deduction considering developmental factors

Acts Referred:

Land Acquisition Act, 1894 Sec. 23, Sec. 28, Sec. 18

Maharashtra Industrial Development Act, 1961 Sec. 32

Counsel:

Deshmukh Adith Satish, Anand Dilip Landge, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Shrirang B Varma, Soumik Ghosal

JUDGEMENT

B.R. Gavai, C.J.I.- [1] Delay condoned.

[2] Leave granted.

[3] The present batch of appeals challenge the common judgment and final order dated 21st April 2022, passed by a learned Single Judge of the High Court of Judicature at Bombay, Bench at Aurangabad (hereinafter, "High Court"), whereby the First Appeals filed by the claimants/Appellants came to be dismissed.

FACTS

[4] The facts, in brief, giving rise to the present appeals are as given below:

4.1. The details of the land pertaining to each of the Appellants have been provided at Sr. Nos. 1, 2, 4, 10, 14, 17, 19 and 20 in chart available at paragraph 28 of the impugned judgment.

4.2. It appears that the land of the Appellants and other adjoining lands were sought to be acquired in the 1990s under the provisions of the Maharashtra Industrial Development Act, 1961 (hereinafter, "Act of 1961") for setting up an Industrial Area near Jintur town in Parbhani District.

4.3. On 16th January 1992, the Land Acquisition Officer & Deputy Collector, Hingoli (hereinafter, "Land Acquisition Officer") issued a notice under sub-section (2) of Section 32 of the Act of 1961.

4.4. On 6th December 1994, the Respondent-State took possession of the Appellants' land and an Award came to be passed by the Land Acquisition Officer. In terms of the said Award, the total area subject matter of the acquisition was 89 Hectares and 44 Are and the total compensation awarded was Rs. 45,70, 508/-.

4.5. Being aggrieved by the quantum of compensation awarded, the Appellants accepted the compensation under protest and simultaneously filed a Reference under Section 18 of the Land Acquisition Act, 1894 (hereinafter, "LA Act") in the year 1997.

4.6. Vide judgment and award dated 7th June 2007, in L.A.R. No. 61 of 1997, the Court of Principal District Judge, Parbhani (hereinafter, "Reference Court"), partly allowed the reference with proportionate costs and enhance the compensation.

4.7. The same was carried in an appeal, however, the batch of appeals was dismissed by the learned Single Judge of the High Court.

4.8. Being aggrieved thereby, the present appeals came to be filed by way of special leave.

SUBMISSIONS

[5] We have heard Mr. Adith Satish Deshmukh, learned counsel appearing for the Appellant, Mr. Shreenivas Patil, learned counsel appearing for the Respondent No. 1 State and Ms. Shyamali Gadre, learned counsel for Respondent No.3 Maharashtra Industrial Development Corporation.

[6] Mr. Deshmukh submitted that this Court vide judgment and order dated 28th July 2025 in Civil Appeal No. 9870 of 2025 and connected matters titled as **"Manohar & Others v. The State of Maharashtra and Others"** has allowed the appeals of some of the other landowners whose cases were decided by the common impugned judgment and order. He, therefore, submits that on parity the present appeals also deserve to be allowed.

[7] Ms. Gadre appearing on behalf of the Respondent No. 3, on the contrary, submitted that there is distinction between the present cases and the cases which were decided by this Court in the earlier round. She submitted that lands in the present case are situated far away from the town of Jintur. She, therefore, submitted that in the event this Court is inclined to allow the appeals, the deduction to be made should be on higher side.

DISCUSSION

[8] We have heard learned counsel for the parties. We have also perused the material placed on record.

[9] We find that the contention as raised by the learned counsel for Respondent No.3 is without substance.

[10] It will be relevant to refer the paragraph 46 of the impugned judgment and order, which reads as under:

"46. It is material to note that the acquired lands are selected for acquisition. **It is evident from the testimony of the claimants that the acquired lands are more convenient for the establishment of M.I.D.C. Jintur. Water facility is also available at a short distance from the acquired lands. The stock of evidence produced by the claimants regarding the proximity of the acquired lands with Jintur town coupled with facilities available and advantages is not any way challenged by way of cross-examination. Certainly, the argument advanced by the learned counsel for the M.I.D.C. that the acquired lands are at a distance of 5 k.m. away from the Jintur town cannot be accepted.** The claimants have also placed on record the documentary evidence in the nature of village map of Pungala and map of Jintur town in order to show the proximity. The learned reference Court has rightly considered the village map of Pungala and map of Jintur town and the location of acquired lands in para 11 of the impugned judgment. **It is rightly held by the reference Curt that the acquired lands are adjacent to Jintur town.** There are hills in between the lands and village Pungala and the acquired lands and they are near to Jintur town rather than from Pungala. **The acquired lands are situated near T-point of Nashik-Nirmal State Highway. It is also observed by the reference Court that the acquired land has N.A. potentiality. The percolation tank is just opposite to the acquired lands, it has sufficient water. As such, selection of the acquired lands for acquisition for establishment of M.I.D.C. indicates their prime location as observed by the reference Court."**

(emphasis added)

[11] A perusal of the aforesaid reveals that, upon examining the documentary evidence, the learned Single Judge of the High Court concurred with the findings of the Reference Court that the acquired lands are adjacent to the Jintur Town. It was found that there are hills in between the lands and village Pungala and the acquired lands are closer to Jintur town rather than to Pungala. It was further found that the lands are situated near the T-point of Nashik-Nirmal State Highway. It was also found that the land in question has N.A. (non-agriculture) potentiality.

[12] We find that most of the land involved in the present cases is either irrigated land or just situated adjacent to the Highway.

[13] Vide judgment and order dated 28th July 2025 in **Manohar** (supra), this Court has held that the ten sale exemplars placed before the Reference Court by the claimants/landowners were found to be of small plots of the land, each of them being

less than 1 Hectare, in the Jintur town. We had, therefore, while accepting the sale exemplars concurred with the conclusion of the Reference Court that a reasonable reduction requires to be made. Accordingly, while granting compensation as per the highest sale exemplar dated 31st March 1990, having market value of Rs. 72,900/- per Acre, we deemed it appropriate to apply a deduction of 20% i.e., Rs. 14,580 per Acre.

CONCLUSION

[14] Taking an overall view of the matter, we are of the considered view that the Appellants being similarly situated to the ones before this Court in the case of **Manohar** (supra), the present appeals also deserve to be allowed in the same terms.

[15] Pertinently, we had while issuing notice in some of the present appeals, observed that the Appellants shall not be entitled to the interest for the period of delay in filing the Special Leave Petition. Accordingly, we find that the Appellants shall not be entitled for the same.

[16] In the result, we pass the following order:

i. The present batch of appeals are allowed;

ii. The judgment and final order dated 21st April 2022, passed by the learned Single Judge of the High Court is quashed and set aside;

iii. The judgment and award dated 7th June 2007 passed by the Reference Court is quashed and set aside;

iv. We direct that the compensation granted to the Appellants be enhanced from Rs. 32,000/- per Acre to Rs. 58,320/- per Acre; and

v. We further direct that all other consequential benefits of solatium and interest on the enhanced compensation in terms of Section 23(1-A), 23(2) and 28 of the Land Acquisition Act, 1894, be granted to the Appellants. They will, however, not be entitled for any interest for the period of delay in filing the present appeals.

[17] Pending applications, if any, are disposed of

2026(1)MLPJ18

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Amit Borkar)

Writ Petition No. 9384 of 2014 **dated 19/12/2025**

Uday Bhanudas Gujar

Versus

Madan Yeshwant Diwan; Alka @ Mithila Madan Diwan; Deputy Collector (Rehabilitation), Pune; Sub Divisional Officer, Bhor Division,; Divisional Commissioner, Pune Division; Sah Ebr Ao Tatyaba Barke

SALE PERMISSION CANCELLATION

Maharashtra Land Revenue Code, 1966 Sec. 248, Sec. 247 - Maharashtra Project Affected Persons Rehabilitation Act, 1999 Sec. 3, Sec. 12 - Sale Permission Cancellation - Challenge raised against Divisional Commissioner's order revoking sale permission earlier granted under Rehabilitation Act - Permission acted upon and registered sale deed executed - Appeal entertained without condoning delay and beyond jurisdiction - Authorities under Rehabilitation Act had no power to cancel once transaction completed - Remedy lay only through civil court - Commissioner acted without jurisdiction and contrary to statute - Permission granted validly - Order cancelling permission quashed - Possession and title of petitioner protected - Directions issued restoring mutation entries - Rule made absolute - Petition Allowed

Law Point: Once statutory permission for transfer under Rehabilitation Act is acted upon by registered sale, higher authority lacks jurisdiction to cancel it; only civil court may adjudicate competing title claims.

Acts Referred:

Maharashtra Land Revenue Code, 1966 Sec. 248, Sec. 247

Maharashtra Project Affected Persons Rehabilitation Act, 1999 Sec. 3, Sec. 12

Counsel:

Tejas D Deshmukh, Ronak Utagikar, Onkar V Somvanshi, Sonali Kunekar, Aseem Naphade, M S Bane

JUDGEMENT

Amit Borkar, J.

[1] The challenge in this petition arises from the order dated 1 August 2014 passed by the Divisional Commissioner, Pune. By the said order, a purported appeal was entertained, and the sale permission dated 13 December 2010 granted in favour of the petitioner's vendor, respondent No.6, under Section 12 of the Maharashtra Rehabilitation Act, 1999 was revoked. This permission had already been acted upon by execution of a registered sale deed in favour of the petitioner. The subject land forms part of Gat No.36, which was originally owned by respondent No.6 as on 8 May 1995. Respondent No.6 had executed an agreement to sell in favour of one Satish Tanksale on that date. Satish Tanksale has, till date, not filed any suit for specific performance. On 15 July 2010, respondent No.6 applied to respondent No.4 under Section 12 of the Rehabilitation Act seeking permission to transfer the land to the petitioner. On 13 December 2010, respondent No.4 granted such permission. Pursuant thereto, on 31 March 2011, respondent No.6 executed a registered sale deed in favour of the petitioner and handed over possession. On 25 April 2011, the petitioner's name was entered in the revenue record by mutation entry No.1579. Thereafter, on 19 April 2011, Satish Tanksale executed an agreement in favour of respondent Nos.1 and 2, on the basis of which they claim rights allegedly flowing from the agreement to sell dated 8 May 1995.

[2] Respondent Nos.1 and 2 thereafter started interfering with the petitioner's possession over the land. The petitioner, therefore, filed Special Civil Suit No.1736 of 2011 on 30 August 2011 seeking an injunction to restrain respondent Nos.1 and 2 from disturbing his possession. The Trial Court granted the injunction on 10 May 2012. The said order was confirmed by the District Court.

[3] On 9 November 2011, respondent Nos.1 and 2 filed Appeal No.44 of 2011 challenging the sale permission dated 13 December 2010 along with an application for condonation of delay. The petitioner filed his reply to the delay condonation application on 6 March 2012. On the same day, the petitioner also raised a specific objection regarding the maintainability of the appeal.

[4] On 1 August 2014, respondent No.5 proceeded to hear the purported appeal on merits without first condoning the delay. Respondent No.5 cancelled the sale permission dated 13 December 2010 solely on the ground that respondent No.4 was not informed about the agreement dated 8 May 1995 and that Satish Tanksale was neither informed nor heard before grant of permission. Aggrieved thereby, the petitioner has approached this Court.

[5] This Court, by order dated 26 February 2018, issued Rule in the present petition.

[6] Mr. Deshmukh, learned Advocate for the petitioner, submitted that the Rehabilitation Act does not provide for any appeal against an order granting permission for transfer. He contended that the appellate order is therefore without jurisdiction. He submitted that an order granting permission does not amount to a decision or order under Section 247 of the Maharashtra Land Revenue Code, as it does not adjudicate any right, title, or interest. According to him, the expression order must be read in the context of the preceding word decision, which contemplates adjudication of rights. He further submitted that the reasons recorded in the impugned order relate to alleged civil disputes, which respondent No.5 was not competent to examine. He submitted that under Section 12(2) of the Rehabilitation Act, permission can be refused only if the proposed transfer defeats the object or provisions of the Act. He further submitted that respondent Nos.1 and 2 are not aggrieved persons and lack locus to challenge the grant of permission. According to him, Satish Tanksale acquired no right, title, or interest under the agreement dated 8 May 1995. Consequently, he could not have transferred any such right in favour of respondent Nos.1 and 2 by the deed dated 9 April 2011. He emphasized that Satish Tanksale never instituted a suit for specific performance. He submitted that once the permission was acted upon, the sale deed was executed, and possession was delivered, the authority under the Act had no power to cancel the permission.

[7] Ms. Sonali Kunekar, learned Advocate for respondent Nos.1 and 2, submitted that respondent No.6 had entered into a registered agreement to sell with Satish Tanksale on 8 May 1995, which required disclosure while seeking sale permission. She submitted that respondent No.5 has passed a reasoned order holding that respondent No.6 suppressed the material fact of the existence of the registered agreement dated 8 May

1995. On that basis, respondent No.5 directed the petitioner to have his rights adjudicated by a competent Civil Court. She submitted that respondent No.5, being the controlling authority under Section 3 of the Rehabilitation Act, was justified in cancelling the permission after granting hearing to all parties. She contended that the petitioner obtained the permission by suppressing material facts, amounting to fraud on respondent Nos.4 and 5, and that the permission was contrary to the provisions of the Rehabilitation Act. On these grounds, she prayed for dismissal of the petition.

[8] Mr. Naphade, learned Advocate for respondent Nos.4 and 5, submitted that the impugned order passed by respondent No.5 is appealable to the State Government under Section 248 of the Maharashtra Land Revenue Code, 1966. Alternatively, the petitioner could have invoked revisional jurisdiction under Section 257(4) of the said Code. He submitted that by the impugned order, the matter has been remanded to respondent No.4 for reconsideration. He invited attention to Section 247 of the Maharashtra Land Revenue Code and submitted that an appeal lies from any decision or order passed under the Code or under any other law for the time being in force. He submitted that Section 12 of the Rehabilitation Act does not exclude the application of Section 247 of the Code. He further submitted that although the appeal was filed before the Divisional Commissioner instead of the Collector, respondent No.5 still possessed revisional powers under Section 257 of the Code to examine the order dated 13 December 2010 passed by respondent No.4. According to him, the impugned order represents a bona fide exercise of statutory power. It does not disclose any deliberate recklessness, negligence, or misconduct as contemplated in paragraph 28 of the judgment of the Supreme Court in **Union of India v. K.K. Dhawan**, 1993 2 SCC 56. Relying upon the decision in **P.C. Joshi v. State of Uttar Pradesh**, 2001 6 SCC 491, he submitted that even if the order is erroneous, it does not justify any adverse action against the officer. He therefore prayed for dismissal of the petition.

[9] The controversy before this Court is narrow in form but significant in consequence. It turns on a single core question. Whether the Divisional Commissioner possessed jurisdiction to entertain an appeal and cancel a sale permission granted under Section 12 of the Maharashtra Rehabilitation Act, 1999, after such permission had been acted upon and had culminated in a registered sale deed and transfer of possession.

[10] The facts are largely undisputed. Respondent No.6, the original owner of the land, sought permission under Section 12 of the Rehabilitation Act to transfer the land to the petitioner. The competent authority, respondent No.4, granted such permission on 13 December 2010. Acting on that permission, a registered sale deed was executed on 31 March 2011. Possession was delivered. Revenue entries were mutated. The transaction stood completed in the eyes of law.

[11] Long thereafter, respondent Nos.1 and 2, who trace their claim to an un-enforced agreement to sell of the year 1995 executed in favour of one Satish Tanksale, approached the Divisional Commissioner by way of an appeal challenging the sale permission. That appeal was filed with delay. The delay was never condoned. Despite

this, the Divisional Commissioner proceeded to examine the matter on merits and cancelled the sale permission on the ground of alleged suppression of the earlier agreement.

[12] At the threshold, the submission of the petitioner that the very appeal was not maintainable deserves acceptance. The Rehabilitation Act does not provide any appellate remedy against an order granting permission under Section 12. The statute is selfcontained. The authority granting permission acts as a designated authority under the special enactment. It does not act as a revenue officer exercising powers under the Maharashtra Land Revenue Code.

[13] The law on this issue is no longer res integra. The Supreme Court in **Fulchand Bhagwandas Gugale v. State of Maharashtra**, 2005 1 SCC 193 has authoritatively held that when an officer functions under a special statute, his powers are circumscribed by that statute alone. He does not act as a revenue officer under the Land Revenue Code merely because he also holds that office. Consequently, orders passed under the special statute do not automatically become amenable to appeal or revision under Sections 247 or 257 of the Land Revenue Code.

[14] Applying this principle, the order granting permission under Section 12 of the Rehabilitation Act cannot be treated as a decision or order under the Land Revenue Code. It does not adjudicate any civil rights. It merely grants statutory permission. Therefore, Section 247 of the Code has no application. The Divisional Commissioner could not assume appellate jurisdiction where none was conferred by law.

[15] The submission on behalf of respondent Nos.4 and 5 that the Divisional Commissioner could still exercise revisional powers under Section 257 of the Code also cannot be accepted. Revisional power presupposes that the original order is one passed under the Code or under a law where the Code is made applicable. The Rehabilitation Act contains no such incorporation. The ratio of Fulchand Gugale squarely negatives this contention.

[16] The further infirmity is procedural and fundamental. The appeal was filed beyond limitation. The application for condonation of delay was pending. Without deciding that application, the Divisional Commissioner could not have entered upon the merits. An authority cannot assume jurisdiction first and decide limitation later. Jurisdiction must precede adjudication. This alone vitiates the impugned order.

[17] Even on merits, the reasoning adopted by the Divisional Commissioner is legally untenable. The existence of an agreement to sell does not create any right, title, or interest in immovable property. Satish Tanksale never sought specific performance for over fifteen years. He conveyed no enforceable right to respondent Nos.1 and 2. A person without title cannot clothe another with title. Such parties cannot be treated as aggrieved persons under Section 12 of the Rehabilitation Act.

[18] More importantly, the authority granting permission under Section 12 is not required to adjudicate private civil disputes. Section 12(2) permits refusal of permission

only if the transfer defeats the object of the Act. The Act is concerned with rehabilitation and restrictions on transfer. It is not a forum for deciding rival contractual claims. The Divisional Commissioner cancelled the permission solely on grounds rooted in alleged civil disputes. That exercise travels far beyond the statutory limits.

[19] Once the permission was acted upon and a registered sale deed came into existence, the statutory authority became functus officio. The Act does not confer any power of review or recall. Cancellation of a permission after it has fructified into a completed conveyance is wholly impermissible in the absence of express statutory authority.

[20] The argument that the Divisional Commissioner acted bona fide or corrected a wrong cannot rescue the impugned order. As held in Fulchand Gugale, an authority cannot justify an illegal exercise of power on the ground that it produces a just result. Jurisdiction is not a matter of convenience. It is a matter of law. An order passed without jurisdiction remains invalid regardless of its perceived correctness.

[21] The reliance on alternate remedies under Sections 248 or 257 of the Land Revenue Code is also misplaced. When the very assumption of jurisdiction is challenged, availability of an alternate remedy does not operate as a bar. The petitioner cannot be driven to a statutory remedy which itself is founded on an erroneous assumption of jurisdiction.

[22] The submission regarding fraud is equally unsustainable. The alleged agreement of 1995 conferred no transferable interest. Nondisclosure of a legally irrelevant fact cannot amount to fraud. Fraud must relate to a fact which the law requires to be disclosed and which has a direct bearing on the statutory satisfaction. That is not the case here.

[23] Viewed from any angle, the impugned order cannot be sustained. It suffers from lack of jurisdiction, procedural illegality, and substantive legal error. Upholding such an order would amount to permitting authorities to exercise powers not conferred by law. That course is impermissible.

[24] Accordingly, the order dated 1 August 2014 passed by the Divisional Commissioner is set aside. The sale permission dated 13 December 2010 stands restored. The registered sale deed executed in favour of the petitioner remains valid and operative.

[25] The petition is allowed in these terms. No order as to costs.

[26] In view of the disposal of the writ petition, nothing remains to be adjudicated in the interim application. Hence, the interim application stands disposed of

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2026(1)MLPJ24

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Gauri Godse)

Second Appeal No 112 of 2004 **dated 11/12/2025**

Pundlik Dagu Holgade; Savliram @ Uttam Dagu Holgade; Nandu Dagu Holgude; Laxman Dagu Holgude; Sajabai Nivrutti More; Rambhabai Vishwanath Kaire; Rajubai Namdeo Shinde; Parvati Dagu Holgade

Versus

Pandurang Kashinath Hire; Ramesh S/o Pandurang; Krishna S/o Pandurang; Premendra S/o Pandurang; Tarabai Madhukar Bhalerao; Ratna Bhikaji Gangurde; Pandit Kashinath Hire; Sushilabai Pandit Hire; Surekha Valmik Gunjal; Law

MORTGAGE OR SALE

Transfer of Property Act, 1882 Sec. 58 - Mortgage or Sale - Plaintiffs sought redemption claiming transaction as mortgage by conditional sale - Defendants contended document was absolute sale with condition to repurchase within five years - Trial court dismissed suit treating document as sale deed - Appellate court reversed holding transaction mortgage by conditional sale - Second appeal examined intention of parties and language of document - Court observed that document transferred absolute ownership with right to create third party interests and absence of creditor-debtor relationship indicated sale with repurchase condition - Inadequate consideration alone not sufficient to infer mortgage - Held that transaction was sale with condition to repurchase, not mortgage by conditional sale - Appeal Allowed

Law Point: Determination whether transaction is mortgage by conditional sale or sale with condition to repurchase depends on intention of parties and document terms; mere inadequacy of consideration not decisive in absence of debtor-creditor relationship

Acts Referred:

Transfer of Property Act, 1882 Sec. 58

Counsel:

Rukmini Khairnar, P N Joshi, B K Barve, Sandeep Barve, Anushka Barve, Simmy Sebastian, Shingote, B K Barve & Co

JUDGEMENT

Gauri Godse, J.- [1] This second appeal is filed by the original defendants to challenge the judgment and decree passed by the first appellate court. By the impugned decree, the suit for redemption of the mortgage is decreed, and the plaintiff is directed to deposit an amount of Rs. 300/- towards redemption of the mortgage. The second appeal is admitted vide order dated 1st July 2004 on the following substantial question of law:

"Whether the Appellate Court committed error by misreading and misinterpreting the document dated 2nd July, 1962 and came to the conclusion that the document is mortgage by a condition of sale ?"

FACTS IN BRIEF:

[2] The appellants are the original defendants nos. 1 to 8. Respondent No. 1 is the original plaintiff. Respondents Nos. 2 to 6 are the original defendants nos. 9 to 13. It was the plaintiff's case that the father of the plaintiff and defendants nos. 9 to 13 needed money and therefore approached the father of defendants nos. 1 to 8, who advanced Rs. 300/-, and a document dated 2nd July 1962 was executed, mortgaging the suit property belonging to the plaintiff's father. Since the father of defendant nos. 1 to 8 did not possess a money-lending licence, the suit property was mortgaged by executing a mortgage by conditional sale. The plaintiff therefore offered to pay the redemption amount, in accordance with the terms and conditions, and prayed for redemption of the mortgage.

[3] The suit proceeded ex-parte against defendant nos. 9 to 13. Defendant nos. 1 to 8 ('defendants') filed a written statement and denied that the amount was paid as a loan. According to the defendants, the plaintiff's father executed a registered sale deed subject to the condition that, if he repaid Rs. 300/- within five years, the defendants' father would execute the sale deed in his favour. Hence, according to the defendants, the transaction was not a mortgage transaction by conditional sale, but it was a document of sale with a condition to repurchase. Since the plaintiff's father made no payment within the five-year repurchase period, his right was extinguished on expiry of the five-year period from the date of the document, i.e., on 2nd July 1967. Accordingly, the defendants contend that the suit property continued to be held by their father as the absolute owner.

[4] The trial court held that the plaintiff failed to prove that the transaction was a mortgage by conditional sale and that he was entitled to redeem the mortgage. The trial court accepted the defendants' contention that the document was a registered sale deed subject to a condition of repurchase. Hence, the trial court dismissed the suit. In an appeal preferred by the original plaintiff, the trial court's findings were reversed, holding that the transaction was a mortgage by conditional sale and that the plaintiff was entitled to redeem the mortgage. The first appellate court, therefore, decreed the suit for redemption of the mortgage and directed the execution of a reconveyance and the delivery of possession.

SUBMISSIONS ON BEHALF OF APPELLANTS:

[5] Learned counsel for the appellants submitted that from the plain reading of the terms and conditions of the document, it is clear that the document was a title document of a sale deed with a condition to repurchase if the amount was paid within five years. Hence, the suit property was sold to the defendants' father, and the absolute title was transferred to him. As per the condition in the document, the ownership was transferred

to the defendants' father with a clarification that he would be entitled to dispose of the property as per his own wish.

[6] Learned counsel for the appellants submitted that there was no relationship of debtor and creditor between the plaintiff's father and the defendants' father. The document made no reference to any interest payable on the amount paid by the defendants' father towards consideration. The document required the plaintiff's father to pay the consideration amount within five years for the reconveyance of the land. However, the plaintiff's father never called upon the defendants' father for repurchase. Hence, the title of the suit property stood transferred absolutely in favour of the defendants' father. Thus, considering the terms and conditions of the document and the circumstances, it was clear that the transaction was a sale with a condition to repurchase. Since the plaintiff's father failed to call upon the defendants' father for repurchase within the agreed time, the title to the suit property stood transferred in favour of the defendants' father absolutely.

[7] Learned counsel for the appellants submitted that the first appellate court erred in misreading and misinterpreting the terms and conditions of the document for arriving at a conclusion that it was a mortgage by conditional sale. None of the conditions in the document contemplated any mortgage of the suit property. To support her submissions, learned counsel for the appellants relied on the decisions of the Hon'ble Apex Court in the case of Pandit Chunchun Jha vs. Sheikh Ebadat Ali and Another,1954 1 SCC 699 and **Dharmaji Shankar Shinde and Others vs. Rajaram Shripad Joshi (Dead) through Legal representatives and Others**, 2019 8 SCC 401. She also relied on the decision of this court in the case of **Nana Tukaram Jaikar vs. Sonabai and Others**, 1982 AIR(Bom) 437. Learned counsel for the appellants submits that the reading of the terms and conditions clearly makes out a transfer of absolute right, title and interest in favour of the defendants' father. None of the conditions in the document reveals the parties' intention to execute the mortgage. Hence, the reasons recorded by the first appellate court would amount to misinterpreting the terms and conditions of the document. Hence, the question of law must be answered in favour of the appellants, and the impugned decree must be set aside.

SUBMISSIONS ON BEHALF OF RESPONDENTS:

[8] Learned counsel for the respondents supports the impugned decree. He relied upon the relevant findings of the first appellate court in paragraph 28 of the impugned judgment. He points out that the surrounding circumstances brought on record as evidence have been rightly relied upon by the learned District Judge in interpreting the terms and conditions of the contract. As held by the learned District Judge in the impugned judgment, a stipulation for transfer within five years from the date of conveyance to the transferor at the expense of the transferor for the same price mentioned in the deed is rightly held as an indication that the document was a mortgage by conditional sale. He submits that there is no basis to interpret the document as a document of sale with a condition to repurchase. The title of the plaintiff's father is

admitted, and thus, from the facts of the case, the condition to repurchase embodied in the document was only by way of a facility to the vendor to repurchase the property. Hence, the transaction in question was correctly held to be a mortgage by conditional sale, and not a sale with a condition to repurchase.

[9] Learned counsel for the respondents, therefore, submitted that the intention of the parties and valuation of the property are important factors to be considered for deciding the nature of the transaction. If the party intended to execute an absolute sale with a condition to repurchase, there was no reason to agree to the consideration amount as mentioned in the document. The recital in the agreement clearly indicates that the parties never intended to transfer the absolute right, title and interest in favour of the defendants' father, as the consideration of Rs. 300/-, was much less than the prevailing market value in 1962-67; thus, the document was purely a mortgage, and the amount mentioned in the agreement was the loan amount. From the evidence brought on record, the first appellate court has rightly held that the consideration amount mentioned in the agreement does not quantify the real value of the suit property as prevailing at the time of execution of the document. Hence, the amount of consideration mentioned in the agreement is the loan amount and therefore, a clause is provided in the agreement to repay the amount within five years and reconvey the property in the name of the plaintiff's father.

[10] To support his submissions that a grossly inadequate amount mentioned in the document would itself show that it is a document of mortgage, learned counsel for the respondents relied upon the decision of the Hon'ble Apex Court in the case of **Bhaskar Waman Joshi (deceased) and Others vs. Shrinarayan Rambilas Agarwal (deceased) and Others**, 1960 AIR(SC) 301 **Bhimrao Ramchandra Khalate v. Nana Dinkar Yadav**, 2021 9 SCC 45 **Patel Ravjibhai Bhulabhai v. Rahemanbhai M. Shaikh**, 2016 12 SCC 216 and the decision in the case of Mushuir Khan vs. Smt. Sajida Bano,2000 3 SCC 286.

[11] Learned counsel for the respondents, therefore, submits that the reasons recorded by the first appellate court to hold that the document was not of absolute ownership and it was a document of mortgage with a condition to sell are correct, and no interference is called for as it does not raise any question of law.

CONSIDERATION OF SUBMISSIONS:

[12] To examine the rival submissions made on behalf of the parties, I have carefully perused the terms and conditions of the document. The parties had agreed that the consideration amount of Rs. 300/- was paid for the transfer of the suit property in favour of the defendants' father. The terms and conditions of the document further provided that the defendants' father would be entitled to deal with the property and create third-party rights in respect of the same. This condition in the document clearly indicates the intention of the parties to transfer the absolute right, title, and interest in favour of the purchaser. To ascertain whether the parties intended to create a mortgage,

the document must set out the essential terms and conditions contemplated under Section 58 of the Transfer of Property Act, 1882 ("TP Act").

[13] If the parties intended to execute a mortgage by way of conditional sale, there was no need to include the term in the document, which conferred on the purchaser an absolute right to deal with the property, including the creation of third-party rights as he wished. The document is dated 2nd July 1962, with a condition that the amount may be returned within five years for repurchase. The five-year period ended on 1st July 1967. Nothing is produced on record to show that the plaintiff's father, during his lifetime, called upon the defendant's father for repayment of the amount. The suit was filed on 6th August 1994, i.e., almost 27 years after the expiry of the five-year period.

[14] The first appellate court held that the suit was within the limitation as it was filed within 30 years for the redemption of the mortgage. The suit, even if held to be within limitation as it was filed on the ground that the document is a mortgage document with a condition of sale, the conduct of the plaintiff of applying for redemption of the mortgage only after expiry of the original owner, i.e. plaintiff's father, speaks volumes about the intention of the parties. If the parties intended to create a mortgage, the term in the agreement that enabled the predecessor, i.e., the defendants' father, to deal with the property would convey no meaning.

[15] Evidence brought on record indicating that the property's value was substantially higher than the consideration stated in the agreement cannot be the sole basis for interpreting the document as a mortgage. Section 58 of the TP Act defines a mortgage to mean a transfer of an interest in the property to secure the payment of money advanced as a loan, an existing or future debt or the performance of an engagement which may give rise to a pecuniary liability. The definition further explains that the principal money and interest for which payment is secured is called the mortgage money, and that the transferor is called the mortgagor and the transferee is called the mortgagee. A mortgage by conditional sale is defined in clause (c) of Section 58 to mean that the mortgagor ostensibly sells the mortgaged property on a condition that the sale becomes absolute in default of payment of the mortgage money, or becomes void on payment of the money. Thus, the real nature of a document can be determined from its terms and conditions and the relevant factors, such as creation of a debt, the debtor-creditor relationship, mortgage money that includes principal money and interest, the duration for reconveyance and the consequences on default of making payment of mortgage money or payment of the mortgage money within the time stipulated in the terms and conditions creating the mortgage.

LEGAL POSITION:

[16] The legal principles for determining the real nature of the transaction are explained by the Hon'ble Apex Court in the case of **Dharmaji Shankar Shinde.** The Apex Court explained the definition of mortgage by conditional sale as under:

"10. Section 58(c) of the Transfer of Property Act contains the definition of "mortgage by conditional sale". In a "mortgage by conditional sale", the transfer is made as a security to a loan taken by the mortgagor-owner; whereas in a "sale with a condition to repurchase", the sale is made by the vendor-owner reserving with himself a right to repurchase it within a stipulated time. **A sale with a condition of retransfer is not a mortgage since the relationship of debtor and creditor does not exist and there is no debt for which the transfer is made as a security.** Whether the document is a "mortgage by conditional sale" or "sale with a condition to repurchase" is to be ascertained from the intention of the parties. It is trite law that the intention of the parties should be gathered from the recitals of the document itself.

emphasis applied by me

[17] In the case of **Dharmaji Shankar Shinde**, the Hon'ble Apex Court referred to and relied upon the decisions in **Pandit Chunchun Jha and Bhaskar Waman Joshi** and held that the question in each case for the determination of the real character of the transaction needs to be ascertained from the conditions in the document viewed in the light of the surrounding circumstances. It is held that, from a reading of the document, if the words are plain and unambiguous, then, in the light of the evidence of the surrounding circumstances, they must be given their true effect. If there is any ambiguity in the language employed, the intention is to be ascertained from the contents and the language of the document.

[18] Thus, for the purpose of deciding whether the essential ingredients are of a mortgage by conditional sale, the agreement needs to be qualified as an ostensible sale for ownership and possession, but containing a clause for reconveyance as contemplated under Section 58(c) of the said Act, and there must exist a debtor and creditor relationship. As to the valuation of the property and the transaction value, along with the duration of reconveyance, these are also important considerations in determining the nature of the agreement. Hence, a cumulative consideration of the factors, together with the recitals of the agreement, would indicate the parties' intention. However, when the recitals in the agreement are clear and unambiguous, it is not necessary to delve into the surrounding circumstances to ascertain the real intention of the parties by ignoring the clear language of the document.

[19] Both the learned counsels relied on the decision of the Apex Court in the case of **P. L. Bapuswami vs. N. Pattay Gounder**, 1966 AIR(SC) 902 on the aspect of valuation of the property. In the dispute regarding the question of valuation of the property, the Hon'ble Apex Court held that the language of the document was not decisive and there were several circumstances to indicate that the document was a transaction of mortgage by conditional sale and not a sale with a condition of retransfer. In the facts of the said case, the condition of repurchase was embodied in the document, and the consideration was lower than the real value of the property. Thus, based on the terms and conditions of the document, the Apex Court held that the document was a transaction of mortgage by way of conditional sale.

[20] The interpretation of the terms of conditional sale by way of mortgage or sale with the condition of repurchase is explained by the Hon'ble Apex Court in the case of **Pandit Chunchun Jha,** holding that the intention of the parties would be a determining factor; however, the intention must be gathered from the document itself. When the language of the document is clear, it must be given effect to. Only in the event there is ambiguity in the language of the document, it would be permissible to look at the surrounding circumstances to determine the intention of the parties.

[21] On a similar proposition regarding the language of the document, learned counsel for the appellants rightly relied upon the decision of the Apex Court in the case of **Dharmaji Shankar Shinde.** The Apex Court held that, in each case, the question would be the determination of the real character of the transaction, to be ascertained from the provisions of the deed, viewed in the light of the surrounding circumstances. It is further held that if the words are plain and unambiguous in the light of evidence of surrounding circumstances, they must be given the true legal effect based on the nature of the document.

[22] The decision in **Mushir Mohd. Khan**, relied upon by the learned counsel for the respondents, the Apex Court held that the two documents read together would not constitute a "mortgage" because the condition of repurchase is not contained in the same documents by which the property was sold. It was held that the proviso to clause (c) of Section 58 operated in the said case, and the transaction between the parties cannot be held to be a mortgage by conditional sale. In **Bhimrao Ramchandra Khalate,** the Apex Court relied upon the decisions in **Pandit Chunchun Jha, Bhaskar Waman Joshi and Dharmaji Shinde.** It is held in the facts of the said case that reading of the document would show that the document was executed for the reason that the plaintiff had borrowed a sum of Rs 3000 for his household expenses, and the defendant was bound to retransfer the land if the amount is paid within one year. The advances of loan and return thereof were part of the same document, which creates a relationship of debtor and creditor. Thus, it was held to be covered by the proviso in Section 58(c) of the Act.

[23] In **Patel Ravjibhai Bhulabhai**, the document in question contained a condition that the amount of Rs 10,000/- paid as a loan, if paid back within five years, the purchaser shall give back the property with possession, and the vendor shall have no right to ask back the same after expiry of the time limit. Hence, it was held that the actual transaction between the parties was a loan, that a debtor-creditor relationship existed, and that the deed in question was a mortgage by way of conditional sale.

[24] In the decision of **Bhaskar Waman Joshi**, the mortgage by conditional sale contemplated under Section 68(c) was accepted based on oral evidence and the parties' subsequent conduct. It was thus held that the interpretation of the document, whether it was a sale or a mortgage by conditional sale, was based on evidence on record in the said case. Since the document granted the option to reconvey the property for the price specified in the deed, and the transferees had no control over the property, it was held that the terms and conditions strongly indicated the parties' intention to create a

mortgage. In Nana Tukaram Jaikar, this Court held that in a sale coupled with an agreement to reconvey there was no relation of debtor and creditor nor was the price charged upon the property conveyed, but the sale was subject to an obligation to retransfer the property within the period specified. Hence, the deed indicated that it was a sale with a condition to repurchase and not a mortgage with condition to sell.

ANALYSIS AND CONCLUSIONS:

[25] In the present case, the trial court has examined the parties' intention by interpreting the document's terms and conditions. The plaintiff's father died in 1991. According to the document, the fiveyear period for reconveyance expired sometime in 1967. After the death of the plaintiff's father, the plaintiff applied for redemption of the mortgage after about 29 years. The trial court, therefore, held that, if the parties intended to create a mortgage transaction, the plaintiff's father would have taken steps during his lifetime to redeem it. The title of the document, styled as a sale deed with a condition to repurchase within five years, is an important factor in determining the parties' intention. The condition of repurchase within five years, coupled with the term that enabled the purchaser to deal with the property, including the creation of third-party rights, is accepted as a sufficient indication or decisive factor of the nature of the document.

[26] Thus, in the absence of terms and conditions that would qualify the document as a mortgage, the trial court refused to grant the plaintiff's prayer for redemption. In view of the clear terms and conditions of the document, the trial court correctly held that, on expiry of the five-year period from the date of the agreement, the right to repurchase was extinguished in 1967. Hence, after 27 years, the plaintiff would not be entitled to seek repurchase under the guise of redemption of the mortgage.

[27] In the present case, neither a creditor-debtor relationship exists between the parties nor is there any creation of debt. Thus, in view of the well-settled legal principles on the interpretation of the document based on the clear and unambiguous language of the document, there was no reason for the first appellate court to interpret the document by referring to the surrounding circumstances on the valuation of the property. When the language of the document is clear, the surrounding circumstances cannot be relied upon to indicate a different intention of the parties.

[28] In the decision of the Hon'ble Apex Court in the case of P. L. Bapuswami, the Hon'ble Apex Court held that if the language is plain and unambiguous, it must be in the light of the evidence of the surrounding circumstances to give its true legal effect. It is held that if there is ambiguity in the language employed, the intention may be ascertained from the contents of the deed with such extrinsic evidence as may by law be permitted to be adduced to show in what manner the language of the deed was related to the existing facts. Thus, even in the decision relied upon by the learned counsel for the respondents, it is a well-settled legal principle that if the document is clear and unambiguous, the surrounding circumstances brought on record cannot be interpreted to give a different meaning than what is intended in the document itself. In view of the different facts of the present case, as discussed above, the decisions relied upon by the learned counsel for the respondents would not be of any assistance to the respondents.

[29] Hence, in the present case, the reasons recorded by the first appellate court, referring to the surrounding circumstances brought on record by way of oral evidence, would not be sustainable in view of the clear and unambiguous language of the deed itself. Hence, the findings recorded by the first appellate court to reverse the trial court's findings are not based on a correct interpretation of the terms and conditions of the document. The impugned judgment and decree would therefore require interference in this second appeal.

[30] In view of the terms and conditions of the document as discussed in the preceding paragraphs, in my opinion, the first appellate court committed an error by misinterpreting the document to arrive at a conclusion that the document is a mortgage by condition of sale. Hence, for the reasons recorded above, the question of law framed in the second appeal is answered in favour of the appellants by holding that the document dated 2nd July 1962 is a document of sale with a condition to repurchase. Since the vendor failed to take steps within the time provided in the agreement for repurchase, the right to repurchase was extinguished on expiry of the five-year period provided in the document. Hence, the plaintiff, who is the son of the original vendor, is not entitled to seek redemption of the mortgage by contending that the document is a mortgage by way of conditional sale.

[31] For the reasons recorded above, the second appeal is allowed by passing the following order:

(i) The judgment and decree dated 21st October 2002 passed by the learned II Additional District Judge, Nashik, in Civil Appeal No. 390 of 1998 is quashed and set aside.

(ii) Civil Appeal No. 390 of 1998 is dismissed.

(iii) The judgment and decree dated 11th September 1998 passed by the Civil Judge Junior Division, Pimpalgaon (B) dismissing the Regular Civil Suit No. 175 of 1994 is confirmed

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2026(1)MLPJ32

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From NAGPUR BENCH]

(Hon'ble Judge: Anil L Pansare; Raj D Wakode)

Writ Petition No. 4479 of 2019, 1629 of 2011 **dated 10/12/2025**

Sureshchander S/o Manoharlal Suri; Shashi W/o Subhash Sahani; Kamlesh W/o Ravi Choudhary; Goldtouch Real Estate Private Ltd

Versus

State of Maharashtra; Nagpur Municipal Corporation, Nagpur; Nagpur Improvement Trust, Kingsway,; Collector, Civil Lines, Nagpur; Special Land Acquisition Officer; Vedprakash Sangatram Arya; Chandu S/o Daulatram Patil

LAND RESERVATION LAPSE

Land Acquisition Act, 1894 Sec. 6, Sec. 11 - Maharashtra Regional and Town Planning Act, 1966 Sec. 127, Sec. 49, Sec. 126 - Land Reservation Lapse - Petitioners sought declaration that reservation of their land for park in Nagpur development plan stood lapsed - Purchase notice issued and confirmed by State Government directing Nagpur Improvement Trust to acquire land within one year - NIT failed to deposit acquisition amount and no steps taken - Authorities argued mere application to acquire sufficient compliance - Petitioners contended absence of declaration under Section 6 of Land Acquisition Act within prescribed time caused lapse - Court held under Section 49(7) and 126 of MRTP Act, failure to make effective acquisition within time leads to lapse of reservation - Mere application without declaration not sufficient - NIT's inability to fund acquisition cannot prevent lapse - Reservation deemed lapsed - Petitioners entitled to develop land - Petitions Allowed

Law Point: When authority fails to take effective steps for acquisition within one year from confirmation of purchase notice under Section 49(7) of MRTP Act, reservation of land lapses automatically and landowner regains development rights notwithstanding financial inability of planning authority.

Acts Referred:

Land Acquisition Act, 1894 Sec. 6, Sec. 11

Maharashtra Regional and Town Planning Act, 1966 Sec. 127, Sec. 49, Sec. 126

Counsel:

C S Kaptan (Senior Advocate), Yash Kullarwar, A S Dabadghao, I J Damle, A M Kukday, K P Mahalle, A Parchure

JUDGEMENT

Anil L. Pansare, J.- [1] The issue involved in both the petitions is identical. Hence, they are decided by common judgment.

[2] Heard Mr. C. S. Kaptan, learned Senior Counsel assisted by Mr. Y. Khullarwar, learned counsel for petitioners in Writ Petition No.4479/2019 and Mr. A. S. Dabadghao, learned counsel for petitioner in Writ Petition No.1629/2011, Mr. I. J. Damle, learned A.G.P. for respondent-State, Mr. A. M. Kukday, learned counsel for Nagpur Municipal Corporation and Mr. K. P. Mahalle, learned counsel for Nagpur Improvement Trust.

[3] The petitioners claim to be owners of lands, which are reserved for park in the Development Plan of Nagpur city, published on 07.01.2000. The petitioners, on 30.07.2003, issued notice under Section 49 of the Maharashtra Regional and Town Planning Act, 1966 ("MRTP"), requesting the Nagpur Improvement Trust ("NIT"), the Planning Authority to purchase the interest in the land. On 23.03.2004, the State Government confirmed the notice in terms of Section 49 of the MRTP Act. On 19.01.2005, the Special Land Acquisition Officer ("SLAO") informed the Executive Engineer, NIT that the land is to be acquired by taking resort to provisions of the Land

Acquisition Act, 1894 ("Act of 1894") and in turn on 24.01.2005, the NIT requested the Collector, Nagpur to acquire the land and hand over to it. On 27.01.2005, the SLAO instructed the NIT to deposit 2/3rd amount. The NIT responded saying that it has financial constraints and will generate the funds by developing the land through private operator. Thereafter, on 27.01.2005, the SLAO again instructed the NIT to deposit 2/3rd amount i.e. Rs.5.03 Crores. On 05.05.2006, the SLAO refused to acquire the land for the reason that the NIT failed to deposit the amount even after lapse of one year and three months.

[4] It is worth mentioning here that the State Government, while confirming the purchase notice issued by the petitioners, directed NIT to take necessary steps for acquisition of land within one year from the date of confirmation notice. The NIT, however, failed to deposit 2/3rd amount even after lapse of one year and three months. Therefore, the SLAO refused to acquire the land. As such, the Collector, Nagpur, vide communication dated 27.01.2005 had, by referring to Government Resolution dated 14.06.2001, instructed the NIT to deposit 2/3rd amount prior to publication of notice under Section 4 and the remaining amount prior to passing award under Section 11 of the Act of 1894. The NIT, however, failed to deposit even 2/3rd amount. It appears that subsequent thereto, NIT had deposited Rs.5.03 Crores. For remaining amount, though efforts were made by NIT to generate funds by developing the park through private agency but failed. Ultimately, NIT took back the amount deposited with the Collector. The end result is that the land has been not acquired for last 25 years.

[5] The counsel for petitioners proposed to continue with purchase notice if the respondents are willing to acquire the land. Upon this, we inquired with the counsel appearing for NIT as to whether NIT is in a position to deposit the market price, the counsel answered in the negative. Thus, it appears that the NIT is not in a position to pay market price. In turn, there arises no question of continuation of acquisition proceedings.

[6] Mr. Kaptan, learned Senior Counsel has invited our attention to Section 49 (7), of the MRTP which provides that if within one year from the date of confirmation of notice, the appropriate authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed as required under Section 126, the reservation, designation, allotment, etc. or restriction of development of the land shall be deemed to have lapsed. He submits that since no effective steps were taken by the NIT even after confirmation notice within one year, the reservation under question stood lapsed.

[7] As against, Mr. K. P. Mahalle, learned counsel for the NIT as also Mr. A. Parchure, learned counsel for the intervenor submits that the requirement under Section 49 (7) of the MRTP, is to make an application to acquire the land within one year from the date of confirmation of notice, which has been made by the NIT. It is a different matter that for want of funds, further process of acquisition could not be done. However, such status cannot be taken aid of to attract deeming fiction and to contend that the reservation will lapse.

[8] Learned counsels appearing for the petitioners submit that mere making application, without taking steps as required under section 126 of the MRTP is not sufficient.

[9] We have gone through the relevant provisions. Section 126(2) provides that on receipt of application for acquisition of land, if the State Government is satisfied that the land is indeed required for public purpose specified in the development plan, it may make a declaration to that effect in official gazette in the manner provided in Section 6 of the Act of 1894. This has been admittedly not done till today. Proviso to sub Section (2), however, provides that no such declaration should be made after the expiry of one year from the date of publication of draft regional plan, development plan or any other plan or scheme as the case may be. In the present case, revised development plan was sanctioned/published on 07.01.2000 and, therefore, the declaration under Section 6 of the Act of 1894 could not have been made in terms of Section 126(2) of the MRTP. Even otherwise, the purchase notice itself was given on 30.07.2003, i.e. after the expiry of one year from the date of publication of plan. Therefore, declaration under Section 126 (2) could not have been made.

[10] The remedy was, therefore, under Section 126(4) which enables the State Government to make a fresh declaration for acquiring the land under provisions of the Act of 1894 in the manner provided by Sub Sections (2) and (3) of Section 126, subject to the modification that the market value of the land shall be market value on the date of declaration in official gazette made for acquiring the land afresh.

[11] That being so, the appropriate remedy, that was available to the petitioners, was to approach the Court seeking direction against the respondents to take steps in terms of Section 126(4) of the MRTP.

[12] In context with above, a profitable reference could be had to the recent judgment of the Supreme Court in the case of Nirmiti Developers through its Partners and anr. .Vs. State of Maharashtra and Ors,2025 SCCOnLine 438, wherein the position of law on this point has been clarified as under:

"POSITION OF LAW

27. This Court in **Chhabildas Vs. State of Maharashtra and Ors.**, 2018 INSC 106 while explaining Sections 49 and 127 of the MRTP Act respectively observed as under:

"9. The scheme of Section 49 of the MRTP Act is to lay down timelines within which the appropriate authority must make an application to acquire the land in respect of which a purchase notice has been confirmed. The moment any of the conditions specified in the subsection (1) are met, the owner or person affected may serve on the State Government, within the time and manner prescribed by regulations, a purchase notice requiring the appropriate authority to purchase the interest in the land in accordance with the provisions of this Act.

10. On the receipt of the purchase notice as per subsection (3), the State Government is to forthwith call from the planning authority or the appropriate authority

such report or records as may be necessary, which the authority shall then forward to the State Government as soon as possible but not later than 30 days from the date of acquisition.

11. In sub-section (4), if the State Government is satisfied that the conditions specified in subsection (1) are fulfilled, it may either confirm the purchase notice; refuse to confirm the purchase notice; or direct that planning permission be granted with or without conditions. Under subsection (5), if the steps contemplated after service of purchase notice leads to a situation where the State Government does not pass any orders thereon, the notice shall be deemed to have been confirmed at the expiration of that period. And finally, under sub-section (7), if within one year from the date of confirmation of purchase notice, the appropriate authority fails to make an application to acquire the land in respect of which the purchase notice has been confirmed, the reservation, designation, allotment, indication or restriction on development of the land shall be deemed to have lapsed. Section 49(6), which was deleted by Maharashtra Act 6 of 1976, read as follows:

"Upon confirmation of the notice, the State Government shall proceed to acquire the land or that part of any land regarding which the notice has been confirmed, within one year of the confirmation of the purchase notice, in accordance with the provisions of Chapter VII."

It is clear that, under this provision, if within one year from the confirmation of the purchase notice, the State Government did not acquire the land, then the consequence would be that the acquisition shall be deemed to have lapsed. This was a salutary provision, but seems to have been deleted so that Section 49 cases are brought on par with Section 126 cases.

12. The object of Section 49 is thus clear that once a purchase notice is received by the authorities, there arises, as the marginal note to the Section also indicates, an obligation to acquire land. The timelines contemplated by the section also indicate that the owner or person affected cannot be left to hang indefinitely without a decision to follow up the purchase notice by acquisition of the land in question.

13. However, it has been argued on behalf of the State that Section 49 abruptly ends with sub-section (7), after which there are no timelines indicated as to what is to happen after the appropriate authority makes an application to acquire the land within one year from the date of confirmation of the notice. In our view, this argument must be rejected, inasmuch as Section 49 (1) itself states that the purchase notice must require the appropriate authority to purchase the interest in the land "in accordance with the provisions of this Act". This being so, once the appropriate authority makes the necessary application to acquire the land within time under Section 49 (7) , we move over to Sections 126 and 127 of the Act.

14. Under Section 126(1)(c), when after the publication of a draft regional plan or development or other plan, any land is required or reserved for a public purpose, the

appropriate authority may make an application to the State Government, for acquiring such land under the Land Acquisition Act. Under sub-section (2) thereof, on receipt of such application, if the State Government is satisfied that the land specified in the application is needed for the public purpose specified therein, then excepting the cases falling under Section 49, the State Government may make a declaration under Section 6 of the Land Acquisition Act, to that effect. However, such declaration under Section 126(2) must be made within a period of one year from the date of publication of the plan in question.

15. A purchase notice may be served under Section 49, after the expiry of one year from the date of publication of the plan in question, in which case Section 126 (2) of the Act will not apply. Under Section 126(4), the State Government may make a declaration under Section 6 subject to the modification that the market value of the land shall be the market value at the date of the declaration in the official gazette made for acquiring the land. But this does not mean that the State Government has carte blanche to do as it pleases. Ordinarily, the State Government is bound to act under Section 126(4) within a reasonable time from the appropriate authority making an application to acquire the land. This should ordinarily be within a period of one year from the date such an application is made. However, if such declaration is not made within the aforesaid period, it will be open for the aggrieved person to move the Court to direct the State Government to make the requisite declaration immediately.

16. But the matter does not end here. Thereafter, Section 127 kicks in. If a declaration under Section 6 the Land Acquisition Act is not made within a period of 10 years from the date on which a plan comes into force under sub-section (4) of Section 126, the owner or any person interested in the land may serve a purchase notice on the authorities, and if within one year from the date of service of such notice, the land is not acquired or no steps are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed."

28. In **Girnar Traders v. State of Maharashtra**, 2007 7 SCC 555, a three-Judge Bench, by a majority judgment delivered by Naolekar, J. framed the question before the Court thus:

"19. The question that requires consideration and answer in the present case is: Whether the reservation has lapsed due to the failure of the planning authority to take steps within the period of six months from the date of service of the notice of purchase as stipulated by Section 127 of the MRTP Act; and also the question as regards applicability of new Section 11-A of the LA Act to the acquisition of land under the MRTP Act."

29. After setting out Sections 126 and 127 respectively, this Court then laid down the scheme of Section 126, which makes it clear that the Section 6 notification under the Land Acquisition Act is to be issued, in cases where acquisition is made under Section 126(1)(c), in pursuance of an application by an appropriate authority to the State Government within one year from the publication of the plan in question, or by way of

the State Government making a fresh declaration beyond a period of one year under Section 126(4). This is stated by the Court in para 28 as follows: (Girnar case SCC para 28)

"28. Sub-section (2) of Section 126 provides for one year's limitation for publication of the declaration from the date of publication of the draft plan or scheme. Sub-section (4), however, empowers the State Government to make a fresh declaration under Section 6 the LA Act even if the prescribed period of one year has expired. This declaration is to be issued by the State Government for acquisition of the land without there being any application moved by the planning/local authority under clause (c) of Section 126(1)."

30. Insofar as Section 127 is concerned, the Court went on to hold:(Girnar case, paras 31-32)

"31. Section 127 prescribes two-time periods. First, a period of 10 years within which the acquisition of the land reserved, allotted or designated has to be completed by agreement from the date on which a regional plan or development plan comes into force, or the proceedings for acquisition of such land under the MRTP Act or under the LA Act are commenced. Secondly, if the first part of Section 127 is not complied with or no steps are taken, then the second part of Section 127 will come into operation, under which a period of six months is provided from the date on which the notice has been served by the owner within which the land has to be acquired or the steps as aforesaid are to be commenced for its acquisition. The six month period shall commence from the date the owner or any person interested in the land serves a notice on the planning authority, development authority or appropriate authority expressing his intent claiming dereservation of the land. If neither of the things is done, the reservation shall lapse. If there is no notice by the owner or any person interested, there is no question of lapsing reservation, allotment or designation of the land under the development plan. Second part of Section 127 stipulates that the reservation of the land under a development scheme shall lapse if the land is not acquired or no steps are taken for acquisition of the land within the period of six months from the date of service of the purchase notice. The word "aforesaid" in the collocation of the words "no steps as aforesaid are commenced for its acquisition" obviously refers to the steps contemplated by Section 126 of the MRTP Act.

32. If no proceedings as provided under Section 127 are taken and as a result thereof the reservation of the land lapses, the land shall be released from reservation, allotment or designation and shall be available to the owner for the purpose of development. The availability of the land to the owner for the development would only be for the purpose which is permissible in the case of adjacent land under the relevant plan. Thus, even after the release, the owner cannot utilise the land in whatever manner he deems fit and proper, but its utilisation has to be in conformity with the relevant plan for which the adjacent lands are permitted to be utilised."

31. The Court then went on to consider **Municipal Corpn. of Greater Bombay v. Dr Hakimwadi Tenants Assn**, 1988 Supp1 SCC 55, and was of opinion that, the

observations on the expression "no steps as aforesaid are commenced for its acquisition" stipulated under Section 127 were obiter in nature. The majority then went on to state the law under Section 127 as follows: (Girnar case paras 54-57)

"54. When we conjointly read Sections 126 and 127 of the MRTP Act, it is apparent that the legislative intent is to expeditiously acquire the land reserved under the Town Planning Scheme and, therefore, various periods have been prescribed for acquisition of the owner's property. The intent and purpose of the provisions of Sections 126 and 127 has been well explained in Municipal Corpn. of Greater Bombay case [**Municipal Corpn. of Greater Bombay v. Dr Hakimwadi Tenants Assn.**, 1988 Supp1 SCC 55]. If the acquisition is left for time immemorial in the hands of the authority concerned by simply making an application to the State Government for acquiring such land under the LA Act, 1894, then the authority will simply move such an application and if no such notification is issued by the State Government for one year of the publication of the draft regional plan under Section 126(2) read with Section 6 of the LA Act, wait for the notification to be issued by the State Government by exercising suo motu power under sub-section (4) of Section 126; and till then no declaration could be made under Section 127 as regards lapsing of reservation and contemplated declaration of land being released and available for the landowner for his utilisation as permitted under Section 127. Section 127 permitted inaction on the part of the acquisition authorities for a period of 10 years for dereservation of the land. Not only that, it gives a further time for either to acquire the land or to take steps for acquisition of the land within a period of six months from the date of service of notice by the landowner for dereservation. The steps towards commencement of the acquisition in such a situation would necessarily be the steps for acquisition and not a step which may not result into acquisition and merely for the purpose of seeking time so that Section 127 does not come into operation.

55. Providing the period of six months after the service of notice clearly indicates the intention of the legislature of an urgency where nothing has been done in regard to the land reserved under the plan for a period of 10 years and the owner is deprived of the utilisation of his land as per the user permissible under the plan. When mandate is given in a section requiring compliance within a particular period, the strict compliance is required therewith as introduction of this section is with legislative intent to balance the power of the State of "eminent domain". The State possessed the power to take or control the property of the owner for the benefit of public cause, but when the State so acted, it was obliged to compensate the injured upon making just compensation. Compensation provided to the owner is the release of the land for keeping the land under reservation for 10 years without taking any steps for acquisition of the same.

56. The underlying principle envisaged in Section 127 of the MRTP Act is either to utilise the land for the purpose it is reserved in the plan in a given time or let the owner utilise the land for the purpose it is permissible under the town planning scheme. The step taken under the section within the time stipulated should be towards acquisition of land. It is a step of acquisition of land and not step for acquisition of land. It is trite that

failure of authorities to take steps which result in actual commencement of acquisition of land cannot be permitted to defeat the purpose and object of the scheme of acquisition under the MRTP Act by merely moving an application requesting the Government to acquire the land, which Government may or may not accept. Any step which may or may not culminate in the step for acquisition cannot be said to be a step towards acquisition.

57. It may also be noted that the legislature while enacting Section 127 has deliberately used the word "steps" (in plural and not in singular) which are required to be taken for acquisition of the land. On construction of Section 126 which provides for acquisition of the land under the MRTP Act, it is apparent that the steps for acquisition of the land would be issuance of the declaration under Section 6 of the LA Act. Clause (c) of Section 126(1) merely provides for a mode by which the State Government can be requested for the acquisition of the land under Section 6 of the LA Act. The making of an application to the State Government for acquisition of the land would not be a step for acquisition of the land under reservation. Sub-section (2) of Section 126 leaves it open to the State Government either to permit the acquisition or not to permit, considering the public purpose for which the acquisition is sought for by the authorities. Thus, the steps towards acquisition would really commence when the State Government permits the acquisition and as a result thereof publishes the declaration under Section 6 of the LA Act."

32. The scheme of Sections 126(2) and (4) was again reiterated in para 61 as follows: (Girnar case para 161)

"61. Proviso to sub-section (2) of Section 126 prohibits publication of the declaration after the expiry of one year from the date of publication of draft regional plan, development plan or any other plan or scheme. Thus, from the date of publication of the draft regional plan, within one year an application has to be moved under clause (c) of Section 126(1) which should culminate into a declaration under Section 6 of the LA Act. As per the proviso to sub-section (2) of Section 126, the maximum period permitted between the publication of a draft regional plan and declaration by the Government in the Official Gazette under Section 126(2) is one year. In other words, during one year of the publication of the draft regional plan, two steps need to be completed, namely, (i) application by the appropriate authority to the State Government under Section 126(1)(c); and (ii) declaration by the State Government on receipt of the application mentioned in clause (c) of Section 126(1) on satisfaction of the conditions specified under Section 126(2). The only exception to this provision has been given under Section 126(4)."

33. In **Shrirampur Municipal Council v. Satyabhamabai Bhimaji Dawkher**, 2013 5 SCC 627, this Court reiterated the findings given in Girnar (supra) majority judgment, and held that there was no conflict between the judgment in Hakimwadi (supra) and the majority judgment in Girnar(supra). This Court, thereafter, went on to hold:

"42. We are further of the view that the majority in Girnar Traders [**Girnar Traders v. State of Maharashtra**, 2007 7 SCC 555] had rightly observed that steps towards the acquisition would really commence when the State Government takes active steps for the acquisition of the particular piece of land which leads to publication of the declaration under Section 6 of the 1894 Act. Any other interpretation of the scheme of Sections 126 and 127 of the 1966 Act will make the provisions wholly unworkable and leave the landowner at the mercy of the Planning Authority and the State Government.

43. The expression "no steps as aforesaid" used in Section 127 of the 1966 Act has to be read in the context of the provisions of the 1894 Act and mere passing of a resolution by the Planning Authority or sending of a letter to the Collector or even the State Government cannot be treated as commencement of the proceedings for the acquisition of land under the 1966 Act or the 1894 Act. By enacting Sections 125 to 127 of the 1966 Act, the State Legislature has made a definite departure from the scheme of acquisition enshrined in the 1894 Act. But a holistic reading of these provisions makes it clear that while engrafting the substance of some of the provisions of the 1894 Act in the 1966 Act and leaving out other provisions, the State Legislature has ensured that the landowners/other interested persons, whose land is utilised for execution of the development plan/town planning scheme, etc., are not left high and dry. This is the reason why timelimit of ten years has been prescribed in Section 31 (5) and also under Sections 126 and 127 of the 1966 Act for the acquisition of land, with a stipulation that if the land is not acquired within six months of the service of notice under Section 127 or steps are not commenced for acquisition, reservation of the land will be deemed to have lapsed. Shri Naphade's interpretation of the scheme of Sections 126 and 127, if accepted, will lead to absurd results and the landowners will be deprived of their right to use the property for an indefinite period without being paid compensation. That would tantamount to depriving the citizens of their property without the sanction of law and would result in violation of Article 300-A of the Constitution."

34. It is, thus, clear that the scheme of Sections 126 and 127 respectively would leave nobody in doubt, for the reason that if a period of 10 years has elapsed from the date of publication of the plan in question, and no steps for acquiring the land have been taken, then once a purchase notice is served under Section 127, steps to acquire the land must follow within a period of one year from the date of service of such notice, or else the land acquisition proceedings would lapse.

35. This Court in Chhabildas (supra) summed up the position in law as under:

"24.1. In all Section 49 cases, where a purchase notice has been served and is confirmed within the period specified, the appropriate authority must make an application to acquire the land within one year from the date of confirmation of the notice. If it does not do so, the reservation, designation, etc. shall be deemed to have lapsed.

24.2. If within the period specified in Section 49(7), the appropriate authority makes the requisite application, then the State Government may acquire the land by making a

declaration under Section 6 of the Land Acquisition Act as set out under Section 126(4), wherein the market value shall be the market value of the land as on the date of Section 6 declaration. Ordinarily, such declaration must be made within 1 year of the date of receipt of the requisite application. In case this is not done, it will be open to the aggrieved person to move the Court to direct the State Government to make the requisite declaration immediately.

24.3. If 10 years have passed from the date of publication of the plan in question, and a purchase notice has been served under Section 127, and no steps have been taken within a period of one year from the date of service of such notice, all proceedings shall be deemed to have lapsed. Thus, even in cases covered by Section 49 , the drill of Section 126(4) and Section 127 will have to be followed, subsequent to the appropriate authority making an application to acquire the land within the period specified in Section 49(7) ."

(Emphasis now)

[13] Thus, the Hon'ble Supreme Court took note of its earlier judgment, which were also relied upon by the petitioners during the course of hearing and, therefore, are not being separately dealt with by us, wherein the Court referred to Chhabildas' case, which held that even in cases covered by Section 49, the drill of Section 126(4) and Section 127 will have to be followed, subsequent to the appropriate authority making an application to acquire the land within the period specified in Section 49(7).

[14] In Chhabildas' case the land owner had issued notice under Section 49(1)(e) of the relevant Act. The purchase notice was confirmed by the State Government and acquisition proceedings initiated within one year from the date of confirmation. The appropriate authority submitted proposal for acquiring the land and steps were taken towards initiating the acquisition process. Despite steps, no final action or completion of acquisition occurred. The land owners later on claimed that the acquisition process had lapsed due to inaction. The authorities responded by asserting that the acquisition proceedings were in process and, therefore, under Section 49 (7), the reservation is protected. The land owners approached the High Court. The petition was dismissed. Accordingly, the land owners approached the Hon'ble Supreme Court. The Supreme Court then summed up the position of law in paragraph 35, which is referred to supra.

[15] Thereafter, the Supreme Court, in the above mentioned case, noted all the facts before it and found that the subject matter of land was reserved for almost 33 years and the owner was deprived of its legitimate benefits. It took note of the identical facts in Chhabildas' case, where the Supreme Court invoked powers under Section 142 of the Constitutions of India to do complete justice having regard to the long and inordinate delay in acquiring the land. The Supreme Court also took note of the fact that right of property is now considered to be not only Constitutional right but also a human right. The Court then underlined the principles envisaged in Section 127 of the MRTP Act saying that it is either to utilise the land for the purpose for which it is reserved in the timeline given or the let the owner utilise the land for the purpose it is permissible under

the town planning scheme. The Court then held that the reservation shall be deemed to have lapsed if no steps are taken for acquisition of the land within prescribed period. The Supreme Court then took note of the fact that in the case before it, the respondents therein did not take any step to issue notification after receipt of notice. Accordingly, the Court declared that the reservation of the plot stood lapsed by efflux of time in view of the provisions of Sections 126 and 127 of the MRTP respectively.

[16] Thus the law as is settled by the Supreme Court is that if within the period specified in Section 49 (7), the appropriate authority makes a request application then the State Government may acquire the land by making declaration under Section 6 of the Act of 1894 as set out under Section 126 (4) of the MRTP. Such a declaration ordinarily must be made within one year of the date of receipt of request application and in case it is not done, it is open to the aggrieved person to move the Court to direct the State Government to make the requisite declaration immediate.

[17] The question, however, is whether, in the peculiar facts and circumstances of the case, should the petitioner be asked to approach the Court to seek such a direction or should we permit the petitioner to issue fresh purchase notice in terms of Section 127 of the MRTP.

[18] Here, we may go back to the judgment of the Supreme Court referred to above where, in identical set of facts, the Supreme Court, considering the fact that land therein was reserved for 33 years and owner was deprived of legitimate benefit, declared that the reservation stood lapsed by efflux of time.

[19] In the present case, the land is reserved for 25 years. The NIT is not in a position to deposit the market price of the lands under question. In such circumstances, to permit the the petitioners to issue fresh notice under Section 127 of the Act is nothing but a futile exercise to compel the petitioner to undergo a procedure which otherwise appears to us to be a technical formality, whose result is already sealed viz. the petitioner's land will be not purchased.

[20] That being so and considering that the petitioner's land is under reservation for last 25 years and since notification was not issued by State Government in terms of Section 126(4)of the MRTP, we hereby declare that the reservation of the land bearing Patwari Halka No. 11, Survey Nos. 202/203/1, 164/165/211-1, 164/165/211/2, 168, 169, 170, 171/1, 172/1 and 175/1 of mouza Nara, Tahsil and District Nagpur, in the revised development plan of the year 2000, is lapsed and stands released from the said reservation and is available to the petitioners for being used and developed, in accordance with law, i.e. for the purpose which is permissible in the cases of adjacent land under the development plan.

[21] The writ petitions are disposed of in the above terms. No order as to costs

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2026(1)MLPJ44

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From AURANGABAD BENCH]

(Hon'ble Judge: Nitin B Suryawanshi; Vaishali Patil Jadhav)

Writ Petition No 717 of 2021 **dated 04/12/2025**

Bhumika D/o Ravindra Koli

Versus

State of Maharashtra; Scheduled Tribe Certificate Scrutiny Committee; Sub-divisional Officer Shahada; Director, Medidcal Education and Research; Competent Authority and Commissioner, State Common Entrance Test Cell

CASTE VALIDITY CERTIFICATE

Evidence Act, 1872 Sec. 73 - Maharashtra Land Revenue Code, 1966 Sec. 36A, Sec. 36 - Bharatiya Sakshya Adhiniyam, 2023 Sec. 72 - Caste Validity Certificate - Petitioner challenged Scrutiny Committee order cancelling Scheduled Tribe certificate of 'Tokre Koli' on ground of interpolation in old records - Committee discarded pre-constitutional documents alleging different ink and handwriting - Petitioner produced consistent entries showing 'Dhor Koli' and 'Tokre Koli' in family lineage - Court found Committee failed to take expert opinion or record statements of custodians of records - Observed that entries of pre-constitutional period have greater evidentiary value - Held that petitioner discharged burden under Sec.8 of Act as tribe entries consistent in old and new records - Committee erred in rejecting claim without proof of tampering - Tribe certificate validated - Petition Allowed

Law Point: Pre-constitutional documentary entries showing consistent caste lineage have higher probative value and cannot be rejected without expert evidence of interpolation-Committee must independently verify authenticity before cancelling tribe certificate.

Acts Referred:

Evidence Act, 1872 Sec. 73

Maharashtra Land Revenue Code, 1966 Sec. 36A, Sec. 36

Bharatiya Sakshya Adhiniyam, 2023 Sec. 72

Counsel:

Mohanish V Thorat, N B Kamble, M D Narwadkar

JUDGEMENT

Vaishali Patil Jadhav, J.- [1] Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

[2] In this petition under Article 226 of the Constitution of India, read with the Maharashtra Act No. XXIII of 2001 and Rules of 2003, the petitioner is challenging the order dated 29.11.2020 passed by respondent no. 2 - Scheduled Tribe Certificate Scrutiny Committee (hereinafter "the Committee"), whereby it has refused to validate her 'Tokre Koli' Scheduled Tribe Certificate and directed it to be confiscated and cancelled, in a proceeding under that Act.

[3] Learned advocate for the petitioner would submit that there are pre-constitutional entries in school admission register and birth and death's register maintained in the ordinary course, describing the petitioner's forefathers as 'Dhor Koli', 'Koli Dhor' and 'Tokre Koli'. Petitioner has produced coloured photocopies of all the preconstitutional entries from the Z.P. School and birth and death register of Tahsil Office, Shahada. Respondent-Committee has discarded these entries on the basis of recommendation in the vigilance report about there being interpolation of pages in the school register as well as in the birth and death register maintained in Tahsil Office. It is urged that interpolated pages are in different handwriting and different ink. According to the learned advocate, petitioner cannot assign any reason for such interpolation, as these documents were in custody of Government Office. According to him, none of the members of petitioner's family or his blood rein were serving or had any direct or indirect role in maintaining the entries. As such he would urge that no malice can be attributed to him. He has relied on the judgment of **Manisha D/o Madhavrao Wantekar Vs. The State of Maharashtra And Others; in Writ Petition No.13162 of 2023**, decided on 15.01.2024 and Civil Appeal arising out of SLP(C)No.27410 of 2024.

Learned advocate would further submit that there are preconstitutional entries of the year 1912, 1915, 1930, 1947 and 1950, which have more evidentiary value. In this background, the Committee ought to have validated the tribe claim of the petitioner as the pre-constitutional entries have more probative value, as has been held in various judgments.

[4] He would submit that though 'Dhor Koli' and 'Tokre Koli' sound different, they are covered under one and the same entry at Sr. No. 28 of the Presidential Order. According to him, observations made in **Samriddhi Yogesh Savale Vs. The State of Maharashtra and Others; in Writ Petition No. 1209 of 2022**, decided on 20.07.2024 are worth referring to. This Court has expressly held therein that if the legislature in its wisdom has put 'Koli Dhor' and 'Tokre Koli' in the same entry, the claim 'Tokre Koli' cannot be treated as inconsistent with that of 'Koli Dhor'.

[5] Learned advocate would then submit that even the notification issued under the Maharashtra Land Revenue Code, 1966 relating to Section 36 and 36-A includes the tribal area of Nandurbar, Dhule District and the communities which are mentioned in the notification also mention Koli Dhor. In the revenue record produced by the petitioner there is mention of land being granted under Section 36 and 36-A which could have occurred only because the petitioner's ancestors were granted the lands as tribals. This

fact has been overlooked by the Committee without assigning any reason. He, therefore, prayed to allow the writ petition.

[6] Learned AGP would support the impugned order. She would submit that though the petitioner has been relying upon preconstitutional record, the caste therein is recorded as 'Koli Dhor', 'Dhor Koli' and 'Hindu Tokre Koli' is not in consistence with the claim of petitioner of 'Tokre Koli'. The Committee found interpolation in the entry of petitioner's cousin grandfather, namely, Ratan Baap Dhanji Muka in the extract of birth and death register wherein name "Ratan" is found in different handwriting and ink. She would point out that birth entry of 1930 of cousin grandfather, namely, Natthu Manga Bap Sukha Aakhadmal, wherein caste is mentioned as Dhor Koli but the first 3 pages are inserted recently and handwriting is different. Birth entry of 04.07.1947 of Girija, petitioner's father's paternal aunt is Koli Dhor but the word "Girija" is written in different ink and hand writing and that Marathi alphabet "**[1]**" is added subsequently in Caste column wherein caste is mentioned as Koli Dhor. Entry in school Admission register of petitioner's great-grand father, namely, Manga Muka Koli is of the year 04.05.1912 (wrongly mentioned as 01.08.1927 in the judgment of Scrutiny Committee), wherein caste is mentioned as Dhor Koli but the page of the entry has been inserted recently and is in different handwriting. She would point out that the school admission register of cousin grandfather, namely, Tukaram Manga Koli of the year 1950, wherein caste is mentioned as Tokre Koli, but the name of grandfather is not there in genealogy and also that three pages are inserted subsequently and are in different handwriting. She would further point out that petitioner's cousin paternal aunt's caste in school admission register is Hindu Tokre Koli of the year 1952 whereas old entries of the year 1912, 1915, 1930 are of Koli Dhor.

[7] Learned AGP would rely on order passed in Writ Petition No.402 of 2022 in the case of Kiran Kailas Nikam Vs. The State of Maharashtra and Others and urges to take action under Section 340 of Cr.P.C. against the petitioner for inserting new pages, which are in different handwriting and ink in school admission register and birth extract register. She would further rely on judgment of Ganesh Narayan Koli (Bagul) Vs. The State of Maharashtra and Ors. in Writ Petition No.5299 of 2024 passed on 08.04.2025 for the purpose of showing consequence of interpolation in birth and death register.

[8] Learned AGP relied on para 36 of the judgment in the case of **State of Maharashtra Vs. Milind and others**, 2001 1 SCC 4, para 30 of **State of Maharashtra and others Vs. Mana Adim Jamat Mandal**, 2006 4 SCC 98 and submitted that the Court in exercise of the powers under Article 226 of the Constitution of India cannot indulge into any enquiry. The petitioner cannot take advantage merely because both the tribes Koli Dhor and Tokre Koli appear at the same serial number of the notification.

[9] She would further submit that no fault can be found with the Committee in discarding pre-constitutional documentary evidence as there is interpolation and it is in different handwriting and ink. The observations of the Committee are based on correct and plausible appreciation of evidence before it. She prayed for dismissal of the petition.

[10] We have considered the rival submissions and perused the original record with the assistance of the AGP. It is necessary to note that all the pre-constitutional documents are discarded by the Committee on the ground of interpolation. The Committee has not doubted the genuineness of the post-Independence Tokre Koli entries. The observations of the Committee are based on the Vigilance Cell Report, which is based on the following documentary evidence relied by the Committee in the impugned order:-

Sr. No. Name of Document Name of Document Holder Blood Relation with Applicant Record of Caste/Tribe Date of Admission/ Registration 1 Birth Register Ratan Baap Dhanji Muka Cousin Grandfather Koli Dhor 30.11.1915 2 Birth Register Natthu Manga Baap Suka Akhadmal Cousin Grandfather Koli Dhor 07.01.1930 The Vigilance Committee after verifying the evidence has observed that the said entries are in different handwriting and in different ink. 3 Birth Register Gunti Girija Mangalu Muka Father's Aunt Koli Dhor 04.07.1947 4 School General Register Manga Muka Koli Great Grandfather Dhor Koli 01.08.1927 The Vigilance Committee after verifying the evidence has observed that the entries appear to be newly written in a different handwriting and the pages are inserted in the register later on. 5 School General Register Tukaram Manga Koli Cousin Grandfather Tokare Koli 02.03.1950 The Vigilance Committee after verifying the evidence has observed that the pages 1 to 3 of the register appear to be newly written in a different handwriting. 6 School General Register Ahilyabai Baap Manga Koli Father's Aunt Hindu Tokare Koli 01.06.1952 7 Mutation Entry Mangalu Muka Koli and Others Great Grandfather - 8 Mutation Entry Ratan Dhanji, Mangalu Muka and Others Great Granfather and Cousin Grandfather - 1963-64 9 School General Register Ravindra Bhanudas Koli Father Hindu Koli (Tokre) 06.06.1977 10 School General Register Arunkumar Bhanudas Koli Uncle Hindu Tokre Koli 12.06.1980 11 School General Register Pravinkumar Bhanudas Koli Uncle Hindu Tokre Koli 03.06.1981 12 School General Register Sachin Sudam Koli Cousin Brother Hindu Tokre Koli 16.06.1993 13 School General Register Riya Pravin Koli Cousin Sister Hindu Tokre Koli 30.06.2003 14 School General Register Bhumika Ravindra Koli Applicant Hindu Tokre Koli 16.06.2008 15 7/12 Extract Bhanudas Manga Koli Grandfather - 2014-15

[11] The above chart shows that, the pre-constitutional entries from the school admission register and birth and death register of petitioner's cousin grandfather, paternal aunt of father, great-grand father were Koli Dhor, the record of her father's aunt of 1952 is Hindu Tokre Koli, but the Committee has discarded this evidence on the basis of Vigilance Committee report, wherein it is observed that there is interpolation in all these entries.

[12] The Committee has refused the Entry No.1 in the chart which is the entry in birth and death register of cousin grandfather Ratan Baap Dhanji Muka giving the reason that the name Ratan is written in different handwriting and ink. We have perused the original register and it came to our notice that in the name column it is written as "Baap

Ratan Dhanji Muka" and subsequently, all the entries are written in this fashion without mentioning the name of the person whose birth entry is being made. The name of person in respect of whom the entry is being made appears to be added subsequently, not only in case of petitioner's cousin grandfather but this is observed in respect of all the entries made in the entire register for the simple reason that the names must have been informed to the authorities after the person being named and for this reason, we do not find that there is any interpolation in respect of Entry No.1.

[13] Entry No's. 2, 4 and 5 are discarded by the Committee for the reason that these pages appear to be inserted subsequently as the handwriting and the ink appears to be different than the pages before and after the pages of these entries in the register. We have scrutinized the original birth and death register as well as the school admission register and we do not find any interpolation. In the entire record different handwriting in different ink is found as different persons holding the charge of post in public office authored the entries at different times.

[14] The Committee has discarded Entry No. 3 of the petitioner's father's paternal aunt, wherein the Committee found that in the birth and death register name "Girija" is in different hand writing and ink and alphabet "**[1]**" in Koli Dhor appears in different ink and handwriting. We have scrutinized the original record, wherein we find that name "**[2]**" is scribed and name Girija is being added. On the same page after this entry there are many other entries wherein the name is scribed and different names are written. From the above it appears that the practice adopted in the public office is that of carrying correction in the name. As such, same cannot be stated to be interpolation. The word "**[1]**" also does not appear in different handwriting and ink. In respect of Entry No.1, doubt is raised by the Committee that in the caste column the caste is shown as 'Hindu Tokre Koli', which is of the year 1952, so it is being made purposely only to take benefit of Scheduled Tribe.

[15] As now it is settled law that pre-constitutional record would carry greater probative value as compared to the later period as has been laid down in the matter of **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others**, 2012 1 SCC 113. Para 22 of the said judgment reads as under:-

"It is manifest from the aforeextracted paragraph that the genuineness of a caste claim has to be considered not only on a thorough examination of the documents submitted in support of the claim but also on the affinity test, which would include the anthropological and ethnological traits, etc., of the applicant. However, it is neither feasible nor desirable to lay down an absolute rule, which could be applied mechanically to examine a caste claim. Nevertheless, we feel that the following broad parameters could be kept in view while dealing with a caste claim:

(i) While dealing with documentary evidence, greater reliance may be placed on pre-Independence documents because they furnish a higher degree of probative value to the declaration of status of a caste, as compared to postIndependence documents. In case the applicant is the first generation ever to attend school, the availability of any

documentary evidence becomes difficult, but that ipso facto does not call for the rejection of his claim. In fact, the mere fact that he is the first generation ever to attend school, some benefit of doubt in favour of the applicant may be given. Needless to add that in the event of a doubt on the credibility of a document, its veracity has to be tested on the basis of oral evidence, for which an opportunity has to be afforded to the applicant."

[16] After Vigilance Cell's report was served upon the petitioner by the Committee, the petitioner has submitted his explanation to the same. The least that was expected of the Committee, which is a Quasikomal Judicial body, to deal with the reply given by the petitioner to the Vigilance Cell's report.

[17] It was expected of the committee to be sensitive to the provisions of Section 73 of the Indian Evidence Act and corresponding Section 72 of Bhartiya Sakshya Adhiniyam. As per the said provisions, it is open for the Quasi-Judicial bodies, like, the respondent- Committee to compare the handwriting and reach at a proper conclusion.

[18] In light of the reasoning recorded herein above, it is apparent that the Committee has neither taken any expert's opinion on the issue, nor thought it fit to even record the statement of any of the public servant, who has authored the aforesaid record or allegedly tampered the record or who was the custodian of the same. Merely because the Vigilance Cell has given an opinion that by itself won't bind the Committee to reach to the said conclusion. The least that is expected of the Quasi-Judicial body, like the respondent- Committee, is to apply its own mind to the factual matrix, the evidence given on record and the provisions of the Act. If we consider the scheme of Section 8 of the Act of 2000, it casts burden on the petitioner, who is the claimant, to establish that he belongs to a caste or tribe. If we peruse the caste/tribe entries in regard to the blood relations of the petitioner, which are reflected in the tabular form reproduced in Para10, it is apparent that the oldest entry relates back to 1912. There is consistency in the entry of Koli Dhor/Dhor Koli. At certain places, word 'Hindu Tokre Koli' also appears.

[19] The entry 'Dhor Koli' or 'Tokre Koli', is recorded at one and the same serial number in the Constitution of India, Scheduled Tribe Order. Once the pre and post-Independence era documents, in relation to the blood relation of the petitioner, reflect the tribe entry of 'Koli Dhor' and 'Tokre Koli', it has to be inferred that the petitioner has discharged the burden, as contemplated under Section 8 of the Act. In such an eventuality, it was for the respondent- Committee to place on record adverse evidence, so as to discard the old pre- Constitutional era documentary evidence, which the Committee has failed. As such, we have no hesitation to hold that the petitioner has discharged the burden as casted on her under Section 8 of the Act of 2000.

[20] In such situation it was incumbent on the part of the Committee to seek explanation from the authorities about the alleged interpolation, who are the custodians of the original records. For this purpose, we can rely on the observations made in para nos. 12 to 15 in the case of **Sayana Vs. State of Maharashtra and others**, 2009 10 SCC 268, which reads thus:-

"12. The report dated 1-12-2003 forwarded by the Police Inspector, Vigilance Cell, nowhere mentions that the certificate dated 17-5-1972 produced by the appellant to establish that he belongs to Mannerwarlu Scheduled Tribe is a forged one. The contents of the certificate dated 17-5-1972 show that the said certificate was issued on the basis of the certificate issued by the President of Kundalwadi Municipality. The report dated 1-12-2003 of Police Inspector does not indicate whether the Police Inspector had recorded the statement of the President of the Municipality to find out whether the certificate issued by the President was genuine or not.

13. What is relevant to notice is that in the report dated 1-12-2003 the Police Inspector has merely stated as a matter of fact that the word "lu" was subsequently added while recording the caste of the appellant as Mannerwarlu in the school register. The Police Inspector has not stated that the word "lu" was interpolated by the appellant. There is every possibility that the word "lu" was not mentioned at the time of recording of the caste of the appellant and on being pointed out the correct spelling of caste, the word "lu" was added. Addition of word "lu" subsequently would not lead to an irresistible conclusion that the said word was added by the appellant or at his behest.

14. It is difficult for this Court to understand as to on which basis the Scrutiny Committee came to the conclusion that the word "lu" was interpolated in the register of the school more particularly when it was not so opined by the Police Inspector who had conducted the enquiry. Whether interpolation by addition has taken place can be stated by a handwriting expert or by comparison of admitted letters of a person with this disputed one. It is an admitted position that the Scrutiny Committee had never attempted to get an expert's opinion nor itself had compared the disputed letters with admitted one of the appellant.

15. Under the circumstances, the finding recorded by the Scrutiny Committee that the word "lu" was interpolated will have to be regarded as not based on any credible evidence. The Police Inspector had never taken care to find out whether the word "lu" was subsequently added by the school authorities or by the appellant. It was necessary for the said officer to undertake such an exercise in view of the specific defence of the appellant that the school record was lying with the school authorities and he had no opportunity whatsoever to tamper with the same."

[21] Therefore, in our considered view, on the basis of Entry Nos. 1 to 6 in the chart, the petitioner has succeeded in proving her caste as 'Tokre Koli'.

[22] The Committee has also invalidated the caste claim of the petitioner on the ground that the pre- Constitutional caste entries mentioned as 'Dhor Koli' at Sr. Nos. 1 to 5 in the chart are not consistent with her caste claim of 'Tokre Koli' as the post-Constitutional entries are of 'Tokre Koli'. The committee observed that petitioner cannot take benefit of this inconsistency though 'Dhor Koli' and 'Tokre Koli' are found to be in the same notification no. 28. In this context, it will be apposite to refer the observations made by Division Bench of this Court in the matter of **Samriddhi Yogesh Savale (supra)** as follows:-

"17. One need not delve deep to observe that every entry in the constitutional order / schedule has its own sanctity and has to be understood and applied strictly as laid down in **Milind Sharad Katware and others Vs. State of Maharashtra and others**, 1987 MhLJ 572. Admittedly, the tribe 'Koli' which was initially included in other backward class, subsequently, was included in special backward class. As against this, 'Tokre Koli' or 'Dhor Koli' are included in entry at serial no. 28 of scheduled tribes. Obviously, therefore, Koli entries would be inconsistent with the claim of 'Dhor Koli' or 'Tokre Koli'.

18. ....

19. It is just possible that the person providing the information may describe the caste as 'Koli' even without what he meant was to describe that it with an adjective, 'Dhor' or 'Tokre'. While recording the entries 'Dhor Koli' or 'Tokre Koli' or 'Koli Dhor' he or they would do it consciously emphasizing the adjective having a different connotation. Therefore, though per se, the entry 'Koli' is inconsistent with the claim of being 'Tokre Koli' or 'Dhor Koli', when there are plentiful entries of 'Dhor Koli' or 'Tokre Koli' of the pre-constitutional period, in our considered view, the principle of preponderance of probabilities would apply and would substantiate the petitioner's claim. It is not merely a question of mathematical calculation as to how many are the favourable entries as against the contrary entries of 'Koli'. It would be a matter of appreciation of the circumstances while making those entries, that too in pre-constitutional era. Obviously, when many of the pre-constitutional entries are of first quarter of the 20th century when the rate of literacy must have been drastically low, even if there are few contrary entries of 'Koli', in our considered view, not much weight can be attached to it when simultaneously there are plentiful favourable entries as well, of the same period.

20. ....

21. ....

22. There is one more aspect which needs to be emphasized in this context. A person would not derive any additional advantage or benefit by being described as 'Tokre Koli' instead of 'Koli Dhor' or vice versa. This would be another reason not to treat such claims to be inconsistent. Therefore, when, as is mentioned hereinabove, there is acceptable documentary evidence of preconstitutional period wherein the petitioner's forefathers were described as 'Dhor Koli' or 'Koli Dhor', the committee could not have refused to extend its benefits to her when she has been claiming to be a 'Tokre Koli'. Applying the above ratio, the Committee should not have refused the claim on the ground that pre- Constitutional entries are 'Dhor Koli' and post- Constitutional entries are of 'Tokre Koli' and that petitioner should not take benefit of Entry No. 28.

[23] The Committee has also invalidated the caste claim of the petitioner on the ground that petitioner has failed to prove the affinity test. It is held in **Anand Vs. Committee for Scrutiny and Verification of Tribe Claims and others** (supra) and

same is reiterated in **Maharashtra Adiwasi Thakur Jamat Swarakshan Samiti Vs. The State of Maharashtra and others in Civil Appeal No.2502/2022** that the affinity test cannot be conclusive either way. It has been held that when the affinity test is conducted by the Vigilance Cell, the result of the test along with all other material on record having probative value will have to be taken into consideration by the Scrutiny Committee for deciding the caste validity claim. It has also been held that the affinity test is not a litmus test to decide the caste claim and is not an essential part in the process of determination of correctness of a caste or tribe claim in every case.

[24] For the above reasons, the impugned order passed by the Committee is unsustainable. The Petition deserves to be allowed. Hence, the following order:

O R D E R

i. Writ Petition is allowed.

ii. The impugned order dated 29.11.2020 passed by Respondent No.2 - Committee is hereby quashed and set aside.

iii. The Committee is directed to issue validity certificate of "Tokre Koli, Scheduled Tribe" to the petitioner within four weeks from the date of uploading of the order.

[25] Rule is made absolute accordingly

2026(1)MLPJ52

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Manish Pitale; Manjusha Deshpande)

Writ Petition No 1239 of 2002 **dated 03/12/2025**

Sha Vijay Anandrao Sawant; Rekha Vijay Sawant; Mrutunjay Vijay Sawant; Madhuri Vinod Ithape; Abhijit Madhukar Sawant; Amol Madhukar Sawant

Versus

Baramati Nagar Parishad, Baramati; Assistant Director, Town Planning & Value Fixation Department; Regional Director, Town Planning; State of Maharashtra

COMPENSATION FOR LAND UTILISED

Constitution of India Art. 300A - Maharashtra Municipal Councils Nagar Panchayats and Industrial Townships Act, 1965 Sec. 330 - Compensation for Land Utilised - Land of petitioner utilised by Municipal Council for road construction without compensation - Council relied on layout condition and rule permitting nominal payment of Re.1 - Petitioner claimed violation of right to property under Article 300A - Court observed deprivation of property without fair compensation contrary to constitutional guarantee - Regulation permitting token payment contrary to law and unenforceable - Municipal Council directed to determine market value and pay compensation within fixed time - Petition Allowed with direction for payment of compensation

Law Point: Article 300A mandates payment of just and fair compensation when property of individual is taken for public purpose; municipal regulation authorising nominal payment without acquisition is unconstitutional

Acts Referred:

Constitution of India Art. 300A

Maharashtra Municipal Councils Nagar Panchayats and Industrial Townships Act, 1965 Sec. 330

Counsel:

Ashutosh Kulkarni, Gourav Shahane, Shreyas Zarkar, Sweta Shah, Abhishek Roy, Prafulla B Shah, V R Raje

JUDGEMENT

Manish Pitale, J.- [1] Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel for the parties.

[2] This writ petition has been pending in this Court since the year 2002. The record shows that it was directed to be taken up for final hearing, but it could not be finally heard despite having remained part-heard on a few occasions. The respondents filed their reply affidavits to oppose this petition and considering that this petition has been pending in this Court for the past 23 years, by an order dated 12.11.2025, it was directed to be listed for final hearing today.

[3] The original petitioner is now represented by his legal representatives, as he expired during the pendency of this writ petition. The principal grievance of the petitioner was that a piece of land belonging to him and his predecessor was utilized by Respondent No.1-Municipal Council for the construction of road and despite being deprived of the piece of land, no steps were taken for adequately compensating the petitioner.

[4] Before appreciating the rival submissions, a reference to the chronology of the events would be necessary. The documents on record show that on 11.06.1979, a layout was sanctioned concerning CTS No.683A/1B, situated in municipal limits of Baramati, District Pune. The order sanctioning the layout specified certain conditions. The Respondent No.1-Municipal Council heavily relies upon these conditions to oppose the prayer made in the present petition.

[5] On 07.02.1991, the Chief Officer of Respondent No.1- Municipal Council sent a communication to the predecessor of the original petitioner, stating that the subject piece of land would be required for the construction of road and that she should co-operate in handing over possession, even prior to the determination of the value of the piece of land. The predecessor of the original petitioner responded positively to the offer made on behalf of Respondent No.1-Municipal Council and accordingly, possession of the piece of land was handed over. It would be relevant to mention here that the said piece of land, on which the road was eventually constructed by Respondent No.1-Municipal Council,

admeasured 1344.94 square meters at CTS No.683A/1B in Taluka Baramati, District Pune. Although the writ petition refers to a larger area, the learned counsel for the petitioners, in all fairness, referred to 'Exhibit N' to submit that the area with which this petition is concerned admeasures 1344.94 square meters.

[6] Thereafter, on 11.03.1991, the predecessor of the original petitioners sent a communication to the Chief Officer of Respondent No.1-Municipal Council demanding compensation at the rate of Rs. 50 per square feet, considering the market value of the land at the relevant point in time. In this context, on 26.04.1991, the Chief Officer of Respondent No.1-Municipal Council sent a letter to the Assistant Director, Town Planning, stating that if the valuation of the subject land was determined, the Municipal Council was ready to pay the amount to the predecessor of the original petitioners. This communication is crucial, as it indicates willingness on the part of Respondent No.1-Municipal Council itself to adequately compensate the land owner for utilization of the subject piece of land. It appears that further steps in that regard were not being taken due to which, the predecessor of the original petitioners had to approach the Office of the Chief Minister of the State of Maharashtra. The Private Secretary of the Chief Minister sent a communication to the Chief Officer of Respondent No.1-Municipal Council on 13.03.1991, directing that the demand made by the said land owner be considered sympathetically.

[7] On 11.08.1991, the Chief Officer of Respondent No.1- Municipal Council sent a communication to the predecessor of the original petitioner calling upon her to submit an affidavit, which would facilitate valuation and payment of compensation concerning the subject piece of land. Accordingly, on 13.11.1991, such an affidavit was prepared and submitted.

[8] Since no further steps were being taken in that regard, the original petitioner, i.e, Vijay Anandrao Sawant, was constrained to address further communication to the Chief Minister of the State of Maharashtra raising grievance with regard to the fact that instead of adequate compensation being paid, at least at the rate of Rs. 40 per square feet, which was given to owners of adjacent lands, nominal compensation of Re. 1/- was proposed by Respondent No.1-Municipal Council. It was submitted that appropriate compensation may be granted. This was followed up with further communications in the years 1993, 1996 and 2000 to Respondent No.1-Municipal Council, as also the Director of Town Planning, but to no avail. It is in these circumstances that the present writ petition was filed in December 2001 praying for appropriate relief for determination of market value and payment of compensation for deprivation of use and enjoyment of the aforesaid piece of land.

[9] The Respondent No.1-Municipal Council as well as Respondent Nos.2 to 4, being State Authorities, filed reply affidavits in this writ petition and opposed the relief primarily relying upon Regulation 19.3 of the Development Control Regulations (for short, 'DCR') applicable to Respondent No.1- Municipal Council. It was submitted that the said regulation provided that areas of land under roads and open spaces in the layout

were to be handed over to the Planning Authority for a nominal amount of Re. 1/-. In this regard, Respondent No.1- Municipal Council in its reply also referred to the Rule/Regulation No.13.2.3.3 of the Standardized Development Control and Promotional Regulations for Municipal Councils and Nagar Panchayats in Maharashtra, which also specified that only a nominal amount of Re. 1/- would be paid by the Planning Authority in such circumstances. On this basis, it was submitted that the relief claimed in the writ petition cannot be granted apart from the fact that the original petitioners approached this Court after more than 10 years of having handed over the subject piece of land to Respondent No.1-Municipal Council.

[10] Mr. Ashutosh Kulkarni, learned counsel for the petitioners submitted that this was a classic case of violation of constitutional right of the Petitioners guaranteed under Article 300A of the Constitution of India. It was submitted that the petitioners are clearly entitled to just and fair compensation for deprivation of enjoyment of the subject piece of land. It was submitted that Respondent No.1-Municipal Council itself had recommended valuation and payment of compensation to the predecessor of the petitioners and yet, no steps were taken in that regard for all these years. It was submitted that in such cases where the land owner has been deprived of the enjoyment of land, the argument of delay and laches cannot be raised as the constitutional right guaranteed to the land owner has to be recognized and just and fair compensation has to be paid for utilization of the land belonging to the owner.

[11] It was further submitted that reliance on the said DCR was wholly misplaced for the reason that this Court in various judgments repulsed such a contention raised on behalf of the State Authorities and municipal bodies by relying upon the judgment of the Hon'ble Supreme Court in the case of **Pt. Chet Ram Vashist & Ors. V/s. Municipal Corporation of Delhi**, 1995 1 SCC 47. It was submitted that a Division Bench of this Court in the case of Vrajlal Jinabhai Patel & Anr. V/s. State of Maharashtra & Ors., [2003 (3) Mh.L.J.], specifically considered such a rule/regulation, which provided for a nominal amount of Re. 1/- to be paid by the Planning Authority. After considering the same, it was found that such a rule/regulation was in the teeth of Article 300A of the Constitution of India and in that light, the writ petition filed by the petitioners therein was allowed. The said position of law was followed in subsequent judgment of this Court in the case of The State of Maharashtra V/s. Bhimashankar Sidramappa Chippa, [2009 (5) Mh.L.J.] and in the case of **Manoharlal Baburam Gupta V/s. The State of Maharashtra & Ors.**, vide judgment and order dated 03.05.2019, passed in Writ Petition No.9779 of 2007.

[12] It was further submitted that the Hon'ble Supreme Court in a recent judgment, in the case of **Bernard Francis Joseph & Ors. V/s. Government of Karnataka & Ors.**, 2025 7 SCC 580, reiterated the significance of the constitutional right guaranteed under Article 300A of the Constitution of India. In that context, the Hon'ble Supreme Court emphasized upon the power to be exercised by the High Courts under Article 226 of the Constitution of India to do justice to such land owners, who were deprived of

enjoyment of their land, without payment of just and fair compensation. It was submitted that in light of the said position of law, the stand taken by the respondents is unsustainable and therefore, the present writ petition ought to be allowed.

[13] On the other hand, Mr. Praful Shah, learned counsel for Respondent No.1-Municipal Council referred to the conditions specified in the order dated 11.06.1979, whereby the layout was sanctioned and he placed particular emphasis on Condition Nos.4, 6, 8, 13 and 15, to contend that having obtained sanction of the layout on such conditions, the petitioners cannot turn around to claim payment of compensation. Reliance was also placed on the aforesaid rule/regulation of the DCR concerning the said Municipal Council to contend that nominal payment of Re. 1/- was justified. The documents on record demonstrated that such an offer was made to the predecessor of the petitioners way back in 1991 itself. It was emphasized that if the predecessor of the petitioners was dissatisfied with such nominal payment, she should have approached the district court under section 330(2) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, within 30 days. Having failed to do so, the writ petition filed by the original petitioner, more than 11 years after handing over of the subject land, cannot be entertained. It was emphasized that the remedy available in the law was not resorted to, and in such a situation, the writ petition ought to be dismissed on this ground itself. It was, therefore, submitted that the petitioners cannot rely upon the position of law laid down by this Court in the aforementioned judgments based on the judgment of the Hon'ble Supreme Court in the case of **Pt. Chet Ram Vashist & Ors. (supra).**

[14] Smt. V.R. Raje, the learned AGP for the Respondent Nos.2 to 4, i.e, the State referred to the reply affidavit on record. It was submitted that the unauthorized non-agricultural use of land by the predecessor of the petitioners was regularized by imposition of fine and thereupon, the layout was sanctioned subject to the conditions referred to hereinabove. It was submitted that in such a situation, when offer of payment of nominal amount of Re. 1/- was made in accordance with the relevant regulations in the year 1991 itself, the prayer for payment of market value or for initiation of acquisition, cannot be entertained in this writ petition, particularly in the light of the peculiar facts and circumstances brought to the notice of this Court. On this basis, it was submitted that the writ petition deserved to be dismissed.

[15] The learned AGP further submitted that there was no question of acquisition of land in the light of the fact that the land was handed over by the predecessor of the petitioners through private negotiation.

[16] We have considered the rival submissions on the basis of the documents on record and the position of law clarified by this Court and the Hon'ble Supreme Court in the context of Article 300A of the Constitution of India.

[17] Article 300A of the Constitution of India specifies that 'no person shall be deprived of his property save by authority of law'. It cannot be disputed that the constitutional right recognized in Article 300A of the Constitution of India also

recognizes the necessity of payment of just and fair compensation to a person, who is deprived of his property. A person being deprived of property without payment of just and fair compensation would amount to deprivation of property without authority of law. Although such a right to property ceased to be a Fundamental Right and is now recognized only as a constitutional right, its significance has been recognized and reiterated by the Hon'ble Supreme Court in various judgments. In the case of **Pt. Chet Ram Vashist & Ors.** (supra), a similar question arose for consideration of the Hon'ble Supreme Court, wherein the Municipal Corporation took a stand that when layouts of private colonizers were sanctioned, the land concerning roads and common spaces stood vested in the Corporation free of cost. In the context of the aforesaid stand taken by the Municipal Corporation, the Hon'ble Supreme Court in the said judgment, held as follows:

"6. Reserving any site for any street, open space, park, school etc. in a layout plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be a legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it. It may be true as held by the High Court that the interest which is left in the owner is a residuary interest which may be nothing more than a right to hold this land in trust for the specific purpose specified by the coloniser in the sanctioned layout plan. But the question is, does it entitle the Corporation to claim that the land so specified should be transferred to the authority free of cost. That is not made out from any provision in the Act or on any principle of law. The Corporation by virtue of the land specified as open space may get a right as a custodian of public interest to manage it in the interest of the society in general. But the right to manage as a local body is not the same thing as to claim transfer of the property to itself. The effect of transfer of the property is that the transferor ceases to be owner of it and the ownership stands transferred to the person in whose favour it is transferred. The resolution of the Committee to transfer land in the colony for park and school was an order for transfer without there being any sanction for the same in law."

[18] After recognizing the said position of law, the Hon'ble Supreme Court directed that market value of the common spaces be paid to the land owners.

[19] Therefore, there can be no dispute about the fact that when certain portions of land in a sanctioned layout are utilized for roads or common facilities, the land owner, being deprived of use of such pieces of land, needs to be adequately compensated for the same.

[20] Since the respondents have specifically relied upon rule/regulation of the DCR applicable to Respondent No.1- Municipal Council, which specifies payment of nominal amount of Re. 1/- for utilization of land for roads, it would be appropriate to refer to the judgments upon which the petitioners have placed reliance. In the case of **Vrajlal Jinabhai Patel & Anr.** (supra), the Municipal Authority therein relied upon Bye-law 14

of the Standardized Building Bye-Laws and Development Control Rules for A Class Municipal Councils of Maharashtra framed by exercising power under the provisions of the aforementioned Act. Bye-Law No.14.3 of the said bye-laws provided for a similar condition that areas of lands under roads and open spaces shall be handed over to the Planning Authorities for which a nominal amount of Re. 1/- shall be paid by the Planning Authorities. This bye-law was specifically relied upon by the concerned Municipal/Planning Authority in the said case to contend that it was enough and that the land owner could not ask for more. In this context, in the said judgment, a Division Bench of this Court held as follows:

"7. Rule 14 appears to have been framed in furtherance of section 183 of the Act which relates to laying out or making of a new streets. It nowhere provides for the open spaces. Therefore, the power, if any, of acquiring the land under the streets is only contemplated under section 183. Acquisition of open spaces is not contemplated under section 183. Rule 14.3 which is a delegated legislation cannot, confer a power of acquisition of the open space under the lay out. Under Article 300-A of the Constitution of India, no person shall be deprived of his property save by authority of law. The authority of law means by or under any law made by a competent legislature. No law made by the legislature was shown to us under which the ownership in the open space could be vested or transferred to the Municipal Council whether by payment of compensation of Re. 1/- or otherwise. In the circumstances, we reject the alternative contention of Shri Joshi that the open space under the layout would be vested in the Municipality on payment of compensation of Re. 1/-."

[21] On this basis, the writ petition filed by the land owner therein was allowed. The said position of law was subsequently followed by another Division Bench of this Court in the case of the State of Maharashtra V/s. Bhimashankar Sidramappa Chippa, [2009 (5) Mh.L.J.]. The above quoted Paragraph No.7 from the judgment in the case of **Vrajlal Jinabhai Patel & Anr. (supra),** was specifically relied upon and after referring to the law laid down by the Hon'ble Supreme Court in the case of **Pt. Chet Ram Vashist & Ors. (supra)**, it was held that reliance could certainly not be placed on any such rule/regulation requiring payment of nominal amount of Re. 1/- for utilization of land of the land owner for roads and common spaces.

[22] This position was again reiterated by a Division Bench of this Court in its judgment in the case of **Manoharlal Baburam Gupta (supra)**, and this Court held in favour of the Petitioner.

[23] The oral submissions made in this petition on behalf of the respondents are based on specific stand taken on their behalf in the respective reply affidavits. In the reply affidavit filed on behalf of Respondent Nos.2 to 4-State Authorities, we find that such a stand is taken in Paragraph No.9, while Respondent No.1- Municipal Council in its reply affidavit has also relied upon such rule/regulation in Paragraph Nos.8 and 9 of its reply.

[24] In the light of the position of law clearly laid down by Division Benches of this Court in the aforementioned judgments, relying upon the law clarified by the Hon'ble Supreme Court **Pt. Chet Ram Vashist & Ors. (supra)**, we are of the opinion that the aforesaid contention raised on behalf of the respondents by relying upon the DCR is wholly unsustainable and it has to be rejected. Accordingly, the said contention is rejected.

[25] We are also of the opinion that in the context of the said position of law, reliance placed on Condition Nos.4, 6, 8, 13 and 15 of the order dated 11.06.1979 sanctioning the layout, is also unsustainable.

[26] The offer made of payment of nominal amount of Re. 1/- in the year 1991 also can be of no avail, as it is found to be in the teeth of the law laid down by this Court. In any case, such a regulation is in the teeth of Article 300A of the Constitution of India, as it amounts to offering illusory compensation to the land owner. As regards the contention raised on behalf of Respondent No.1-Municipal Council that recourse should have been taken by the petitioners to Section 330(2) of the aforementioned Act within the time period of one month, suffice it to say that the aforesaid provision cannot override the constitutional right of the petitioner guaranteed under Article 300A of the Constitution of India. In any case, Section 330(4) of the aforesaid Act refers to the provisions of the Land Acquisition Act, 1894, and sub-section 5 thereof, specifically stipulates that after compensation is determined and paid, the possession of the land or building can be taken by the Municipal Council. In the present, admittedly, the possession of the subject piece of land was taken in a hurry in 1991 itself with promise made to the predecessor of the petitioners that appropriate valuation would be done and compensation would be paid to her. Respondent No.1-Municipal Council recommended the requests made on behalf of the predecessor of the petitioners for grant of compensation and yet, it turned around and offered nominal amount of Re. 1/-, as compensation, which amounts to illusory compensation. Thus, Respondent No.1-Municipal Council cannot rely upon its own communications to deprive the petitioners of their right.

[27] As regards delay and laches, the said aspect pales into insignificance in the face of the admitted position on facts that despite the petitioners and their predecessors being deprived of enjoyment of the subject land since the year 1991, not a single paisa was paid towards compensation till date. The Hon'ble Supreme Court in the recent judgment in the case of **Bernard Francis Joseph & Ors. (supra)**, reiterated the significance of the constitutional right guaranteed under Article 300A of the Constitution of India. The Hon'ble Supreme Court in the said judgment observed as follows:

"49. It cannot be gainsaid that the appellants herein have been deprived of their legitimate dues for almost 22 years ago. It can also not be controverted that money is what money buys. The value of money is based on the idea that money can be invested to earn a return, and that the purchasing power of money decreases over time due to inflation. What the appellants herein could have bought with the compensation in 2003

cannot do in 2025. It is, therefore, of utmost importance that the determination of the award and disbursal of compensation in case of acquisition of land should be made with promptitude."

"50. We find that in the present case, the appellants were required to knock at the doors of the courts on number of occasions during the period of last twenty-two years. The appellants have been deprived of their property without paying any compensation for the same in the said period of last twentytwo years. As already discussed hereinabove, the appellants had purchased the plots in question for construction of residential houses. Not only have they not been able to construct, but they have also not been even paid any compensation for the same. As discussed hereinabove, though right to property is no more a fundamental right, in view of the provisions of Article 300-A of the Constitution of India, it is a constitutional right. A person cannot be deprived of his property without him being paid adequate compensation in accordance with law for the same."

[28] In fact, in Paragraph No.53 of the said judgment, the Hon'ble Supreme Court emphasized that in such situations, High Courts ought to exercise powers under Article 226 of the Constitution of India to give complete justice to the land owners, who are deprived of their land without payment of compensation. The State Authorities can also not escape by taking a stand that this was a case of acquisition by private negotiations. The predecessor of the petitioners was asked to hand over possession of the subject piece of land with a promise of adequate compensation. Possession was taken in the year 1991 and till date not a farthing has been paid.

[29] Hence, the argument on delay and laches is also rejected. We find that in the facts and circumstances of the present case, the writ petition deserves to be allowed. As noted hereinabove, the relief in the present writ petition shall be restricted to area of 1344.94 square meters concerning CTS No.683A/1B of Baramati, District Pune.

[30] We are of the opinion that in these circumstances, the respondents ought to initiate process for acquisition of the aforesaid piece of land to determine and pay compensation to the petitioners under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (for short, 'the Act of 2013').

[31] In view of the above, the writ petition is allowed in the following terms:

(a) The Respondent No.1-Municipal Council shall move a proposal before the Special Land Acquisition Officer (for short, 'SLAO') of the Respondent-State within four weeks for acquisition of the aforesaid piece of land.

(b) Thereupon, the SLAO shall take appropriate steps under the Act of 2013, in accordance with law for determination of compensation payable to the petitioners.

(c) The entire exercise of initiating the process of acquisition, pronouncing the award and payment of compensation shall be completed within a period of one year from today.

[32] Rule made absolute in the above terms.

[33] At this stage, the learned counsel for Respondent No.1- Municipal Council prayed for stay of this order for a specified period in order to challenge the same.

[34] Considering the fact that the petitioners and their predecessors have been struggling for relief for the past more than three decades, we see no reason to grant the aforesaid prayer. Accordingly, the prayer is rejected

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2026(1)MLPJ61

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Amit Borkar)

Writ Petition; Writ Petition (St) No. 3531 of 2024, 15827 of 2024; 11749 of 2024 **dated 28/11/2025**

Nainesh Sanghvi; Rajesh Sanghvi; Mukesh V Parikh; Upen Vakil; Bharat Parikh; Jagdish Vithalbhai Patel; Vinod R Devatar; Kashimira Malkan (Since Deceased); Bimal M Malkan; Chintan Bimal Malkan; Hetal Bimal Malkan

Versus

State of Maharashtra; Divisional Joint Registrar; Deputy Registrar; Amit Darshan Cooperative Housing Society Ltd; Laxman Laskar, Enquiry Officer; Shivaji Shinde, Authorized Officer

AUTHORITY OF ENQUIRY OFFICER

Maharashtra Co-Operative Societies Act, 1960 Sec. 83, Sec. 88 - Maharashtra Co-Operative Societies Rules, 1961 Rule 72 - Authority of Enquiry Officer - Petitions challenged report and recovery certificate issued under Section 88 of Maharashtra Cooperative Societies Act - Petitioners contended authorised officer had been replaced before submission of report yet proceeded to submit it - Authority argued replacement order not served hence report valid - Court held power of officer ceases once substituted irrespective of service of order - Stated that authority flows from statutory appointment and ends upon withdrawal - Found report by officer who had become functus officio void ab initio - Quashed report and consequential recovery actions - Directed fresh enquiry by duly appointed authorised officer in accordance with law - Petitions Allowed

Law Point: Once officer replaced by competent authority, his statutory power ceases instantly; any report or action thereafter is void and cannot form basis of further proceedings

Acts Referred:

Maharashtra Co-Operative Societies Act, 1960 Sec. 83, Sec. 88

Maharashtra Co-Operative Societies Rules, 1961 Rule 72

Counsel:

Siddhesh Bhole, Ashwin Pimple, Surel S Shah (Senior Advocate), Amol Khanna, Pankaj Das, Kavita N Solunke, S L Babar, Y D Patil

JUDGEMENT

Amit Borkar, J.- [1] These petitions raise common issues of fact and law. It is therefore appropriate to decide them together by a common judgment.

[2] These petitions arise from proceedings initiated under Section 88 of the Maharashtra Cooperative Societies Act, 1960. The core issue that calls for determination is limited but important. It is whether an Authorised Officer who stands replaced by another officer, after the proceedings under Section 88 have been closed for preparation of the report due to complaints of denial of hearing, can still submit a report only because he claims that he was unaware of the order of his substitution. The answer to this issue goes to the legality of the proceedings themselves.

[3] The relevant facts are stated hereafter for clarity.

[4] On 30 October 2018, Respondent No.3 initiated suo motu proceedings under Section 83(1) of the Act and appointed Respondent No.5 as the enquiry officer to examine the records of the society for the years 2012 to 2016. On 1 December 2018, Respondent No.3 expanded the scope of enquiry to cover the period up to 30 October 2018. On 15 February 2019, Respondent No.5 issued notice to the managing committee members calling for their reply. The society submitted its reply on 6 March 2019. On 1 August 2019, Respondent No.5 filed his report under Section 83(1) noting financial loss and legal lapses. Based on this report, Respondent No.3 on 7 October 2019 appointed Respondent No.6 as the Authorised Officer for conducting enquiry under Section 88 and for submitting his report. Respondent No.6 thereafter issued notices to the concerned committee members, who filed their replies. On 31 May 2021, Respondent No.6 framed charges under Rule 72(3) of the Maharashtra Cooperative Societies Rules, 1961. Petitioner Nos.1, 3, 4 and 5 submitted their replies on 20 September 2021. On 14 February 2022, Respondent No.3 replaced Respondent No.6 and appointed Mr. Sunil Khochre as the new Authorised Officer due to delay in submission of the report. In spite of his replacement, Respondent No.6 on 28 February 2022 proceeded to prepare a report under Section 88 and on 1 March 2022 submitted that report to Respondent No.3.

[5] On 13 October 2022, Respondent No.3 issued a certificate under Section 98 holding the managing committee members, including the petitioners, liable for an amount of Rs.49,45,673. The petitioners challenged the orders passed under Section 83 dated 30 October 2018, 1 December 2018 and the report dated 1 August 2019 by filing Revision Application No.35 of 2023. They also filed Revision Application No.36 of 2023 challenging the recovery certificate under Section 98. They further filed Appeal No.27 of 2023 challenging the report dated 28 February 2022 along with an application for condonation of delay.

[6] The case of the petitioners is that Respondent No.2 dismissed Revision Application Nos.35 and 36 of 2023 and Appeal No.27 of 2023 by order dated 29 January 2024 without affording them proper hearing. Due to this, the report under Section 83, the report under Section 88 and the certificate dated 13 October 2022 all came to be upheld. The petitioners therefore seek relief in these petitions.

[7] Learned Advocate Mr. Bhole for the petitioners submitted that Petitioner Nos.2, 6 and 7 were not members of the managing committee during the period 2012 to 2018. He submitted that despite this undisputed fact, they have been held liable for the alleged loss without any basis under the Act. He submitted that the Authorised Officer did not examine material documents including the General Body Resolution and the certificate issued under Section 101. He submitted that Respondent No.6 failed to complete the enquiry within the time prescribed. Due to this failure, Respondent No.3 passed an order on 14 March 2022 appointing Mr. Sunil Khochre as the new Authorised Officer in place of Respondent No.6 for conducting further enquiry under Section 88. He submitted that after this substitution, Respondent No.6 had no authority on 28 February 2022 or on 1 March 2022 to prepare or submit any report under Section 88. He therefore submitted that the consequent certificate under Section 98 also cannot stand in law. He also submitted that the enquiry under Section 83 covered a period beyond five years from the date of initiation, which is contrary to the scheme of the Act. He therefore prayed that the impugned judgment and order be set aside.

[8] In reply, learned Senior Advocate Mr. Shah for Respondent No.3 referred to the affidavit filed by Respondent No.6. It is stated in the affidavit that the order dated 14 February 2022 replacing him was never served upon him. According to him, he had no knowledge of his substitution. He submitted that by letter dated 21 June 2022, which was received on 5 August 2022, Respondent No.3 called for an explanation from Respondent No.6 regarding the delay of more than two years in submitting the report. After considering his explanation dated 9 August 2022, Respondent No.3 passed an order on 13 October 2022 which, according to him, shows that the delay in submission of the report has been accepted and treated as condoned.

[9] He relied on the judgment of the Supreme Court in Rohan Builders (India) Private Limited v. Berger Paints India Limited,2024 SCCOnLineSC 2494. He submitted that the principles relating to Section 29A of the Arbitration and Conciliation Act, 1996 can be applied to the present case for guidance. He submitted that under Section 29A(4) and 29A(5), the proceedings do not come to an end automatically due to delay. He also relied on the judgment of the Supreme Court in **State of Punjab v. Amar Singh Harika**, 1966 AIR(SC) 1313, to contend that an order which is not served does not operate against the person concerned in the absence of knowledge.

[10] He, therefore, submitted that the authorities under the Act have rightly held the petitioners responsible for the loss caused to the society. He submitted that no interference is warranted, and the petitions deserve dismissal.

[11] The question that falls for determination before this Court is one of considerable importance which is whether an Authorised Officer, who has been replaced by another Authorised Officer after proceedings under Section 88 have been closed for submission of report following completion of hearing of the delinquents and other parties, can nonetheless submit his report when he contends that he was not aware of the order of his replacement.

[12] Before examining the main issue, it is necessary to recall a few basic principles that guide the exercise of powers under any statute. An officer acting under a statute does not act on personal authority. He acts only because the statute permits him to do so. His power starts when the statute or the competent authority gives it. His power ends the moment that authority is withdrawn. After that point, he has no legal capacity to act. Once an officer is replaced, relieved, or his assignment comes to an end, he becomes functus officio. This means he cannot take any further steps in the proceedings. Whenever an officer continues to act despite his removal, the law does not recognise steps taken by such an officer. When the reason for exercising power no longer exists, the power itself comes to an end. The law does not permit continuation of authority after the source of that authority has been taken away. This position creates certainty in the functioning of public authorities.

[13] The statutory scheme shows a clear intention of the Legislature. The first proviso to Section 88(1) requires the authorised person to finish the proceedings within one year from the date of the order of authorisation. The later provisos allow extensions of time, but they do not change the basic nature of the authorisation. The Legislature wants these proceedings to finish without delay because delay affects rights, reputation, and the working of societies. The fixed timelines show the importance given to speedy disposal.

[14] When the Registrar exercises his power to replace one Authorised Officer with another, he does so in the exercise of his statutory authority. The power to authorise necessarily includes the power to withdraw such authorisation and to substitute another in place of the original authorisee. This follows from the doctrine that he who gives may take away qui dat potest auferre. The replacement of an Authorised Officer is not merely an administrative act devoid of legal consequences. It extinguishes the authority of the officer replaced and simultaneously vests fresh authority in the successor officer.

[15] The maxim cessante ratione legis cessat ipsa lex applies with clarity in the present context. When the very basis for the exercise of authority disappears, the authority itself cannot continue. The authorised officer derives his power only from the order of the Registrar. That order is the reason for the authority. When the Registrar replaces him, the reason for the authority ceases. The authority that flowed from it must also cease. When the underlying purpose or justification for the exercise of power comes to an end, any act done thereafter loses legal force. The doctrine serves an important function. It ensures that statutory powers are exercised only within the bounds set by the lawmaker. It prevents continuation of authority where the law no longer supports it. The

maxim thus reinforces the position that the scheme of Section 88 cannot recognise the actions of a person who no longer holds office for the purpose of the inquiry. The statutory design demands continuity of authority till completion of the act. When that continuity breaks, the earlier incumbent cannot complete what the law expects to be done only by a duly authorised officer.

[16] The Court must therefore proceed on the understanding that the cessation of the reason for the power results in the cessation of the power itself. The successor officer alone can carry the proceedings forward. It ensures that the final outcome rests on the exercise of authority that is valid in law.

[17] The doctrine of functus officio applies with full force to the facts of the present case. Once the proceedings were closed for submission of report after completion of hearing, and once a fresh Authorised Officer was appointed in place of the original officer, the latter became functus officio. The closure of proceedings for submission of report marks a significant stage in the quasi-judicial process. At that juncture, the adjudicatory function has reached completion, and what remains is the act of reduction of conclusions into writing and submission thereof. When a replacement occurs at this stage, the incoming officer steps into proceedings that are substantially complete, and it is for him to apply his mind to the material on record and submit his report.

[18] It may be argued that the original Authorised Officer, having heard the parties and having applied his mind to the evidence, is best placed to submit the report, and that replacement at this stage would result in waste of time and effort. The Legislature, in its wisdom, has conferred upon the Registrar the power to authorise and, by necessary implication, the power to replace. If the Registrar, in the exercise of his judgment, considers it appropriate to replace an Authorised Officer even after closure of hearing, that is a matter within his domain, and courts should be slow to interfere unless there is manifest illegality or violation of principles of natural justice, in a petition challenging replacement order.

[19] The argument that the earlier authorised officer did not know about his replacement cannot justify his submitting the report. Ignorance of an order cannot revive a power that has already come to an end. Anyone who acts without authority does so at his own risk, and such acts do not bind the authority that appointed him. This rule applies even when the person is unaware that his authority has ended. What matters is the fact that the authority has been withdrawn.

[20] Accepting such a plea would introduce uncertainty into the proceedings. The validity of a report would depend on what the officer says he knew or did not know. This would undermine predictability in statutory proceedings. The law cannot depend on an individual's state of mind when the statute provides a clear and objective rule.

[21] In essence, an authorised officer derives his power from the Registrar's order. When that power is withdrawn and another officer is appointed, the earlier officer cannot continue with the proceedings or submit the report. His lack of knowledge of the

replacement order does not change this position. Allowing him to submit the report would mean allowing a person without jurisdiction to complete a quasi judicial act, which the law does not permit. The successor authorised officer must take charge, examine the record, give further hearing if needed, and then submit his report.

[22] The successor officer does not have to start the proceedings afresh. He receives the existing record, including evidence and documents. He shall grant a further oral hearing based on the material already on record. What is necessary is that the final report must be submitted by an officer who holds valid authority on the date of submission.

[23] In the present case, Respondent No.3 passed an order on 14 February 2022 appointing a new Authorised Officer. From that date, Respondent No.6 could not act under Section 88. The report prepared on 28 February 2022 and submitted on 1 March 2022 was without authority. A report that is without authority cannot form the foundation for further proceedings. The recovery certificate under Section 98 is based entirely on such report. The certificate therefore cannot stand.

[24] The contention that the substituted officer was unaware of the order cannot restore his authority. The law in this field is settled. The existence of an order, and not the knowledge of the officer, determines the cessation of power. Administrative acts take effect when they are made by the competent authority.

[25] The reliance on Rohan Builders (India) Private Limited rendered under the Arbitration Act does not assist the respondents. Section 29A deals with a different scheme. It permits continuation of proceedings unless terminated by a specific order. The scheme of Section 88 is different. It provides a complete code for enquiry. Authority to act flows directly from the appointing order. Once that order is withdrawn, the power to act is withdrawn.

[26] Based on the discussion above, the following principles emerge.

(i) The authority of an officer under Section 88 begins with his appointment and ends with his replacement. Any report prepared after replacement is void.

(ii) Administrative orders take effect when issued by the competent authority. Personal knowledge of the officer is not the test.

(iii) Subsequent proceedings based on an invalid report cannot stand.

(iv) The Revisional Authority is required to examine whether the foundation of the recovery certificate is valid. Failure to do so results in denial of justice.

(v) Liability under Section 88 must be fixed only after proper appraisal of evidence relating to each member's role.

[27] This Court, in Sayajirao Narayan Takwane v. Divisional Joint Registrar Co-operative Societies and Others,2025 SCCOnLineBom 214, has held that a report submitted by the Registrar under Section 83 of the Maharashtra Co-operative Societies Act is not a decision. Such a report does not determine rights. It does not impose liability. It only places material before the competent authority. Therefore, it is not an order capable of being challenged before any court or authority.

[28] Applying this legal position, Writ Petition No. 15827 of 2024, which challenges the order passed in revision, does not survive for consideration. The petitioner is granted liberty to challenge the report under Section 83 by taking recourse to appropriate legal proceedings. All questions on merits are kept open.

[29] In view of these principles, the petitioners are entitled to succeed.

a) The report dated 28 February 2022 and its submission dated 1 March 2022 by Respondent No.6 under Section 88 of the Maharashtra Cooperative Societies Act, 1960 are declared illegal and without authority.

b) The recovery certificate dated 13 October 2022 issued under Section 98 of the Act is quashed and set aside.

c) The orders dated 29 January 2024 passed in Revision Application Nos.36 of 2023 and Appeal No.27 of 2023 are quashed and set aside.

d) The matter is remitted to the Competent Authority for fresh hearing under Section 88 in accordance with law. The newly appointed Authorised Officer or any other officer appointed by registrar hereinafter, shall give due opportunity of oral hearing to all parties and complete the proceedings based on the material already on record within the period prescribed.

e) All contentions on merits are kept open.

f) Rule is made absolute in the above terms.

[30] No order as to costs

2026(1)MLPJ67

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Arif S Doctor)

Interim Application (L); Official Liquidators Report; Company Petition No 26905 of 2024; 27 of 2023; 1176 of 2001 **dated 27/11/2025**

Zulfikar Akbarali Khoja; Nilesh Indulal Ponda; Indian Link Chains Mfrs Ltd

Versus

Official Liquidator, M/s Navinon Ltd; Ravindra Kamlakar Palkar; Cidco

VALIDITY OF ASSIGNMENT DEED

Companies Act, 1956 Sec. 433, Sec. 529A, Sec. 536, Sec. 441, Sec. 434, Sec. 530, Sec. 529 - Transfer of Property Act, 1882 Sec. 41 - Specific Relief Act, 1963 Sec. 19 - Validity of Assignment Deed - Cause of matter arose when Official Liquidator sought cancellation of Deed of Assignment transferring land and building of Navinon Ltd to applicants - Applicants claimed to be bona fide purchasers and sought ratification - Property belonged to company under liquidation and transfer made years after commencement of winding-up - Applicants relied on authority of ostensible ownership

and absence of notice of liquidation - Liquidator argued transfer void under statutory provisions as property disposed after commencement of winding-up - Court observed that transaction executed after initiation of liquidation proceedings is void unless expressly validated - No proof shown of benefit to company or creditors - Payment not made to company and executors acted without lawful authority - Court held transfer cannot be ratified under statutory discretion - Applicants not entitled to protection under Transfer of Property Act as they failed to establish bona fide purchase or due diligence - Transaction treated as fraudulent and contrary to law - Deed declared void and possession directed to be handed to liquidator - Equitable relief for restitution rejected as no legal basis proved - Petition for ratification dismissed - Official Liquidator's report accepted - Interim Application Dismissed

Law Point: Disposition of property made after commencement of winding-up proceedings without approval is void under Section 536(2) of Companies Act, 1956 and cannot be ratified unless shown to be bona fide, beneficial to creditors, or in ordinary course of business; equitable considerations cannot override statutory prohibition

Acts Referred:

Companies Act, 1956 Sec. 433, Sec. 529A, Sec. 536, Sec. 441, Sec. 434, Sec. 530, Sec. 529

Transfer of Property Act, 1882 Sec. 41

Specific Relief Act, 1963 Sec. 19

Counsel:

Mutahhar Khan, Satyajit Roul, Chetan Shelke, Sneha Phene, Ajit Tamhane, Savita Sawalkar, Priyanka Mahadeshwar, Eshaan Saroop

JUDGEMENT

Arif S. Doctor, J.- [1] Since the issue that arises for consideration in the Official Liquidator's Report ("**OLR**") and the Interim Application are essentially two sides of the same coin, both the captioned proceedings were, with the consent of the Learned Counsel, heard together and are being disposed of by this common order.

[2] The issue for consideration in both captioned proceedings is the validity of a Deed of Assignment dated 16th May 2019 ("**the Deed of Assignment**"), which assigned to the Applicants, a plot of land identified as - Lot No. 45, Old Survey No. 113 (Part), New Survey No. 165, measuring approximately 1,497 square metres, located in Tarapur Industrial Area, Boisar, Palghar ("**the said land**"), along with a building on it ("**the said building**"). The said land and building are collectively referred to as "**the said property**". It is not in dispute that the said property belonged to a company known as Navinon Limited ("**Navinon**").

[3] The OLR seeks cancellation of the Deed of Assignment, while the Interim Application seeks its ratification.

[4] However, before adverting to the rival contentions, it is necessary for context to set out the following facts:

i. On 3rd November 2001, Company Petition No. 1176 of 2001 was presented in this Court for the winding up of Navinon under the provisions of Sections 433 and 434 of the Companies Act, 1956 ("**Companies Act**").

ii. It is the Applicants' case that on 14th February 2005, one Manohar Narhar Shanke ("Manohar Shanke") and Ravindra Kamlakar Palkar ("Ravindra Palkar") were authorised by a board resolution of Navinon to deal with two properties belonging to Navinon, one of which was the said property. This board resolution was signed on behalf of Navinon by Atulya Mafatlal, the then Vice Chairman of Navinon.

iii. On 17th February 2005 a joint power of attorney was executed by Atulya Mafatlal in favour of Manohar Sankhe and Ravindra Palkar in terms of the board resolution dated 14th February 2005. It is not in dispute that this power of attorney was unregistered.

iv. On 16th December 2005, this Court passed an order of winding up against Navinon, by which the Official Liquidator High Court Bombay was appointed to take charge of the assets and affairs of Navinon.

v. It is the case of the Applicants that sometime in the year 2017 the Applicants were approached by Atulya Mafatlal, who represented himself to be a director of Navinon, along with Manohar Sankhe, who claimed to be the leader of the workman's union, with a proposal to transfer the said property in favour of the Applicants by way of a Deed of Assignment.

vi. It is the case of the Applicants that since Manohar Sankhe was unable to continue to act as the Constituted Attorney on behalf of Navinon on account of personal reasons, he delegated his powers to Ravindra Palkar vide a Power of Attorney dated 26th September 2017. This Power of Attorney was registered.

vii. On 16th November 2017, the Applicants issued a public notice in a newspaper called "Aapla Vartahar" which the Applicants claim had wide circulation in the area in which the said property is located. It is the Applicants' case that they did not receive any response to the public notice.

viii. It is also the Applicants' case that on 1st December 2017, the workers' union of Navinon passed a resolution giving consent to the proposed assignment on the condition that 50% of the sale consideration was paid to the union. The Applicants have relied upon a letter dated 8th December 2017, issued by the Applicants' Advocate, who opined that there was no impediment in proceeding with the proposed assignment.

ix. Since CIDCO was the first lessee of the said land, on 4th December 2019, Atulya Mafatlal addressed a letter to CIDCO requesting that the application for transfer/assignment in favour of the Applicants be processed.

x. The Deed of Assignment was then executed on 16th May 2019 by Ravindra Palkar on behalf of Navinon as its constituted attorney.

xi. It is the case of the Official Liquidator that on 14th October 2022, the Official Liquidator received a letter from one Mansi Ghagh claiming that some unknown persons had entered the said land and had commenced demolition of the existing structures.

xii. Accordingly, on 13th January 2023, the Official Liquidator deputed representatives to conduct a spot inspection of the said property, during which the Applicants informed the Official Liquidator of the Deed of Assignment.

xiii. As already noted above, the Official Liquidator then filed the captioned OLR on 15th February 2023 to declare the Deed of Assignment dated 16th May 2019 as being void and for a direction to the Applicants to hand over possession to the Official Liquidator. The Applicants thereafter, on 29th August 2024, filed the captioned Interim Application seeking ratification of the said Deed of Assignment.

SUBMISSIONS ON BEHALF OF THE OFFICIAL LIQUIDATOR

[5] Mr. Khan, Learned Counsel appearing on behalf of the Official Liquidator, at the outset invited my attention to Section 441 of the Companies Act to point out that once an order of winding-up was passed, the winding-up proceedings were deemed to have commenced from the date on which the company petition was presented. He submitted that in the present case, the winding-up petition against Navinon was presented on 3rd November 2001, and the order of winding was passed on 16th December 2005. He thus submitted that the winding-up proceedings were deemed to have commenced on 3rd November 2001. He then took pains to point out that the Deed of Assignment was executed on 16th May 2019, which was almost eighteen years after the commencement of winding up.

[6] Mr. Khan then placed reliance upon Section 536(2) of the Companies Act to point out that any disposition of the property of a company made after the commencement of winding-up is void unless expressly validated by the Court. He submitted that in the facts of the present case, the Deed of Assignment having been entered into well after the commencement of winding up was, by operation of law, void.

[7] Mr. Khan, however, fairly pointed out that while Section 536(2) does vest the Court with discretionary power to validate transactions entered into after the commencement of winding-up, such discretion is circumscribed and can be exercised only in limited circumstances. He submitted that only those transactions which were shown to be (i) in the interest of the company in liquidation, (ii) necessary to enable the company to continue as a going concern, or (iii) entered into in the ordinary course of its business were capable of being ratified. He submitted that any disposition of company property outside these categories must ordinarily be treated as void and incapable of ratification. In support of this submission, he relied upon the decisions of this Court in Sunita Vasudeo Warke v. Official Liquidator,2013 SCCOnLineBom 59 and Laxman Yeshwant Prabhudesai v. NRC Ltd.,2010 SCCOnLineBom 434, from which he pointed out that this Court had emphasised that dispositions of a company's property after the commencement of winding-up were, by default, void. Mr. Khan submitted that these

judgments make it clear that validation is the exception, not the norm, and may be granted only when the transaction demonstrably serves the interests of the company or its creditors and does not deplete or prejudice the company's assets.

[8] Mr. Khan then placed reliance upon the decision of this Court in Sarigam Containers Pvt. Ltd. v. Magatul Industries Ltd.,2008 SCCOnLineBom 490, to submit that although the Court possesses wide discretionary power under Section 536(2) to validate a postcommencement transaction, the burden of seeking such validation rests squarely on the party claiming under the impugned transfer. He submitted that Sarigam Containers clearly lays down that the Applicant seeking ratification must specifically plead and affirmatively establish that the transaction was bona fide, duly authorised, effected in the ordinary course of the company's business, and demonstrably beneficial to the company or its creditors. He submitted that unless these foundational facts were distinctly pleaded and supported by cogent evidence, the Court cannot be invited to exercise its discretion under Section 536(2). In the absence of such material, he submitted, the transaction must ordinarily be treated as void, and the question of seeking validation does not arise at all.

[9] Mr. Khan then took pains to point out that, in the present case, the Applicants had neither pleaded, much less proved, that the Deed of Assignment was executed in the ordinary course of the business of Navinon or that the same conferred any benefit on Navinon or its creditors. On the contrary, he pointed out Ravindra Palkar, who had executed the Deed of Assignment on behalf of Navinon had in his Affidavit in Reply to the Interim Application, specifically stated that he had acted solely on the representations, instructions, and directions of Atulya Mafatlal, and further affirmed that had he known that Navinon was already under liquidation he would not have executed the Deed of Assignment. He also pointed out that the Affidavit of Ravindra Palkar expressly affirmed the fact that no consideration from the Deed of Assignment was paid to Navinon. Mr. Khan thus submitted that on this ground alone, the question of ratifying such a transaction under Section 536(2) did not arise.

[10] Mr. Khan further pointed out that though the Deed of Assignment recorded that the consideration for the transfer was rupees one crore, not a single rupee had been received by Navinon, as confirmed by Ravindra Palkar. He pointed out from the Deed of Assignment that the consideration was to be paid to the Assignor, i.e., Navinon, however the same was allegedly paid as follows -

(i) Rs. 29,93,039 to CIDCO (ii) Rs. 40,00,000 to Mr. R.M. Rai (alleged to be a decree holder against the Navinon) (iii) Rs. 19,80,000 to alleged members of the workers union and (iv) Rs. 10,26,961 was appropriated by Ravindra Palkar against alleged arrears of his salary for a period up to March 2019.

[11] Mr. Khan then submitted that the execution of the said Deed of Assignment was clearly fraudulent. He first pointed out that the Power of Attorney dated 17th February 2005, which was said to have been issued pursuant to a Board resolution was unregistered, and authorised both Manohar Sankhe and Ravindra Palkar. He then

pointed out that in 2017 Manohar Sankhe had purportedly relinquished his authority in favour of Ravindra Palkar by a Power of Attorney dated on 12th October 2017 which was registered and based on which Ravindra Palkar had executed the Deed of Assignment. He submitted that this conduct smacked of malafides and fraud since the first Power of Attorney was unregistered and of no legal force, even assuming the board resolution was valid. He submitted that it was to overcome this patent illegality that the second power of attorney was executed and registered even assuming Manohar Sankhe could have delegated his powers to Ravindra Palkar.

[12] Mr. Khan then submitted that neither delay nor inaction on the part of the Official Liquidator could form the basis for seeking validation of a transaction that is otherwise void under Section 536(2), as held by this Court in **Laxman Yeshwant Prabhudesai v. NRC Ltd.** He submitted that if alienations made post commencement of winding up were to be validated on such grounds, the same would effectively amount to rewarding the misconduct or irregularities of the erstwhile directors of a company that has already been ordered to be wound up. He also placed reliance on the judgement of this Court in BIFR v. Hindustan Transmission Products Ltd.,2012 SCCOnLine 1294 to point out that neither the honesty or good faith of the transferee nor the absence of any direct involvement in impropriety is, by itself, sufficient to justify ratification. He pointed out that this Court in that case emphasised that validation under Section 536(2) can be granted only when the transaction demonstrably serves the interests of the company in liquidation or its creditors, not merely because the transferee had acted innocently or without knowledge of the winding-up proceedings. Mr. Khan thus submitted that the statutory presumption of voidness cannot be displaced merely on the basis of equitable pleas unless the transaction affirmatively meets the strict requirements for validation.

[13] Mr. Khan also submitted that the Applicants cannot claim any equity on the basis of the payments allegedly made by them, since firstly, these payments were not made to Navinon, and secondly, all payments in liquidation were required to be made strictly in accordance with Sections 529, 529A, and 530 of the Companies Act. He pointed out that the payments relied upon by the Applicants were, in fact, preferential in nature and contrary to the statutory scheme provided for in the Companies Act. He therefore submitted that if infact any such payments were made, they were made entirely at the Applicants' own risk and cannot form the basis for seeking equitable relief.

[14] In conclusion, Mr. Khan submitted that the Applicants, in collusion with Atulya Mafatlal and Ravindra Palkar, had misappropriated a valuable asset of Navinon to the detriment of creditors and workmen. He submitted that a case for ratification had been made out, and the Deed must be declared void, and possession consequently be handed over to the Official Liquidator .

SUBMISSIONS ON BEHALF OF THE APPLICANTS

[15] Mr. Shah, Learned Counsel appearing on behalf of the Applicants, in the captioned Interim Application, essentially submitted that the Interim Application be

allowed since: **(A)** the Applicants were bona fide purchasers for value without notice of the order of winding up; alternatively, **(B)** the said transfer was from the ostensible owner, and thus the Applicants were entitled to the benefit of Section 41 of the Transfer of Properties Act, 1882, and Section 19(b) of the Specific Relief Act, 1963. He submitted that in the event the Court was not inclined to ratify the said transfer, then **(C)** the Applicants were entitled to be restituted for the amounts spent by them in terms of Section 33 of the Specific Relief Act.

[16] Mr. Shah submitted that at the time when the Deed of Assignment was entered into, the Applicants were entirely unaware of the fact that a winding-up order had been passed against Navinon. He pointed out that though the winding-up order was passed in the year 2005, there was no indication that the said property was in the possession of the Official Liquidator or that the said property did not belong to Navinon. In support of his contention he submitted that (i) there were no security guards deployed to safeguard the said property nor was there any signage or notice displayed at the said property to indicate that the same was in the possession of the liquidator or that Navinon was in liquidation; (ii) that the said property came to be transferred to the name of Navinon only on 5th April 2019 until which time it stood in the name of Indian Dyestuff, i.e. Navinon's former name; (iii) no response was received by the Applicants to the public notice issued by them on 16th November 2017; (iv) CIDCO continued to accept payments made by the Applicants towards service charges and water charges; (v) CIDCO also issued an NOC for assignment in favour of the Applicants; (vi) on 29th April 2022, MIDC granted the Applicants' permission for demolition of the existing building; (vii) on 14th July 2022, MIDC, i.e., who was the original owner of the said property, approved the sanctioned plans; and (viii) on 22nd April 2024, the Applicants were issued an occupation certificate by MIDC.

[17] Mr. Shah submitted that it was only on 13th January 2023, when the Official Liquidator visited the said property, that the Applicants became aware of the winding-up order. He therefore contended that the Applicants were bona fide purchasers for value and thus could not be divested of the rights validly acquired under the Deed of Assignment. In support of this contention, he relied upon the decision of the Hon'ble Supreme Court in the case of Crystal Developers v. Asha Lata Ghosh,2004 SCCOnLIneSC 1262 and pointed out that transferees who act in good faith, for valuable consideration, and without notice of any infirmity in title, are entitled to equitable protection. He submitted that the Applicants fell squarely within this category of purchasers, having entered into the Deed of Assignment after conducting due diligence and without any knowledge of the winding-up proceedings.

[18] Mr. Shah then placed reliance upon the decision of this Court in S.P. Khanna v. S.N. Ghosh,1975 SCCOnLineBom 263 to contend that where a transaction is shown to be bona fide, for fair and adequate consideration, and demonstrably in the interest of the company against which a winding-up order has been passed, the Court may exercise its discretionary jurisdiction under Section 536(2) of the Companies Act to validate such a

transaction, even if it was entered into after the commencement of winding-up proceedings. He submitted that the ratio of **S.P. Khanna** recognises that the power under Section 536(2) is fundamentally equitable in nature and is intended to prevent injustice, particularly where the transferee has acted honestly and the transaction does not prejudice the company or its creditors. Mr. Shah submitted that the present case squarely falls within the ratio of the judgement in the case of **S.P. Khanna** since, the Applicants had acted in good faith and had paid an amount exceeding the market value of the property, thereby conferring a clear benefit on the company in liquidation. He submitted that the discretion of this Court under Section 536(2) is not confined only to the matters mentioned in **Sunita Vasudeo Warke v. Official Liquidator, Laxman Yeshwant Prabhudesai v. NRC Ltd.,** or **Sarigam Containers Pvt. Ltd. v. Magatul Industries Ltd.,** were only illustrative in nature.

[19] Mr. Shah then, in the alternative, submitted that the transfer in favour of the Applicants was effected by Ravindra Palkar who, on the face of the record, appeared to possess full authority to deal with the property and thus an ostensible owner. In support of this contention he placed reliance upon (i) the Board Resolution of Navinon dated 14th February 2005; (ii) the Power of Attorney dated 17th February 2005 executed in favour of both Manohar Sankhe and Ravindra Palkar; and (iii) the registered Power of Attorney dated 26th September 2017, by which Manohar Sankhe delegated his powers exclusively to Ravindra Palkar. He submitted that the Applicants having exercised due diligence, acted in good faith and having paid a consideration of Rupees One crore which, was utilised for the benefit of Navinon were entitled to invoke the protection afforded by Section 41 of the Transfer of Properties Act, 1882. In support of his contention he placed reliance upon the decision of the Hon'ble Supreme Court in Duni Chand v. Vikram Singh & Ors,2024 SCCOnLineSC 1702 to point out that a transferee who acts in good faith, after exercising due diligence, is protected when the transferor is the ostensible owner. Mr. Shah submitted that the Applicants in the present case satisfied each of these requirements and were thus entitled to such protection.

[20] Mr. Shah then submitted that, in the event this Court was not inclined to ratify the Deed of Assignment, then Applicants would have to be restituted to the position they occupied prior to its execution. He submitted that, in such an eventuality, the Official Liquidator would have to reimburse the Applicants not only with the entire consideration amount paid under the Deed of Assignment but also all amounts expended by the Applicants towards arrears, statutory dues, and other liabilities relating to the subject land. In support of this submission, he placed reliance upon the decision of this Court in Nimesh K. Thakkar & Ors. v. Official Liquidator & Ors,1989 SCCOnLineSC 276 to point out that this Court had recognised that a bona fide transferee was entitled to restitution of amounts paid in furtherance of a transaction that is subsequently avoided, particularly where the company in liquidation or its creditors have benefited from such payments. He submitted that since the Applicants had paid valuable consideration and

discharged substantial liabilities of Navinon, the Applicants were entitled to be restituted for all the amounts spent in the event the transfer was held to be invalid.

[21] Mr. Shah also placed reliance upon the judgment of the Hon'ble Supreme Court in Kuju Collieries Ltd. v. Jharkhand Mines Ltd.,1974 SCCOnLineSC 224 to point out that when an agreement is void, no rights can flow from it and any person who has received an advantage under such a void agreement is bound, under the principles of restitution, to restore that advantage or compensate the person from whom it was received. He submitted that the underlying rationale of **Kuju Collieries** is that even where a transaction is void and incapable of enforcement, equity mandates that the party who has benefited cannot retain such benefit to the detriment of the other party. Applying this principle to the present case, Mr. Shah submitted that if the Deed of Assignment was held to be void, the Applicants would nonetheless be entitled to a full restitution of all amounts paid and expended by them, whether by way of consideration or discharge of statutory dues of Navinon since Navinon and its creditors had derived benefit from those payments.

[22] Mr. Shah then placed reliance upon the decision of this Court in Helbon Engineers Pvt. Ltd. v. Ferral Anant Machinery Manufacturers Pvt. Ltd. & Anr.,2024 SCCOnLineBom 2134 to point out that this Court has, in appropriate circumstances, has exercised its discretionary jurisdiction under Section 536(2) to validate a transfer of a company's property executed after the commencement of winding-up. He submitted that in **Helbon Engineers**, this Court had recognised that the object of Section 536(2) was not to invalidate all post-commencement transactions mechanically but to prevent prejudice to the company and its creditors. He pointed out in the case of **Helbon Engineers** the Court found that the impugned transfer had been effected bona fide, for fair value, and in a manner that did not jeopardise the interests of the company in liquidation and that the transferee therein and accordingly ratified the transfer notwithstanding that it took place after the winding-up order. Mr. Shah submitted that the ratio of **Helbon Engineers** clearly illustrates that Section 536(2) vests the Court with a wide equitable discretion to protect genuine and beneficial transactions, and that the power is intended to be exercised to prevent injustice rather than to penalise bona fide parties. He therefore submitted that the present case, being one where the Applicants had acted in good faith and paid valuable consideration which was utilised for the benefit of Navinon and its creditors, fell squarely within the same equitable principles recognised in **Helbon Engineers** and would therefore warrant similar validation.

SUBMISSIONS ON BEHALF OF THE OFFICIAL LIQUIDATOR IN REJOINDER

[23] Mr. Khan submitted that the Applicants contention that the Deed of Assignment was a bona fide transfer was plainly unstateable since the Deed itself inter alia recorded, that that the subject land was neither included in nor subject to any liquidation proceedings and further that the Applicants had accepted the assignment of the leasehold rights strictly on an "as is, where is" basis. He thus submitted that the

question of the Applicants now contending that they were unaware of any liquidation proceedings or claiming any equities did not arise.

[24] Mr. Khan did not dispute that the power of ratification under Section 536(2) of the Companies Act was discretionary in nature. He clarified, however, that the very object of conferring such discretion on the Company Court was limited and to be exercised only to prevent the business and affairs of a company from coming to a complete standstill upon the presentation of a winding-up petition. Section 536(2), he submitted, was intended to protect bona fide commercial transactions necessary for the continued functioning of the company and not to validate transfers that may otherwise prejudice the body of creditors or undermine the winding-up process. Mr. Khan also did not dispute that the parameters laid down by this Court in the decisions of **Sunita Vasudeo Warke** and **Laxman Yeshwant Prabhudesai** were illustrative and not exhaustive but submitted that the same underscored an important principle, i.e., that the discretion under Section 536(2) must be exercised with the utmost caution and circumspection and only in cases where the equities overwhelmingly justify such validation. He submitted that the facts of the present case being gross would not satisfy these considerations, either on the touchstone of bona fides or on the requirement of demonstrating that the impugned transaction was in the interest of the company or its creditors. He therefore submitted that, on the facts of the present matter, this Court ought not to invoke its discretionary power under Section 536(2) to ratify the transaction in question.

[25] Mr. Khan submitted that the Applicants' reliance on Section 41 of the Transfer of Property Act, 1882, was also entirely misconceived. He pointed out that the Interim Application did not contain a single averment with respect to Section 41, nor were any of the foundational facts necessary for invoking Section 41 of the Transfer of Property Act, 1882, set out in the Interim Application. Mr. Khan placed reliance upon the decision of Hon'ble Supreme Court in the case of **Duni Chand**, to point out that the Hon'ble Supreme Court had held that for Section 41 to apply, the transferee must specifically plead and prove that the transferee had taken reasonable care to ascertain the transferor's authority to transfer the property in question. He submitted that Section 41 operates only where the real owner consents to such transfer and thus creates an estoppel. In the facts of the present case, he pointed out that the Official Liquidator was merely a statutory custodian of the said property and not the owner. He submitted that it was well settled that waiver or acquiescence requires a positive act that would reasonably mislead a third party. Mr. Khan placed reliance upon the decision in the case of Superintendent of Taxes, Dhubri v. Onkarmal Nathmal Trust,1975 SCCOnLineSC 186 to point out that estoppel cannot be inferred against a statutory authority.

[26] Mr. Khan, then in dealing with the judgements relied upon by Mr. Shah, submitted that the Applicants' reliance on each of those decisions was wholly misplaced and that none of them had any application to the facts of the present case. He pointed out that the decision in **Nimesh K. Thakkar** categorically holds that persons entering into

transactions with a company after the commencement of winding-up proceedings stand on the same footing as ordinary creditors and are not entitled to any priority over other creditors, nor can they claim restitution but are required to lodge any claim with the Official Liquidator. Similarly, the decision in **Crystal Developers** would be of no assistance to the Applicants, as it was rendered in the context of revocation of probate and bears no relevance to proceedings under Section 536(2) of the Companies Act. Mr. Khan then also pointed out that the decision in the case of **S.P. Khanna**, merely reiterates the broad equitable considerations that may apply to bona fide transactions entered into after a winding-up order is passed and does not, in any manner dilute, qualify, or override the specific statutory mandate under Section 536(2), which declares that any disposition of the company's property made after the commencement of winding-up proceedings is void.

[27] Mr. Khan then also distinguished the decision of this Court in the case of **Helbon Engineering Pvt. Ltd.** by pointing out that, unlike the present case, in the case of **Helbon Engineering Pvt. Ltd.** there were no creditors or employees who had any outstanding claims against the company in question. He submitted that the outstanding claims against Navinon were well in excess of the consideration which was stated to have been paid by the Applicants in the present case. He also pointed out that the decision in the case of **Kuju Collieries** was also equally misplaced. He submitted that while the general principle that benefits received under a void agreement must be restored was not in dispute, he contended that this principle had no application in the present context since the Companies Act was a self-contained and special statute that prescribed a specific mechanism for prioritising and adjudicating all claims made against a company in liquidation. He thus submitted that the general principles for restitution cannot be invoked to bypass or dilute the statutory scheme embodied in the Companies Act.

FINDINGS AND REASONS

[28] After hearing Learned Counsel for the parties and the caselaw which have been relied upon, I am satisfied that the question of ratifying the Deed of Assignment does not arise, for the following reasons:

A. Section 441(2) of the Companies Act, 1956, makes clear that the winding up of a company is deemed to have commenced from the date of presentation of a winding-up petition, which in the facts of the present case was admittedly on 3rd November 2001. The Deed of Assignment was executed on 16th May 2019, which is nearly eighteen years after the commencement of winding up.

B. Section 536(2) of the Companies Act unequivocally provides that any disposition of a company's property made after the commencement of winding up is void, unless the Court specifically directs otherwise. The provision is mandatory, and the power of validation conferred upon the Court is an exceptional one, as is clear from the decisions in the case of **Sunita Vasudeo Warke v. Official Liquidator, Laxman Yeshwant Prabhudesai v. NRC Ltd.**, and **Sarigam Containers Pvt. Ltd. v. Magatul Industries**

Ltd. Thus the discretion vested in the Court under Section 536(2) of the Companies Act is one which is to be exercised sparingly and only where the transferee clearly establishes that the transaction was bona fide, effected in the ordinary course of the company's business, or was demonstrably beneficial to the company or its creditors or in those circumstances where no possible prejudice would be caused by validating such a transaction. These decisions clearly enunciate that the Official Liquidator's delay or inaction, the transferee's good faith, or private dealings without the Liquidator's knowledge cannot displace the statutory presumption of voidness. Such factors alone cannot justify the disposition of a company's property after the commencement of winding-up proceedings against the company.

C. Crucially, in the present case the Applicants have neither pleaded nor demonstrated that the transaction in question was in the ordinary course of business or was in any manner beneficial to Navinon or its creditors. On the contrary, the material on record makes clear that the Deed of Assignment was executed eighteen years after the commencement of winding up and was wholly outside the ordinary course of business of Navion. Further, not a single rupee from the consideration which is stated to have been paid by the Applicants was received by Navinon. Thus, neither Navinon nor its creditors received any benefit from the said transaction. Equally crucial is the fact that Ravindra Palkar has, in his Affidavit in Reply to the Interim Application (L) No. 26905 of 2024 , unequivocally stated that he (i) executed the Deed of Assignment under the instructions of Atulya Mafatlal (ii) was unaware of the fact that a winding-up order had been passed against Navinon and (iii) had he been aware that Navinon was under liquidation, he would not have executed the Deed of Assignment.

D. The execution of the Deed of Assignment is patently fraudulent and entirely lacking in bona fides. The transaction was effected eighteen years after commencement of winding-up, on the strength of powers of attorney that were themselves legally ineffectual. The 2005 Power of Attorney relied upon was unregistered and therefore incapable of authorising any transfer of immovable property, and the subsequent 2017 Power of Attorney purportedly executed by Manohar Sankhe in favour of Ravindra Palkar was equally invalid, since the foundation of Manohar Sankhe's authority was the 2005 Power of Attorney, even assuming Manohar Sankhe could delegate his authority to Ravindra Palkar without any ratification from Navinon. Notably, Ravindra Palkar executed the Deed of Assignment on behalf of Navinon by representing, falsely, that the property was not subject to liquidation. No consideration was paid to Navinon, instead, the amounts were diverted to third parties and to Ravindra Palkar personally. Thus, the transaction conferred no benefit whatsoever on Navinon or its creditors and was plainly a fraudulent attempt to misappropriate its assets.

E. The Applicants' reliance on Section 41 of the Transfer of Property Act, 1882, is entirely misconceived. To begin with, the Interim Application contains no pleadings setting out the foundational facts necessary to invoke Section 41. Moreover, Section 41 applies only where the real owner, by consent or conduct, enables another to hold

himself out as the ostensible owner. In the present case, the Official Liquidator is not the real owner of the property but merely a statutory custodian of the company's assets. Consequently, the doctrine of ostensible ownership has no application to these facts, all the more so when the Applicants have not even asserted such a case in their pleadings.

F. The plea for restitution is equally untenable. As held by this Court in the case of **Nimesh K. Thakkar**, persons entering into transactions after commencement of winding-up stand on par with ordinary unsecured creditors and must lodge their claim before the Official Liquidator. They are not entitled to any special equity or priority on the ground that the transaction has been avoided. The Companies Act is a complete code governing distribution of the company's assets through Sections 529, 529A, and 530. The Court cannot order restitution in a manner that is contrary to the scheme for payment under the provisions of the Companies Act. Reliance upon the decision of the Hon'ble Supreme Court in the case of **Kuju Collieries Ltd.** is entirely inapposite since it was rendered in the context of general principles relating to contract and not in the context of winding-up, where the Companies Act lays down the scheme for adjudication and distribution of claims.

G. The reliance on the decisions of **S.P. Khanna** as well as **Helbon Engineers Pvt. Ltd.** is misplaced. The decision in **S.P. Khanna** does not dilute the mandatory nature of Section 536(2) nor expand the scope of the Court's discretion. It merely recognises that validation may be granted in exceptional cases where the transaction is demonstrably beneficial to the company in question. As already noted in paragraph (26) above, such is not the case here. Especially the decision in the case of **Helbon Engineers Pvt. Ltd.** would not apply to the present case, since in the said case, the Court had exercised the power u/s. 536(2) since the company in liquidation had no outstanding creditors or workmen's dues, the impugned transfer was bona fide and did not prejudice the company, its stakeholders, or the winding-up process and, infact, facilitated the company's affairs without jeopardising liquidation.

[29] For all these reasons, the transaction embodied in the Deed of Assignment dated 16 May 2019 is void under Section 536(2) and is not a fit case for validation. The Applicants have neither established any statutory ground for ratification nor shown that the transaction promoted the interests of the Company or its creditors.

[30] The Applicants' remedy, if any, lies in filing a claim before the Official Liquidator, which shall be adjudicated in accordance with law and the priorities prescribed under the Companies Act.

[31] Accordingly, the OLR is liable to be allowed, and the Interim Application seeking ratification of the impugned Deed of Assignment is liable to be dismissed.

ORDER

[32] In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

(i) The Official Liquidator's Report dated 15 February 2023 is allowed in terms of prayer clauses (a) and (b) which read thus:

"a) In view of para (12), above, whether this Hon'ble Court may be pleased to declare the purported transfer of the immovale property of the company (In Liqn) situated at House bearing no.13, Tarapur Industrial Area, Boisar Taluka, District Palghar to Mr. Zulfikar Khoja and Mr. Nilesh I Ponda by way of Deed of Assignment dated 16/05/2019 as void.

b) In view of para (13) above, whether this Hon'ble Court may be pleased to direct Mr. Zulfikar Khoja & Mr. Naresh I Ponda to stop the construction work on the above mentioned property of the company (In Liqn.), to vacate and handover the peaceful possession of the property of the company (In Liqn.) occupied by them within 7 days to the Official Liquidator, High Court, Bombay."

(ii) Interim Application (L) No. 26905 of 2024 is dismissed.

(iii) The Applicants are at liberty to lodge their claim, if any, before the Official Liquidator in accordance with law. Any such claim shall be adjudicated by the Official Liquidator strictly in terms of the priorities and statutory scheme contained in Sections 529, 529A, and 530 of the Companies Act, 1956. Nothing in this order shall be construed as an expression of opinion on the merits of such a claim.

(iv) In the facts and circumstances of the case, there shall be no order as to costs.

(v) All pending applications, if any, stand disposed of.

[33] At this stage, Ms. Sneha Phene, learned counsel for the Applicants, sought a stay of this order. The request was opposed by Mr. Khan, who submitted that the operation of this order not be stayed since the same may imperil the said property, as the Applicants could then deal with the same. He, however, submitted that insofar as handing over possession of the property in question was concerned, the Applicants may hand over possession after a period of four weeks. Hence, there shall be a stay in terms of prayer clause (b) for a period of four weeks from the date on which a copy of this order is uploaded

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2026(1)MLPJ80

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From KOLHAPUR BENCH]

(Hon'ble Judge: M S Karnik; Ajit B Kadethankar)

Writ Petition No 6562 of 2024 **dated 25/11/2025**

Dr Dattatray Baburao Kungulwar; Eknath Baburao Kungulwar; Kalavathi Baburao Kungulwar; Bhanudas Baburao Kungulwar

Versus

State of Maharashtra; Solapur Municipal Corporation

LAPSING OF RESERVATION

Maharashtra Regional and Town Planning Act, 1966 Sec. 127 - Lapsing of Reservation - Petition sought declaration that reservation of land under Development Plan for burial ground and road lapsed under Section 127 of MRTP Act - Petitioners served purchase notice with documents showing ownership - No acquisition steps initiated within statutory period of twenty-four months - Authorities contended notice defective for lack of details and offered TDR and FSI instead of compensation - Court held once statutory period expires without acquisition, reservation automatically lapses irrespective of notice defects - Offer of TDR does not override mandatory provisions - Land deemed released for development - Petition Allowed

Law Point: Upon expiry of statutory period under Section 127 of MRTP Act without acquisition or commencement of proceedings, reservation automatically lapses and authorities cannot resist release on ground of alleged defects in purchase notice

Acts Referred:

Maharashtra Regional and Town Planning Act, 1966 Sec. 127

Counsel:

Dr Ramdas Sabban, R P Kadam, Anand S Kulkarni

JUDGEMENT

Ajit B. Kadethankar, J.- [1] Rule. Rule returnable forthwith and heard finally with the consent of parties.

[2] Subject-Matter:- By this Writ Petition under Article 226 of the Constitution of India, the Petitioner seeks a direction to the Respondents, to declare that the reservation of (i) District Center (Reservation Site No. 13/37), area admeasuring 13,800 sq. mtrs. (out of the total land Reserved area admeasuring 35,000 sq. mtrs.), situated at Survey No. 167/2B, Kasbe Solapur, Taluka North Solapur, District Solapur **AND (ii)** East - West 30 mts. D.P. Road purposes, area admeasuring 3,674 sq.mtrs., situated at Survey No. 167/2B, Kasbe Solapur, Taluka North Solapur, District Solapur, [for short, **"writ land"**] have lapsed as per Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, **"MRTP Act"**).

[3] Facts in brief:-

i) The Development Plan of Solapur for the year 1997-2017 came into force from 15th December 2004 and the writ land was reserved as for the purpose of Burial Ground and Cremation Ground.

ii) The 10-year statutory period for acquiring the writ land expired in 2014.

iii) Petitioners are the owners of the Subject-matter Writ Land. Purchase Notice was issued by the Petitioners on 7th February 2022.

iv) The statutory period of two years after issuance of the Purchase Notice under Section 127 of MRTP Act for acquisition of the writ land expired on 6th February 2024. (The 12 Months period is now amended to 24 months since after 2015)

v) Admittedly, no steps for acquisition of the writ land have been taken as contemplated in law by the Respondents.

[4] Petitioner's arguments:

4.1 Dr. Ramdas Sabban, learned counsel for the Petitioner submitted that, the Petitioner has not yet learnt about any reservation post purchase notice. He would submit that this Court has held that, even otherwise, the reservation of the writ land for "fair ground" in any Revised Development Plan would be beyond the expiration of the oneosk year period of the Purchase Notice and therefore, the same would be illegal and bad in law.

4.2 Mr. Sabban would further submit that the Petitioner had submitted all the documents, sought by the Respondents with its notice, a copy of which is also annexed at page No.20 to the present Writ Petition. He would submit that it can not be said that the Petitioner has not given a description of the writ land in the purchase notice.

4.3 In support of his contentions, he relied on the following decisions:

1) **Girnar Traders v/s. State of Maharashtra**, 2007 7 SCC 555

2) **Shri Prakash R. Gupta v/s. Lonavala Municipal Council**, 2009 1 SCC 514

3) **Shrirampur Municipal Council v/s. Satyabhamabai Bhimaji Dawkher and Ors**, 2013 5 SCC 627

and

4) **Godrej and Boyce Manufacturing Company Ltd. v/s. State of Maharashtra**, 2015 11 SCC 554

4.4 Mr. Sabban, learned counsel for the Petitioner would submit that the Corporation-Authorities vide letter dated 11th March 2022 asked the Petitioner to accept TDR, RCC & FSI by submitting some more documents. He would further submit that vide letters dated 27th May 2022 and 11th October 2023 the Petitioner clearly declined to accept the TDR, RCC & FSI and demanded the compensation. He would further submit that vide letter dated 11th October 2023, the Petitioner reminded the Respondent-Corporation that the necessary documents pertaining to the writ land were already submitted together with the purchase notice.

[5] Respondent's arguments:-

5.1 Per contra, Mr. Kulkarni, learned counsel appearing for the Respondent No.2-Corporation submitted that, Mr. Manish J. Bhishnurkar, Deputy Director Town Planning, Solapur Municipal Corporation, Solapur, have filed an Affidavit-in-Reply dated 24th September 2024 to oppose the prayers made in the Writ Petition.

5.2 He would submit that in the said Affidavit-in-Reply, the Respondent-Authorities have clearly mentioned that the Petitioner did not give correct description of the writ

land nor had annexed requisite documents together with the purchase notice and therefore it cannot be said to be a notice as contemplated under Section 127 of the MRTP Act. He accordingly submitted that, the Petition is thus liable to be dismissed.

5.3 It also reveals from the reply Affidavit that the Respondent No.2 offered TDR, RCC & FSI to the Petitioner in leu of compensation.

5.4 Mr. Kadam, learned A.G.P. appearing for Respondent No. 1, supported the submissions of Advocate Mr. Kulkarni and contended that the Petition is devoid of merit and therefore deserves to be dismissed.

[6] Consideration and discussion:

6.1 We have heard the counsel for the parties and perused the entire record and proceedings before us. In view of the aforesaid factual position, the following issues arise for our consideration:

(I) Whether the Purchase Notice is defective for lack of documents and for want of detailed description of the writ land, as contemplated under Section 127 of the MRTP Act ?

(II) Whether the offer of TDR, RCC & FSI by the Respondent No.2 override the scheme of Section 127 of the MRTP Act ?

6.2 In view of the fact that the entire issue wriggles around Section 127 of the MRTP Act, for the sake of convenience, we reproduce the same hereunder for ready reference:

"(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force [or if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, **the owner or any person interested in the land may serve notice, along with the documents showing his title or interest in the said land,** on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; **and if within [twentyosk four months] from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon, the land shall be deemed to be released from such reservation, allotment or designation** and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

(2) On lapsing of reservation, allocation or designation of any land under sub-section(1), the Government shall notify the same, by an order published in the Official Gazette.]"

6.3 The period of 12 months has been substituted by 24 months by an amendment that came into effect from 29th August 2015. Therefore we apply the test of 24 months for the purpose of the present case.

6.4 It is held by this Court that the submission of documents, showing title or interest in the said land along with the Purchase Notice to the concerned Authority as per Section 127(1) is intended to facilitate clear transfer of title from the owner or the person interested in the land upon payment of the consideration to the claimant within the stipulated period of 12/24 months as the case may be.

6.5 The law is absolutely clear that after the expiry of the stipulated period 12/24 months (as the case may be) under Section 127 (1) of service of Purchase Notice, if the land is not acquired or no steps as contemplated under the section are commenced for its acquisition, then thereupon the land is deemed to be released from such reservation. Under such circumstances the concerned authority cannot raise a defence that the Purchase Notice was defective as it was not accompanied by the documents showing his title or interest in the said land.

6.6 In other words, the concerned Authority or State cannot take up a defence of a defective Purchase Notice for want of documents showing title or interest in the said lands, when it has failed to take the steps to acquire the property within the stipulated period as contemplated by the MRTP Act.

6.7 This is so because the land or property is being released to the owner, whosoever it may be. Obviously, there is no "transfer" of right, title or interest in the reserved land upon "release" from reservation, allotment or designation. If there is a dispute regarding the ownership of the land or property, the authority is not concerned; and that issue has to be decided by the jurisdictional Civil Court. However such is not the case in hand. Its a clear property as there is no dispute with regards to the title of the Writ Land.

6.8 Therefore, the concerned Authority cannot claim the Purchase Notice to be defective, in defence to resist or deny releasing the land or property from such reservation, to become available to the owner for the purpose of development or otherwise as permissible.

6.9 If Section 127 of the MRTP Act is not implemented scrupulously but by giving unjust and irrational reason to release the reservation, the owners or the person having interest in the property will not be able to claim lapsing of reservation if the steps for acquisition could not be concluded for want of documents of title within the statutory period of one/two years as the case may be.

6.10 In **Dina Sohrab Hakim and Another v/s. State of Maharashtra**, 2002 2 MhLJ 851 this Court held that, Notice under Section 127 of the MRTP Act does not contemplate an investigation into title by the concerned Authority, nor can the concerned Authority prevent running of time if there is a valid Notice. Further it held that, the Executive Engineer of the Municipal Corporation was not justified in addressing the letter by which he required the owners to furnish information regarding their title, ownership, and particulars of the tenants, the nature and user of tenements and the total areas occupied by them. It held that, the Corporation had the requisite information in

their records or that it had access to all land records following the judgment of the Supreme Court in **Municipal Corporation of Greater Bombay v/s Dr. Hakimwadi Tenants Association and Others**, 1988 Supp1 SCC 55.

6.11 In M/s C. V. Shah v/s. The State of Maharashtra and Others,2005 SCOnLineBom 542 the Court held that, the object of the Notice under Section 127 is to inform the Authority to acquire the land which is reserved, designated or allotted in the final development plan. It held that the notice need not set out all the facts and details of the reservation/designation or that the said land has not been acquired within 10 years of the coming into force of the final development plan. The word 'Notice' denotes an intimation to the party concerned of a particular fact. Notice may take several forms and that is not prescribed under Section 127. If Notice describes the land with sufficient clarity and requires the concerned Authority to acquire or compulsorily purchase the land which is reserved/designated/allotted then it would meet sufficient compliance.

6.12 In **Popat Kisan Mhaske & Anr. v/s. Hon ble Minister for Urban Development Mumbai**, 2018 2 MhLJ 435 this Court has held that, non-issuance of the requisite documents together with Purchase Notice cannot invalidate the Purchase Notice.

6.13 In Chinmay Gurunath Parale v/s. State of Maharashtra and others,2023 SCCOnLineBom 827 this Court held that, non-submission of the title documents along with the Purchase Notice would not render the Purchase Notice invalid.

6.14 Suffice to note, it is not the case of the Respondents that the writ land was reserved after expiry of the statutory period of two years after issuance of Purchase Notice or in the intervening period. However, even in such cases this Court in the case of Santu Sukhdeo Jaibhave v/s. Nashik Municipal Corporation,2022 SCCOnLineBom 5273 has held that, the publication of the Draft Revised Plan prior to the issuance of Purchase Notice cannot have an effect of continuing the reservation on account of the same being sanctioned subsequently.

[7] Conclusion:

7.1 In the present case, the Purchase Notice gave a clear description of the land that was to be released and thus the contention that the Notice was vague for want of particulars cannot be accepted. Moreover, the Purchase Notice dated 7th February 2022 is annexed at page 20 of the Writ Petition compilation. It shows that the 7/12 extract, Part Plan, Demarcation Plan, Zone Certificate etc. were annexed to the Purchase Notice. The Respondents in their Affidavit-in-Reply have clearly admitted that they received the Purchase Notice. Under these circumstances, we absolutely do not agree with the contentions of the Respondents that there was no detailed description of the writ land offered by the Petitioner.

Case in hand is squarely covered by the exhaustive judgment of this court at Bombay rendered in the Writ Petition No.15701 of 2022 [Anant Rajegaonkar & another V/s. State of Maharashtra,2025 SCCOnLineBom 1855].

7.2 True that upon receipt of the Purchase Notice dated 7th February 2022 the Respondent-Corporation asked the Petitioner to accept the TDR, RCC & FSI by submitting more documents, however the Petitioner has flatly declined to accept such offer. We are of the view that such offer or suggestion by the Corporation will not frustrate the effect and scheme under Section 127 of the MRTP Act. The provision for lapsing of reservation would continue to operate under Section 127 of the Act, despite there being any offer made by the RespondentCorporation for TDR, RCC & FSI as the case may be. The right of a party seeking lapsing of reservation u/s 127 of the MRTP Act would neither be delayed nor would be frustrated if such an offer is made by the Corporation.

7.3 Final Order:

Hence, we find that the Petitioner has successfully made out a case under Section 127 of the MRTP Act and the Writ Petition accordingly deserves to be allowed as follows:-

(i) The Respondent Authorities shall take steps to notify all concerned Authorities about the lapsing of reservation u/s 127 of the MRTP Act, of the Subject-matter "Writ Land" within a period of six weeks from the date of the Order.

(ii) The Respondent Authorities shall notify lapse of reservation over the Subject-matter Writ Land by an Order to be published in the Official Gazette as required by Section 127 (2) of the MRTP Act, within a period of 12 weeks from the date of this Order, and

(iii) The Respondent Authorities shall release the Subject-matter Writ land from the said reservation, allotment or designation and shall make available the same to the Petitioner for the purpose of development or otherwise.

(iv) Upon such discharge and release from reservation u/s 127 of the MRTP Act, the R.No. 2 shall accord permission to the Petitioner for development of the Subject-matter Writ Land in accordance with the law.

(v) Rule is made absolute in the aforesaid terms

2026(1)MLPJ86

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

[From KOLHAPUR BENCH]

(Hon'ble Judge: M S Karnik; Ajit B Kadethankar)

Writ Petition No 5391 of 2025 **dated 25/11/2025**

Niyojit Siddhivinayak Gruhnirman Sanstha Marjewadi

Versus

State of Maharashtra; Solapur Municipal Corporation Indrabhuvan

LAPSING OF RESERVATION

Maharashtra Regional and Town Planning Act, 1966 Sec. 127 - Lapsing of Reservation - Petition sought declaration that reservation for burial and cremation ground on specified lands had lapsed under Section 127 of Maharashtra Regional and Town Planning Act - Development plan reserved lands for public purpose - Statutory period for acquisition expired - Purchase notice duly issued by landowners - No acquisition steps taken within stipulated period - Authority contended that purchase notice defective due to absence of title documents - Court observed that documents accompanying notice serve only to facilitate transfer on acquisition - Once period of twelve or twenty-four months expires without initiation of acquisition, reservation automatically lapses - Authority cannot resist release on ground of defective notice - Land stands released and becomes available for permissible development - Reservation deemed to have lapsed - Petition Allowed

Law Point: Under Section 127 of Maharashtra Regional and Town Planning Act, once statutory period after purchase notice expires without acquisition steps, reservation automatically lapses and land stands released even if notice lacked documents of title.

Acts Referred:

Maharashtra Regional and Town Planning Act, 1966 Sec. 127

Counsel:

Dr Ramdas Sabban, R P Kadam, A S Rao

JUDGEMENT

Ajit B. Kadethankar, J.- [1] Rule. Rule returnable forthwith and heard finally with the consent of parties.

[2] Subject-Matter:- By this Writ Petition under Article 226 of the Constitution of India, the Petitioner seeks a direction to the Respondents, to declare that the reservation of **(i)** Burial Ground (Reservation Site No. 13/103), area admeasuring 1-H 44-Areas (out of total land area admeasuring 2-H 64-Areas), situated at Survey No.69/2/B/1, Village - Marjewadi, Taluka - North Solapur, District - Solapur **AND (ii)** Cremation Ground (Reservation Site No. 13/104), area admeasuring 1-H 56-Areas (out of total land area admeasuring 2-H 64- Areas), situated at Survey No.69/2/B/2, Village - Marjewadi, Taluka - North Solapur, District - Solapur, [for short, "**writ land**"] have lapsed as per Section 127 of the Maharashtra Regional and Town Planning Act, 1966 (for short, **"MRTP Act"**).

[3] Facts in brief:-

i) The Development Plan of Solapur for the year 1997-2017 came into force from 15th December 2004 and the writ land was reserved as for the purpose of Burial Ground and Cremation Ground.

ii) The 10-year statutory period for acquiring the writ land expired in 2014.

iii) Petitioners are the owners of the Subject-matter Writ Lands. Purchase Notice was issued by the Petitioners on 8th March 2021.

iv) The statutory period of one year after issuance of the Purchase Notice under Section 127 of the Maharashtra Regional and Town Planning Act ["MRTP Act" for the sake of brevity] for acquisition of the writ land expired on 7th March 2022. (The 12 Months period is now amended to 24 months since after 2015)

v) Admittedly, no steps for acquisition of the writ land have been taken as contemplated in law by the Respondents.

[4] Petitioner's arguments:

4.1 Dr. Ramdas Sabban, learned counsel for the Petitioner submitted that, as yet the Petitioner has not learnt about any reservation post purchase notice. He would submit that this Court has held that even otherwise the reservation of the writ land for "fair ground" in any Revised Development Plan would be beyond the expiration of the one-year period of the Purchase Notice and therefore, the same would be illegal and bad in law.

4.2 Mr. Sabban would further submit that the Petitioner had submitted all the documents, as sought by the Respondents with its notice, a copy of which is also annexed at page No.19 to the present Writ Petition. He would submit that it can not be said that the Petitioner has not given description of the writ land in the purchase notice.

4.3 In support of his contentions, he relied on the following decisions:

1) **Girnar Traders v/s. State of Maharashtra**, 2007 7 SCC 555

2) **Shri Prakash R. Gupta v/s. Lonavala Municipal Council**, 2009 1 SCC 514

3) **Shrirampur Municipal Council v/s. Satyabhamabai Bhimaji Davkher and Ors.**, 2013 5 SCC 627

and

4) **Godrej and Boyce Manufacturing Company Ltd. v/s. State of Maharashtra**, 2015 11 SCC 554

[5] Respondent's arguments:-

5.1 Per contra, Mr. A. S. Rao, learned counsel appearing for the Respondent No.2-Corporation submitted that, Ms. Sarika Gangaram Akulwar, Deputy Engineer, Assistant Director of Town Planning Department with the Respondent No.2-Municipal Corporation have filed Affidavit-in-Reply dated 30th October 2023 to oppose the prayers made in the Writ Petition.

5.2 He would submit that in the said Affidavit-in-Reply, in para No.6, the Respondent-Authorities have clearly mentioned that the Petitioner did not give correct description of the writ land nor annexed requisite documents together with the purchase notice and therefore it cannot be said to be a notice as contemplated under Section 127 of the MRTP Act. He accordingly submitted that, the Petition is thus liable to be dismissed.

5.3 Mr. Kadam, learned A.G.P. appearing for Respondent No. 1, supported the submissions of Advocate Mr. Rao and contended that the Petition is devoid of merit and therefore deserves to be dismissed.

[6] Consideration and discussion:

6.1 We have heard the counsel for the parties and perused the entire record and proceedings before us. In view of the aforesaid factual position, the following issue arises for our consideration:

Whether the Purchase Notice is defective for lack of documents and for want of detail description of the writ land, as contemplated under Section 127 of the MRTP Act ?

6.2 In view of the fact that the entire issue wriggles around Section 127 of the MRTP Act, for the sake of convenience, we reproduce the same hereunder for ready reference:

"(1) If any land reserved, allotted or designated for any purpose specified in any plan under this Act is not acquired by agreement within ten years from the date on which a final Regional Plan, or final Development Plan comes into force [or if a declaration under sub-section (2) or (4) of section 126 is not published in the Official Gazette within such period, **the owner or any person interested in the land may serve notice, along with the documents showing his title or interest in the said land**, on the Planning Authority, the Development Authority or, as the case may be, the Appropriate Authority to that effect; **and if within [twentyfour months] from the date of the service of such notice, the land is not acquired or no steps as aforesaid are commenced for its acquisition, the reservation, allotment or designation shall be deemed to have lapsed, and thereupon, the land shall be deemed to be released from such reservation, allotment or designation** and shall become available to the owner for the purpose of development as otherwise, permissible in the case of adjacent land under the relevant plan.

(2) On lapsing of reservation, allocation or designation of any land under sub-section(1), the Government shall notify the same, by an order published in the Official Gazette.]"

6.3 The period of 12 months has been substituted by 24 months by an amendment that came into effect from 29th August 2015. Therefore we apply the test of 12 months for the purpose of present case.

6.4 It is held by this Court that the submission of documents, showing title or interest in the said land along with the Purchase Notice to the concerned Authority as per Section 127(1) is intended to facilitate clear transfer of title from the owner or the person interested in the land upon payment of the consideration to the claimant within the stipulated period of 12/24 months as the case may be.

6.5 The law is absolutely clear that if after the expiry of the stipulated period 12/24 months (as the case may be) under section 127(1) of service of Purchase Notice, the land

is not acquired or no steps as contemplated under the section are commenced for its acquisition, and thereupon the land is deemed to be released from such reservation. Under such circumstances the concerned authority cannot raise a defence that the Purchase Notice was defective as it was not accompanied by the documents showing his title or interest in the said land.

6.6 In other words, the concerned Authority or State cannot take up a defence of a defective Purchase Notice for want of documents showing title or interest in the said lands, when it has failed to take steps to acquire the property within the stipulated period as contemplated by the MRTP Act.

6.7 Because, such documents are not required for release of the property from reservation, allotment or designation when the land is not acquired or no steps are commenced for its acquisition, reservation or allotment as provided in the MRTP Act on account of the lapsing of reservation.

6.8 This is so because the land or property is being released to the owner, whosoever it may be. Obviously, there is no "transfer" of right, title or interest in the reserved land upon "release" from reservation, allotment or designation. If there is a dispute regarding the ownership of the land or property, the authority is not concerned; and that issue has to be decided by the jurisdictional Civil Court. However such is not the case in hand. Its a clear property nor there is any dispute as regards to the title of the Writ Land.

6.9 Therefore, the concerned Authority cannot claim the Purchase Notice to be defective, in defence to resist or deny releasing the land or property from such reservation, to become available to the owner for the purpose of development as otherwise, permissible.

6.10 If Section 127 of the MRTP Act is not implemented scrupulously but by giving unjust and irrational reason to release the reservation, the owners or the person having interest in the property will not be able to claim lapsing of reservation if the steps for acquisition could not be concluded for want of documents of title within the statutory period of one/two years as the case may be.

6.11 In **Dina Sohrab Hakim and Another v/s. State of Maharashtra**, 2002 2 MhLJ 851 this Court held that, Notice under Section 127 of the MRTP Act does not contemplate an investigation into title by the concerned Authority, nor can the concerned Authority prevent running of time if there is a valid Notice. Further it held that, the Executive Engineer of the Municipal Corporation was not justified in addressing the letter by which he required the owners to furnish information regarding their title, ownership, and particulars of the tenants, the nature and user of tenements and the total areas occupied by them. It held that, the Corporation had the requisite information in their records or that it had access to all land records following the judgment of the Supreme Court in **Municipal Corporation of Greater Bombay v/s Dr. Hakimwadi Tenants Association and Others**, 1988 Supp1 SCC 55.

6.12 In M/s C. V. Shah v/s. The State of Maharashtra and Others,2005 SCOnLineBom 542 the Court held that, the object of the Notice under section 127 is to inform the Authority to acquire the land which is reserved, designated or allotted in the final development plan. It held that the notice need not set out all the facts and details of the reservation/designation or that the said land has not been acquired within 10 years of the coming into force of the final development plan. The word 'Notice' denotes an intimation to the party concerned of a particular fact. Notice may take several forms and that is not prescribed under Section 127. If Notice describes the land with sufficient clarity and requires the concerned Authority to acquire or compulsorily purchase the land do reserved/designated/allotted then it would meet sufficient compliance.

6.13 In **Popat Kisan Mhaske & Anr. v/s. Hon ble Minister for Urban Development, Mumbai**, 2018 2 MhLJ 435 this Court has held that, non-issuance of the requisite documents together with Purchase Notice cannot invalidate the Purchase Notice.

6.14 In Chinmay Gurunath Parale v/s. State of Maharashtra and others,2023 SCCOnLineBom 827 this Court held that, non-submission of the title documents along with the Purchase Notice would not render the Purchase Notice invalid.

6.15 Suffice to note, it is not the case of the Respondents that the writ land was reserved after expiry of the statutory period of two years after issuance of Purchase Notice or in the intervening period. However, even in such case this Court in the case of Santu Sukhdeo Jaibhave v/s. Nasik Municipal Corporation,2022 SCCOnLineBom 5273 has held that, the publication of the Draft Revised Plan prior to the issuance of Purchase Notice cannot have an effect of continuing the reservation on account of the same being sanctioned subsequently.

[7] Conclusion: In the present case, the Purchase Notice gave a clear description of the land that was to be released and thus the contention that the Notice was vague for want of particulars cannot be accepted. Moreover, the Purchase Notice dated 8th March 2021 is annexed at page 19 of the Writ Petition compilation. It shows that the **[1]** Zone Certificate, 7/12 Extracts, **[2]** / Development Plan etc. were annexed to the Purchase Notice. The Respondents in their Affidavitin-Reply have clearly admitted that they received the purchase notice.

Under these circumstances, we absolutely do not agree with the contentions of the Respondents that there was no detail description of the writ land offered by the Petitioner.

Case in hand is squarely covered by the exhaustive judgment of this court at Bombay rendered in the Writ Petition No.15701 of 2022 [Anant Rajegaonkar & another Vs. State and ors.]

7.1 Final Order:

In view of the above discussion, we pass following order:-

(i) The Respondent Authorities shall take steps to notify all concerned Authorities lapsing of reservation u/s 127 of the MRTP Act, of the Subject-matter "Writ Lands" within a period of six weeks from the date of the Order.

(ii) The Respondent Authorities shall notify lapse of reservation over the Subject-matter Writ Lands by an order published in the Official Gazette as required by Section 127 (2) of the MRTP Act, within a period of 12 weeks from the date of this order.

(iii) The Respondent Authorities shall release the Subject-matter Writ lands from the said reservation, allotment or designation and shall make available the same to the Petitioner for the purpose of development or otherwise.

(iv) Upon such discharge and release from reservation u/s 127 of the MRTP Act, the R.No. 2 shall accord permission to the Petitioner for development of the Subject-matter Writ Land in accordance with the law.

(v) Rule is made absolute in the aforesaid terms

2026(1)MLPJ92

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Amit Borkar)

Anticipatory Bail Application No. 2633 of 2025 **dated 25/11/2025**

Shyamsundar Radhyesham Agarwal; Balwant Kashinath Patil

Versus

State of Maharashtra

LAND FORGERY ALLEGATION

Indian Penal Code, 1860 Sec. 34, Sec. 420, Sec. 468, Sec. 471, Sec. 467, Sec. 120B - Bombay Tenancy and Agricultural Lands Act, 1948 Sec. 43 - Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 482, Sec. 173 - Land Forgery Allegation - Application sought pre-arrest protection in cheating and forgery offences relating to agricultural land - Allegations of fraudulent Power of Attorney and sale without government permission under tenancy law - Applicant contended transactions old, registered, and confirmed through civil proceedings - FIR filed after long delay alleging alteration of documents and misuse of authority - Prosecution argued ongoing investigation and multiple criminal antecedents - Material indicated complex civil disputes converted into criminal complaint - Court noted delay, availability of documentary evidence, and cooperation of applicant during inquiry - Held custodial interrogation not warranted - Protection granted subject to cooperation with investigation - Anticipatory Bail Granted

Law Point: Delay and documentary nature of property transactions justify pre-arrest protection where civil elements predominate and custodial interrogation not essential for investigation.

Acts Referred:

Indian Penal Code, 1860 Sec. 34, Sec. 420, Sec. 468, Sec. 471, Sec. 467, Sec. 120B

Bombay Tenancy and Agricultural Lands Act, 1948 Sec. 43

Bharatiya Nagarik Suraksha Sanhita, 2023 Sec. 482, Sec. 173

Counsel:

Mihir Desai (Senior Advocate), Pavan Patil, Prithviraj Gole, Soham Badole, Siddhesh Pednekar, Mahalakshmi Ganapathy, Aabad Ponda, Karan Jain, Faizal Shaikh

JUDGEMENT

Amit Borkar, J.- [1] The applicant, who is arrayed as accused No. 3, has moved this application seeking pre-arrest protection under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023. The relief is sought in connection with Crime Register No. 559 of 2025 registered at Thane Nagar Police Station for offences under Sections 420, 467, 468, 471, 120B and 34 of the Indian Penal Code, 1860. The FIR is lodged by one Balwant Kashinath Patil.

[2] The complainant filed a report under Section 173 of the Bharatiya Nagarik Suraksha Sanhita against the present applicant. His case is that his family depends on cultivation of ancestral land situated at Mouje Navghar, Bhayandar, Thane. The land bears old Survey No. 280 and new Survey No. 91. It admeasures 18,490 square meters and was recorded in 1948 as protected tenancy of his great-grandfather, Vitthal Shinwar Patil.

[3] The complainant narrates that Vitthal left behind five heirs. They were Ganeswar Vitthal Patil, Krishnabai Kashinath Patil, Mathurabai Jayaram Gharat, Bhagyabai Mukund Gawde and Bayabai Kakaji Bhoir. Their names were entered as protected tenants after Vitthal's demise. Upon their deaths, the names of their heirs were mutated. It is alleged that several heirs executed a Power of Attorney dated 10 September 2003 in favour of Harshad Dinanath Gawde and Dinanath Sadashiv Gawde. The document was not registered. It is alleged to have authorized the attorneys to sell the land, decide the price, manage revenue affairs and obtain necessary permissions with the consent of heirs who were unable to regularly visit government offices.

[4] The complainant states that the understanding among the heirs was clear. Any sale proceeds were to be shared by all heirs. Any final document was to bear signatures of all heirs. His mother, Smt. Krishnabai Kashinath Patil, passed away on 1 October 2021.

[5] The complainant states that when he checked the 7/12 extract of new Survey No. 91 on the online portal to enter his name as heir of Krishnabai, he found the names of Shubham Murlidhar Agrawal and Sharad Murlidhar Agrawal. He asserts that no sale was ever carried out by the family. No heir received any consideration. He approached the District Collector, Thane, and obtained documents including a permission letter dated 10 September 2011 issued by the Sub-Divisional Officer. He also obtained

pleadings from Special Civil Suit No. 481 of 2011. He alleges that the compromise in that suit was recorded without signatures of any heirs and without service of summons.

[6] The complainant further states that under the Right to Information Act, he secured a copy of a Deed of Conveyance dated 14 November 2008. The document shows TNN No. 4 and Doc. No. 9727 of 2008. He alleges that the applicant falsely represented himself as Power of Attorney holder and sold the property to his nephews, Shubham and Sharad Agrawal, for Rs. 80 lakhs. He alleges erasures on page 10 of the document. He alleges that the 7/12 extract was replaced with one pertaining to Godev village. The entry under Section 43 relating to tenant rights was removed. He alleges that the name of the Attorney was altered by substituting the name of Shamsundar Agrawal in place of Dinanath Sadashiv Gawde. He states that the interior pages still mentioned the original Power of Attorney holders. He also alleges that the Sub-Registrar wrongly attached Godev's 8/12.

[7] The complainant refers to a confirming document dated 15 September 2011 bearing Doc. No. 7281 of 2011. It was executed by Dinanath and Harshad Gawde in favour of Shubham and Sharad Agrawal. It purports to confirm the 2008 deed without any consideration. He alleges that Mutation Entry No. 1282 was wrongly altered to show that payment was made to the Power of Attorney holders. He alleges that the confirming parties acted beyond the authority granted under the 2003 Power of Attorney. He states that only the heirs of deceased Dhaneshwar Vitthal Patil could have confirmed the transaction. This was not done. He also states that Shamsundar Agrawal, who was shown as purchaser, filed the mutation application himself.

[8] The complainant points out that permission of the Government to sell the land was obtained only later. Permission letter dated 10 September 2011 was issued in favour of the heirs, the Power of Attorney holder and the purchasers. This was on an application dated 19 September 2009. He alleges that before obtaining such permission, Shamsundar Agrawal prepared a false Power of Attorney, deleted the name of Dinanath, substituted his own name and executed the conveyance on 14 November 2008 showing sale for Rs. 80 lakhs. He alleges that the annexures included 7/12 extract of Godev village and the entry under tenant law was deleted. He states that the deed was executed without consent of heirs and without distribution of sale proceeds. He alleges that the deed was executed knowing well that prior permission was mandatory. He states that only thereafter was an application made in 2009 and permission granted in 2011.

[9] The complainant reiterates that between 14 November 2008 and 15 September 2011, accused persons, including Dinanath, Harshad, Shamsundar and the Agrawal brothers, acted in collusion. He states that they took steps to usurp the protected tenancy land bearing old Survey No. 280 and new Survey No. 91. He states that though the heirs stood recorded on the 7/12 extract, the accused misused the Power of Attorney dated 10 September 2003, altered it and inserted the name of Shamsundar. He alleges that knowing that prior permission was mandatory, they executed a sale deed without such permission, annexed documents of Godev village and removed the tenant law entry. He

states that only later they applied for permission and obtained it. He alleges that by fraud and misrepresentation they deprived the heirs of their property and misled the Government. On these allegations the FIR came to be lodged.

[10] The applicant, apprehending arrest, moved an application under Section 483 before the Sessions Judge. The Sessions Court rejected the application by order dated 29 September 2025. The applicant has therefore approached this Court seeking anticipatory bail.

[11] Mr. Desai, learned Senior Advocate for the applicant, submitted that the transactions referred to in the FIR pertain to the period between 2003 and 2011. All these transactions were registered. They were acted upon. They were confirmed in several civil proceedings. The FIR has been filed in 2025, almost 12 to 15 years later, and even after the informant's alleged adoptive mother passed away in 2021. He submitted that the FIR is an attempt to unsettle a chain of title which stood concluded long ago and which was acknowledged by the complainant's own predecessor in two civil suits. He submitted that all legal representatives executed registered agreement for sale and a registered power of attorney in 2003. Full consideration was paid. A registered conveyance was executed in 2008. A registered rectification deed followed in 2011. Permission under Section 43 of the Bombay Tenancy and Agricultural Lands Act was duly granted by the Sub Divisional Officer. In 2014, Suit No. 234 of 2012 was settled, which related to these very instruments. In 2023, multiple confirming deeds were executed. Therefore, according to him, the informant cannot now plead ignorance or allege fraud regarding documents executed in 2008 and 2011.

[12] He submitted that Annexure II, which is the 7/12 extract annexed with the conveyance, does not contain the entry under Section 43 of the BTAL Act. According to him, this is a clerical mistake. He submitted that it does not affect the legality of the registered conveyance. The conveyance contains the correct description, certificate number and recitals relating to the Navghar land. Permission granted in 2011 by the competent authority was for the Navghar property after due inquiry.

[13] He submitted that the plea that the heirs were unaware of the alleged forgery cannot stand. The heirs were represented by advocates in all proceedings. Most of them have executed registered confirming deeds thereafter.

[14] Referring to the 7/12 extract annexed to the conveyance, he submitted that the mistake stood corrected by a registered rectification deed in 2011. The informant claims to be the adopted son of deceased Krishnabai. The informant was himself a witness to the power of attorney and the agreement for sale of 2003. He submitted that deceased Krishnabai was fully aware of the execution of these documents and the subsequent conveyance and rectification deed. He submitted that this fact is recorded in proceedings of Special Civil Suit No. 286 of 2017.

[15] Referring to the power of attorney executed in 2003, he submitted that the document is entirely typed. There are no alterations or insertions. The conveyance was

executed in 2008. He submitted that in Suit No. 286 of 2017 filed by another branch of the family concerning the same land, the issues now raised in the FIR were also raised. In that suit, deceased Krishnabai was defendant No. 12. She was served by bailiff and was fully aware of the conveyance.

[16] He submitted that Krishnabai passed away on 1 October 2021. She did not raise any objection to the power of attorney or to the conveyance during her lifetime. The informant alone has filed the FIR. His claim of adoption is not proved.

[17] Referring to the 2008 conveyance, he submitted that on 18 October 2008 the applicant applied for permission under Section 43 of the BTAL Act. On 14 November 2008, the conveyance was executed. The wrong 7/12 extract was annexed. On 18 February 2009, one branch of the family raised objections to the application under Section 43. On 27 February 2009, the Circle Officer submitted his report. On 2 March 2009, a public notice was issued by the applicant. On 10 September 2011, the Sub Divisional Officer allowed the application under Section 43 and recorded Shubham and Sharad Agrawal as purchasers. He submitted that on 15 September 2011, the rectification deed was registered and the correct 7/12 extract and permission were annexed. He submitted that the conveyance of 2008 and the 7/12 extract have been part of the public record since 2008.

[18] He submitted that though 35 antecedents are shown against the applicant, in three cases he has been acquitted. In six cases, FIRs have been quashed by this Court. In two cases, he has been discharged. In eight cases, the prosecution has filed summary reports. In eight other cases, the applicant's business partner, who is arrested under MCOCA, has filed cases against him. He submitted that in most matters the applicant has been protected either by interim orders of the Sessions Court or of this Court.

[19] He submitted that after this Court granted protection, the applicant cooperated with the investigation. He has produced either original documents or their photocopies. Co accused purchasers from 2008 onwards have already been granted bail. He submitted that the applicant also deserves protection.

[20] In reply, Ms. Ganapathy, learned APP, submitted that the offences alleged are grave. She submitted that the applicant, along with the co accused, entered into a conspiracy and prepared forged documents. According to her, bogus 7/12 extracts and fabricated powers of attorney were used by the applicant and on that basis the disputed land was illegally taken over. She submitted that two co accused, who are nephews of the applicant, have been arrested. During custodial interrogation they have stated that the applicant prepared and used forged documents. She submitted that the investigation regarding the forged documents is still in progress. She pointed out that the applicant has several criminal antecedents. She therefore urged that the application be rejected.

[21] Mr. Ponda, learned Senior Advocate for the informant, invited my attention to the statement of the Tahsildar recorded during investigation. The Tahsildar has stated that the 7/12 extract annexed to the 2008 conveyance does not contain the entry

regarding the requirement of permission under Section 43 of the BTAL Act. According to him, the 7/12 extract is forged. He stated that the extract annexed pertains to Goddeo village whereas it ought to have been of Navghar. He submitted that though permission for sale was applied for in 2009, the conveyance refers to a permission said to be dated 14 November 2008. He submitted that deceased Krishnabai did not receive the amount of Rs. 40,000 mentioned in the agreement for sale dated 10 September 2003. He submitted that her proportionate share as on 17 September 2003 was shown as having increased almost twenty four times within a period of seventeen days. According to him, this demonstrates that the amount shown as paid under the agreement for sale was disproportionately low.

[22] Referring to the power of attorney dated 10 September 2003, he submitted that it was executed in favour of Dinanath and Harshad Gawde, who are accused Nos. 1 and 2. They were to complete all government formalities relating to the tenancy rights of deceased Krishnabai. He submitted that on the same day the applicant claims that deceased Krishnabai executed another power of attorney in favour of Harshad Gawde and the applicant. According to him, this document is forged because the pages show alteration in the name of Shyamsundar at the beginning of the document. He further submitted that entries 1 to 10 in the agreement for sale dated 27 September 2003 show that payments were made by the applicant to the Gawdes in 2002. However, the alleged transfer documents between deceased Krishnabai and the Gawdes are dated 10 September 2003. He submitted that it was not possible for the applicant to anticipate a year in advance that the Gawdes would enter into a transaction on 10 September 2003. He pointed out that entry at serial No. 15 shows cash paid on 20 September 2003.

[23] He submitted that this is a serious case involving creation and use of forged documents. The forged documents have not yet been recovered. He submitted that the applicant has used such documents at several stages.

[24] He submitted that this is a case of land grabbing. He stated that the transfers are suspicious. He relied on Mutation Entry No. 1282 which shows that the Gawdes received Rs. 80 lakh on behalf of deceased Krishnabai and other protected tenants from Sharad and Shubham Agrawal. However, the recital in the conveyance dated 14 November 2008 shows that the applicant received Rs. 80 lakh from the same purchasers.

[25] Referring to the 7/12 extract and Index II of the conveyance of 2008, he submitted that the property conveyed was at Navghar. He submitted that by using whitener on the entry relating to protected tenancy, the applicant and co accused altered the village name from Navghar to Goddeo while executing the registered conveyance dated 14 November 2008.

[26] He submitted that the permission dated 10 September 2011 was obtained on a declaration made on behalf of one Dhaneshwar Patil, who had passed away on 30 May 2008. Based on this declaration, Sharad and Shubham were shown as entitled to purchase the land. He relied on the judgment of the Supreme Court in **Pratibha Manchanda and another versus State of Haryana and another**, 2023 8 SCC 181. He

submitted that in cases involving land grabbing the Supreme Court has held that anticipatory bail should not be granted. He submitted that the Supreme Court has held that delay in filing the FIR is not material when the forgeries are evident and when the complainant had no prior knowledge of collusive civil proceedings and successive transactions.

[27] He submitted that the applicant gave a false address of the protected tenant in Special Civil Suit No. 481 of 2011 and executed the rectification deed dated 15 September 2011 without the knowledge of the protected tenant. He submitted that the consent terms executed on 26 September 2011 were fraudulent.

[28] He submitted that the applicant has suppressed criminal antecedents by stating only that multiple cases have been filed by his former business partner. He did not disclose the number of cases, which are in fact as many as 42 including the present FIR. He submitted that only seven cases are filed by the former partner. The remaining cases are filed by government officials, business associates and farmers whose lands were allegedly grabbed by the applicant. He submitted that the applicant disclosed 35 cases only after conclusion of arguments and filed a separate compilation. He therefore sought rejection of the anticipatory bail application.

[29] In rejoinder, Mr. Desai, learned Senior Advocate, submitted that in Pratibha Manchanda the general power of attorney said to be forged was never produced by the accused till 2022. Therefore, the Supreme Court held that delay was not material in that case. He submitted that the facts of the present case are different. He submitted that the applicant has cooperated with the investigation after interim protection was granted. He therefore prayed for continuation of interim relief.

[30] The short questions for determination in this application are these. First, whether the FIR suffers from such delay or laches as to render the prosecution suspect and make a case for pre-arrest protection. Second, whether the material on record discloses a prima facie case of serious forgery and collusion which disentitles the applicant to anticipatory bail. Third, if anticipatory bail is granted, what conditions would adequately protect the investigation and public interest.

[31] Anticipatory bail is a jurisdiction of exception. The court must exercise it with circumspection. The law recognises that personal liberty is a cherished right. A person should not lose that liberty only because someone has made allegations after many years or on the basis of suspicion. At the same time, the court cannot ignore that some offences affect the purity of public records and the confidence people place in the system. If there are allegations that public documents were tampered with or false documents were used, the court must examine the material placed before it with proper caution.

[32] The court has to maintain a fair balance. On one side is the duty to protect the liberty of a citizen and prevent unnecessary arrest. On the other side is the need to assist a proper and fair investigation. If there is material to show that the accused may

influence witnesses, destroy important documents or otherwise interfere with the investigation, the court will be slow in granting anticipatory bail. The court, therefore, has to consider many factors. It must see how serious the offences are. It must see the conduct of the accused and his past record of dealing with the law. It must see what role is attributed to him, whether the FIR was filed promptly or after a long delay, and if there is delay, whether it is explained. The stage of investigation is also important and whether the police have shown that custodial interrogation is truly needed. The court must also look at the civil record. If registered documents, rectification deeds and civil court orders have existed for years without objection, these are relevant and cannot be ignored.

[33] At the same time, the court cannot permit a party to hide behind civil proceedings if the material shows that public records were altered or false documents were created. Such allegations are serious. Yet, when there is long delay in filing the FIR and when civil proceedings have settled the issue for many years, the court must be slow to permit a criminal case to be revived without strong reasons. The court must take a practical view. It must examine whether the investigation can continue without arrest and whether conditions can be imposed to ensure that the accused does not obstruct the investigation.

[34] The approach, therefore, has to be balanced and reasonable. The court must protect the investigation and ensure that it proceeds properly. At the same time it must safeguard personal liberty and ensure that a person is not arrested merely because old and stale allegations have been levelled after many years.

[35] The record placed before the Court reveals that the chain of transactions now questioned by the prosecution is not of recent origin. The earliest documents date back to the year 2003. The conveyance deed was executed on 14 November 2008. A rectification deed followed on 15 September 2011. Both are registered instruments. Their execution, registration and continued subsistence on public record for more than a decade are matters of significance. They show that the transactions were neither concealed nor kept away from public scrutiny. They stood open to examination by any person claiming an interest in the property.

[36] The material further shows that the competent authority, namely the Sub Divisional Officer, granted permission under the tenant law after conducting an inquiry on 10 September 2011. The grant of such permission is not mechanical. It involves scrutiny of the claim, examination of revenue entries, and verification of the identity and status of the persons concerned. The authority's order, therefore, carries a presumption of regularity unless dislodged by cogent material.

[37] The civil record also reflects that disputes concerning the same property travelled before civil courts. Settlements were recorded. Confirming deeds were executed between parties. These events indicate that persons entitled to raise objections did participate in the process, acknowledged the transactions, and took steps consistent with their validity. Civil adjudication does not foreclose criminal prosecution where

forgery is later detected. Yet the existence of civil proceedings and registered deeds for a long period is a relevant circumstance in assessing whether the lodging of the FIR after many years is a bona fide step or a reaction arising from later disputes within the family.

[38] The delay in lodging the FIR is substantial. A period of twelve to fifteen years has elapsed from the time of the impugned transactions. Such delay is not a mere technicality. It affects the reliability of the accusation. It raises a serious question whether the grievance is genuine or whether the FIR has been invoked as an instrument to unsettle a chain of title that stood admitted and acted upon over the years. The Court must approach such delayed allegations with caution. Unless the complainant shows circumstances explaining why the wrongdoing could not have been discovered earlier despite the transactions being on public record, the delay militates in favour of the accused.

[39] The combined effect of registration of instruments, grant of statutory permission after inquiry, civil settlements, and prolonged inaction on the part of the heirs creates a presumption that the transactions had attained finality in the ordinary course of affairs. It is in this backdrop that the delay of more than a decade assumes importance. It casts a shadow of doubt over the bona fides of the prosecution's version and weighs in favour of the applicant at the stage of considering anticipatory bail.

[40] The statement of the Tahsildar, as brought on record by the prosecution, raises an issue of some gravity. A 7/12 extract is not a casual document. It is a revenue record of statutory character. Any alteration, substitution or fabrication of such a record strikes at the heart of the administration of land law. If it is ultimately established that an extract pertaining to one village was annexed in place of another, or that mandatory entries were removed or suppressed, the offence would be serious. Such conduct, if proved, would amount to tampering with public records and misleading statutory authorities.

[41] The prosecution also relies on statements said to have been made by two nephews during custodial interrogation implicating the applicant. Such statements cannot be treated as conclusive at this stage. They do not constitute substantive evidence. They form part of the investigative process and will have to withstand the test of relevance and admissibility in accordance with law. It is well settled that custodial statements must be approached with circumspection. They cannot by themselves be the foundation for denial of liberty unless supported by independent material.

[42] The prosecution asserts that the investigation is still in progress. According to the investigating agency, certain documents alleged to be forged have not yet been recovered. The investigation may, therefore, require further steps for tracing the original records, comparing them with revenue entries and verifying the chain of custody of those documents. These are legitimate requirements of investigation. The Court cannot ignore them. At the same time, the Court must ensure that the need for further probe does not become a ground for unnecessary curtailment of liberty, unless there is material to show that custodial interrogation of the applicant is indispensable.

[43] The stage of investigation is an important consideration. If relevant documents are yet to be seized, or if the investigating agency must confront various parties with each other's statements, some latitude must be granted to ensure that the investigation runs its course. These factors do weigh in favour of the prosecution's plea that the Court should proceed with care. They remind the Court that while delay and civil proceedings may favour the applicant, the seriousness of the allegations and the need for unhampered investigation cannot be brushed aside.

[44] The delay that marks the present prosecution is not a matter of minor relevance. It goes to the root of the matter. The transactions now questioned were not hidden or surreptitious. They formed part of the public record by virtue of registration. They were followed by a rectification deed which was also registered. They were thereafter examined by the competent authority which granted permission under the tenant law after holding an inquiry. Each of these acts created a trail that was open, ascertainable and verifiable by any interested person.

[45] When transactions stand on the public record in this manner, any person who claims an interest in the property is expected, in the ordinary course of human conduct, to raise objection within a reasonable time. Here, the civil record shows that disputes relating to the same land did reach the civil courts. Parties entered into settlements. Confirming deeds were executed. These developments indicate that civil remedies were not only available but were actively pursued. There was, therefore, no legal or practical impediment preventing the complainant or his predecessors from questioning the transactions.

[46] The presence of successive civil suits, compromises and confirming deeds bears directly on the bona fides of the criminal case. When civil courts have dealt with the subject matter and when the parties themselves have relied on those very documents in civil proceedings, a sudden invocation of criminal law after long silence assumes a different colour. It suggests that the criminal law has been set in motion not because new facts have emerged, but because the underlying civil disputes have taken an unfavourable turn for one side.

[47] The Court must take a realistic and informed view. Criminal law cannot be used to unsettle transactions that have stood acknowledged, acted upon and affirmed over years unless there is compelling and immediate material showing deliberate fraud not discoverable earlier. On the present record, such immediacy is absent. The delay of more than a decade, coupled with the existence of registered documents, rectification deeds, statutory permissions and civil settlements, tilts the balance in favour of protecting liberty.

[48] This does not mean that allegations of forgery should be dismissed at the threshold. They must be examined with care in the course of investigation. But the long lapse of time weakens the claim of imminent necessity for custodial interrogation. It strengthens the argument that the investigation can proceed without curtailing liberty,

provided conditions are imposed to secure attendance, ensure cooperation and maintain purity of investigation.

[49] In such circumstances, the cumulative effect of delay and settled public records requires the Court to lean in favour of granting protection. Liberty can be preserved, while the interests of investigation can be safeguarded by strict and enforceable conditions. This balanced approach accords with the settled principles that guide the exercise of discretion in applications for anticipatory bail.

[50] The judgment of the Supreme Court in Pratibha Manchanda requires careful consideration. The Supreme Court therein emphasised that where allegations disclose clear and patent acts of forgery involving public documents and where the very foundation of title rests upon such fabricated instruments, the delay in lodging the FIR cannot by itself operate as a shield for the accused. The Court held that when collusive civil proceedings and clandestine transactions have taken place without the complainant's knowledge, the lapse of time pales into insignificance. In such cases, the gravity of the offence and the continuing impact of the forgery on public records outweigh the factor of delay.

[51] It is necessary to notice that the Supreme Court's observations were founded on peculiar facts. The forged general power of attorney, which formed the fulcrum of the fraudulent transaction, never surfaced before any authority or court for nearly two decades. It was never produced by the accused at any stage. The complainant had no means to discover its existence until late, and the chain of transactions had been engineered behind the complainant's back. In that background the Court refused anticipatory bail, holding that the delay was not fatal.

[52] Applying the principle to the present case, the Court must examine whether the factual foundation here stands on the same footing. The record before me shows that the instruments complained of are not hidden documents. The conveyance deed of 2008 and rectification deed of 2011 are registered instruments. They have been part of the public domain for years. The permission under Section 43 of the tenant law was granted after an inquiry by the Sub Divisional Officer. Civil suits were instituted by branches of the same family. Settlements were recorded. Confirming deeds were executed. These events show that the transactions were neither clandestine nor inaccessible to the complainant's predecessors.

[53] The ratio of Pratibha Manchanda does not lay down an absolute rule excluding delay as a relevant factor. It holds that delay must be assessed in the context of the complainant's knowledge and the nature of the alleged forgery. In cases where the documents are concealed, where the forgery is embedded in instruments never placed on public record, and where the complainant had no means to discover the fraud earlier, delay ceases to carry weight. However, where the documents are registered, acted upon and form part of public record for long years, the principle operates differently.

[54] In the present matter, the delay of twelve to fifteen years stands unexplained. The transactions were visible. The civil record demonstrates that the family invoked civil remedies and engaged with the documents. The complainant has not placed material to show that despite ordinary diligence the wrongdoing could not have been discovered earlier. In such circumstances the principle of Pratibha Manchanda does not divest the factor of delay of its significance. Instead, delay remains a relevant and weighty consideration in favour of the applicant.

[55] At the same time, the Supreme Court's emphasis on the gravity of forgery involving public documents is fully applicable. The allegations regarding mismatched 7/12 extracts, possible tampering with revenue entries, and substitution of village records, if ultimately established, would constitute serious criminality requiring thorough investigation. The Court must therefore ensure that while liberty is protected, investigation is not stifled.

[56] The correct approach, consistent with the binding law and mindful of factual distinctions, is to harmonise both principles. The delay and the long-standing public record weigh in favour of granting anticipatory bail. The seriousness of allegations and the need for effective investigation require the imposition of stringent conditions. This balanced method preserves the essence of the rule laid down in Pratibha Manchanda while applying it in a manner consistent with the facts at hand.

[57] Thus, the judgment strengthens the need for caution but does not mandate denial of anticipatory bail where the documents are long registered, publicly accessible and repeatedly acted upon. The present matter, upon its own facts, justifies protection with safeguards rather than incarceration at the threshold.

[58] The prosecution asserts that the investigation is still in progress and that certain documents, alleged to be forged, are yet to be traced. This submission requires careful consideration. The law does not treat custodial interrogation as a matter of routine. It is justified only when the investigating agency is able to show that such custody is necessary for eliciting information which cannot reasonably be secured by any other method.

[59] The Court must, therefore, scrutinise the record to see whether the need for custody has been demonstrated. The material placed before this Court shows that the applicant has appeared before the investigating officer on several occasions. He has produced documents in his possession. The prosecution does not dispute that purchasers and others connected with the transaction have already been interrogated. Some among them have been arrested and subsequently released on bail. This indicates that the investigation has progressed considerably without requiring the custodial interrogation of the applicant.

[60] The prosecution has not placed any material to show that a specific recovery hinges exclusively upon the custodial presence of the applicant. No document has been identified as lying undiscoverable unless the applicant is taken into custody. No

circumstance has been pointed out which suggests that the applicant, if left at liberty subject to strict conditions, would obstruct the process of investigation. The Court must bear in mind that the object of custodial interrogation is not punitive. Its object is only to facilitate investigation when such custody is shown to be indispensable.

[61] The Court cannot deprive a person of liberty on the mere assertion that investigation is ongoing. Investigation often proceeds in stages. It may require verification of documents, examination of witnesses, or comparison of revenue entries. Such tasks do not, by themselves, require the physical custody of the accused. The law demands a more concrete foundation before liberty is curtailed. In the absence of material demonstrating that the applicant's custodial interrogation is essential, it would not be just to deny him protection.

[62] A balanced approach must prevail. Liberty is not to be withdrawn mechanically. At the same time, the interests of investigation must be safeguarded. These interests can be secured by imposing conditions that ensure the applicant's availability to the investigating agency, restrain him from tampering with evidence, and prevent him from influencing witnesses. When such non-custodial measures can achieve the objective, the Court is not justified in placing the applicant in custody.

[63] The material placed before the Court shows that the applicant has a chequered history with the law. Several cases stand registered against him. Such antecedents cannot be brushed aside. They call for a careful and informed approach. At the same time, the mere volume of cases cannot be taken as a decisive factor for refusing anticipatory bail. The Court must undertake a qualitative assessment. It must examine the nature of the antecedents, the outcome of those proceedings and whether they indicate a pattern relevant to the present accusation.

[64] The record shows that in some matters the applicant has been acquitted. In several others, FIRs have been quashed by this Court. In a few cases, summary reports have been submitted. These outcomes show that antecedents, though numerous, do not by themselves establish that the applicant is inclined to evade the process of law or that he habitually obstructs investigation. The Court must distinguish between antecedents that are live and pressing, and those that have become spent or inconsequential with the passage of time or by reason of judicial determination.

[65] The true test is whether, in the facts of the present case, the antecedents create a real and immediate risk that the applicant will misuse liberty. The Court must consider whether he is in a position to influence the investigation, tamper with documentary evidence or suborn witnesses. The applicant has, according to the material placed on record, appeared before the investigating agency and produced documents. His cooperation, though not conclusive, is a relevant circumstance showing that he has not evaded the process.

[66] It is also not in dispute that the co accused purchasers, who are alleged to have been part of the chain of transactions, have already been released on bail. This fact

reduces the likelihood that the applicant alone requires custodial interrogation for unravelling the transactions. When similarly placed co-accused have been granted liberty, the Court must consider whether parity and fairness warrant protection to the applicant as well.

[67] Yet, the antecedents cannot be ignored altogether. They call for vigilance. They warrant safeguards to ensure that liberty does not result in prejudice to the investigation. The balance can be maintained by imposing conditions which restrict the applicant's movements, ensure his availability to the investigating agency, and prevent any attempt to interfere with the witnesses or documentary material.

[68] The Court, therefore, proceeds on a balanced understanding. Antecedents are a relevant factor, but they do not operate as an absolute bar. They require the Court to impose suitable protective conditions rather than to reject the application outright.

[69] Therefore, while recognising that the investigation must proceed to its logical end, the Court finds no material to hold that custodial interrogation of this applicant is indispensable. The ends of justice can be served by granting protection subject to stringent conditions, thereby preserving both personal liberty and the integrity of the investigation.

[70] Having considered the rival submissions I am satisfied that the applicant should be granted protection from arrest subject to conditions which adequately protect the investigation and the public interest.

(i) In the event of arrest of the applicant in connection with Crime Register No. 559 of 2025 registered at Thane Nagar Police Station for offences under Sections 420, 467, 468, 471, 120B and 34 of the Indian Penal Code, 1860, the applicant shall be released on bail on their furnishing a personal bond in the sum of Rs.50,000 with two local sureties of Rs.50,000 to the satisfaction of the trial court concerned.

(ii) The applicant shall immediately furnish his true and permanent residential address and shall not change his residence without prior written permission of the trial court.

(iii) The applicant shall cooperate with the investigating agency. He shall make himself available for questioning as and when called. He shall produce all documents, records and originals in his possession which relate to the transactions in question and which have not yet been produced to the investigation.

(iv) The applicant shall not, directly or indirectly, induce, threaten or attempt to influence any witness, co-accused or person acquainted with the facts of the case. He shall not contact by any means the persons named in the FIR except through lawful process.

(v) The applicant shall not tamper with, destroy or dispose of any document or property connected with the investigation.

(vi) The applicant shall not leave the jurisdiction of the trial court including traveling abroad, without prior written permission of trial court.

(vii) The applicant shall report to the investigating officer once a week (Every Monday) until the completion of the investigation. If the investigating officer requires more frequent reporting the same shall be communicated with reasonable notice. Reporting shall be at the police station or at such place as the Investigating Officer may direct.

(viii) The applicant shall produce his passport, if any, before the investigating officer within seven days from today. The IO shall file an endorsement of receipt of the passport before the trial court.

[71] The investigating agency shall complete the investigation as expeditiously as possible.

[72] Nothing in this order shall be construed to affect the civil rights of the parties. The civil courts shall proceed untrammeled by this criminal proceeding and the parties shall remain at liberty to prosecute their civil remedies.

[73] The interim application stands disposed of in above terms

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2026(1)MLPJ106

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Amit Borkar)

Writ Petition No 8662 of 2021, 8668 of 2021, 8663 of 2021, 8664 of 2021

dated 14/11/2025

Anil Keruji Jagtap & Anr; Balshiram Manjabhau Kurhade; Rizwana Yusuf Pathan

Versus

Razzak Nazimuddin Kazi & Ors; Sanjay Baban Hulwale & Ors; Yashwant Nagri Cooperative Credit Society Ltd & Ors

AUCTION CONFIRMATION VALIDITY

Maharashtra Co-Operative Societies Act, 1960 Sec. 101 - Maharashtra Co-Operative Societies Rules, 1961 Rule 107 - Auction Confirmation Validity - Auction purchasers deposited fifteen per cent of bid amount and sought time extension for balance due to pandemic restrictions - Recovery Officer granted extension and accepted remaining payment within extended period - Sale confirmed and certificate issued - Revisional Authority later held sale void for non-compliance with Rule 107(11)(g)(h) timelines - Court noted Supreme Court's order excluding limitation period during Covid applied to all proceedings including statutory deposits - Held payment within protected period valid and sale confirmation proper - Observed that deposit under Rule 107 formed part of legal proceeding hence entitled to benefit of extension - Revision order quashed and sale confirmed as lawful. - Petitions Allowed

Law Point: Time for deposit under Rule 107 during Covid covered by Supreme Court limitation extension; delayed deposit within protected period does not invalidate auction confirmation.

Acts Referred:

Maharashtra Co-Operative Societies Act, 1960 Sec. 101

Maharashtra Co-Operative Societies Rules, 1961 Rule 107

Counsel:

Mohan B Gawade, Jagannath S Pawar, Nitin Gaware Patil, Vivekanand S Tadake, Sachin B Thorat, Prajwal Thorat, D S Deshmukh, M S Srivastav, P V R Nelson, Savina S Crasto

JUDGEMENT

Amit Borkar, J.- [1] Rule. Rule made returnable forthwith.

[2] The facts and the legal issues in all these petitions are the same. It is proper to decide all the petitions together. A common judgment will therefore dispose of all the matters.

[3] These petitions challenge the order of the Revisional Authority. The Revisional Authority allowed the revision filed by the borrower. It held that the auction sale had become void because there was no compliance with Rule 107(11)(g) and (h) of the Maharashtra Cooperative Societies Rules, 1961.

[4] The material facts are as follows. A certificate under Section 101 of the Maharashtra Cooperative Societies Act, 1960 was issued against the borrower. The Special Recovery Officer started execution under Rule 107 of the MCS Rules. The property was attached. A public auction was held on 17 March 2020 after issuing the required proclamation. Several bidders took part. The petitioners in Writ Petition Nos. 8663 and 8664 were declared the highest bidders. Each of them deposited fifteen per cent of the bid amount as required under Rule 107(11)(g).

[5] Due to the Covid-19 pandemic, the petitioners could not deposit the remaining eighty-five per cent amount within the time fixed under Rule 107(11)(h). They therefore applied on 16 April 2020 seeking extension of time. The Special Recovery Officer granted the extension. The petitioners deposited the balance amount on 15 May 2020 and 20 May 2020. After receiving the entire amount, the Recovery Officer on 10 July 2020 forwarded a proposal to the District Deputy Registrar for confirmation of sale. Respondent No. 4 issued notice to the borrower and gave an opportunity of hearing. After hearing the parties, the District Deputy Registrar confirmed the auction and issued the sale certificate on 18 December 2020. The Special Recovery Officer thereafter registered the sale deed in favour of the petitioners on 12 December 2020.

[6] The borrower filed a revision before the Revisional Authority on 31 December 2020. The Revisional Authority allowed the revision by order dated 19 July 2021. This

order is under challenge in these petitions. The society of the borrower has also filed connected writ petitions.

[7] The learned advocate for the petitioners relies on the order of the Supreme Court in Suo Motu Writ Petition No. 3 of 2020. The submission is that the Supreme Court extended the period of limitation under general and special laws. The Supreme Court directed that for computing limitation for any suit, appeal, application, or proceedings, the period from 15 March 2020 to 14 March 2021 must be excluded.

[8] It is submitted that the time limits under Rule 107(11)(g) and (h) are part of the proceedings covered by the Supreme Court's order. The petitioners deposited the balance amount on 15 May 2020 and 20 May 2020. They are therefore entitled to protection under the Supreme Court's order. On this basis, it is contended that the Revisional Authority wrongly cancelled the confirmation of sale.

[9] The borrower has been served in all petitions. There was no appearance on the last date. The Court had made it clear that the petitions would be decided finally on the next date. Even today there is no appearance on behalf of the borrower.

[10] The auction was held on 17 March 2020. The petitioners complied with the first statutory requirement by depositing fifteen per cent of the bid amount without delay. The outbreak of Covid19 created conditions beyond the control of any ordinary person.

The petitioners could not arrange the balance amount within the strict time prescribed in sub clause (h). They therefore sought an extension. The Special Recovery Officer considered the situation and granted the extension. The petitioners then deposited the remaining eighty five per cent on 15 May 2020 and 20 May 2020. These dates fall within the period affected by the pandemic.

[11] The issue that now arises is narrow. It is whether the petitioners can claim the protection of the order passed by the Supreme Court in Suo Motu Writ Petition No. 3 of 2020. The answer depends on the true scope of the expression used by the Supreme Court and the nature of the steps required under Rule 107.

[12] Clause 2 of the Supreme Court's order deserves careful attention. The Court has stated in clear terms that while computing limitation for any suit, appeal, application, or proceedings, the period between 15 March 2020 and 14 March 2021 shall stand excluded. The purpose of this direction was to ensure that litigants do not suffer for reasons arising out of an unprecedented public health crisis. The requirement of depositing the auction amount under Rule 107(11)(g) and (h) is a key part of the legal process of execution. The Rules follow a fixed sequence. Each step depends on the earlier step. The deposit of fifteen per cent at the start and the deposit of the remaining amount within the prescribed time are not simple money transactions. They are compulsory steps. These steps decide whether the auction can reach its legal completion. If the balance amount is not deposited in time, the auction becomes ineffective. If the amount is deposited in time, the Recovery Officer must take the next step of confirming

the sale. These legal effects show that the act of deposit forms part of the proceeding itself and cannot be separated from it.

[13] Clause 2(i) of the order passed by the Supreme Court uses the word 'proceedings'. The word must be understood in its plain sense. It covers every stage in a legally regulated process where the law requires a party to act within a fixed time. The Supreme Court passed its order during an exceptional period. Ordinary timelines could not be followed due to the pandemic. The Court therefore excluded the period from 15 March 2020 to 14 March 2021 for all proceedings. This protection was meant to ensure that no party suffers for reasons outside their control. The timelines for deposit under Rule 107(11)(g) and (h) are statutory timelines that carry direct legal consequences. There is credible material to show that these steps form part of the execution proceeding. They therefore fall within the protection given by the Supreme Court.

[14] Once this legal position is accepted, the conclusion follows. The petitioners deposited the balance amount within the excluded period that the Supreme Court has recognised. Their compliance thus stands protected. The Revisional Authority overlooked this position. It therefore committed an error in setting aside the confirmation of sale. The petitions deserve to be allowed.

[15] Rule is absolute in terms of prayer clause (b).

[16] All writ petitions are disposed of accordingly, in above terms.

[17] There shall be no order as to costs

2026(1)MLPJ109

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: Milind N Jadhav)

Second Appeal No 394 of 2017 **dated 12/11/2025**

Krishnabai Babya Navale

Versus

Savitri Shankar Gharat (Since Deceased Through Lrs) Shankar Lahu Gharat and Ors

PARTITION AND OWNERSHIP

Limitation Act, 1963 Art. 65 - Bombay Tenancy and Agricultural Lands Act, 1948 Sec. 85, Sec. 32G, Sec. 85A, Sec. 32M, Sec. 32O - Partition and Ownership - Suit filed by sister seeking partition of agricultural land claiming share as ancestral property - Defendant sister asserted exclusive ownership under purchase certificate issued under Sections 32G and 32M of Tenancy Act and urged bar of jurisdiction - Plaintiff contended purchase made in representative capacity for family benefit - Lower Courts decreed suit holding property joint family estate and Civil Court competent - On appeal Court held statutory transfer under 32M conferred exclusive ownership on

tenant and jurisdiction of Civil Court barred - Delay of decades rendered suit untenable - Findings of lower courts unsustainable - Appeal Allowed

Law Point: Once tenancy purchase certificate issued under Sections 32G and 32M, ownership becomes absolute and Civil Court has no jurisdiction to reopen title as joint family property.

Acts Referred:

Limitation Act, 1963 Art. 65

Bombay Tenancy and Agricultural Lands Act, 1948 Sec. 85, Sec. 32G, Sec. 85A, Sec. 32M, Sec. 320

Counsel:

Bharat Joshi, S S Patwardhan, Kishor Tembe

JUDGEMENT

Milind N. Jadhav, J.- [1] Heard Mr. Joshi, learned Advocate for Appellant and Mr. Patwardhan, learned Advocate for Respondents.

[2] This Second Appeal is filed to challenge the judgment dated 21.01.2017 passed by the learned District Court, Raigad, Alibag in First Appeal No.62 of 2006. Regular Civil Suit No.50 of 2002 is filed by Appellant's sister Savitribai in the Civil Court at Uran seeking partition and her share in the Hindu joint family property i.e. kul right in the estate of her deceased father Ramji Patil and deceased mother Yenibai / Venibai Ramji Patil.

[3] By judgment dated 08.02.2006, the Suit was decreed by the learned Trial Court. By judgment dated 21.01.2017, First Appeal filed by Appellant was dismissed by the learned District Court, Raigad at Alibag. Hence, present Second Appeal.

[4] On 03.07.2017, this Court admitted the Second Appeal and framed the following substantial questions of law:-

"(i) Whether the trial Court and the Appellate Court whilst passing the impugned Judgment and decree have erroneously ignored the provisions of Sections 32M, 32G, 85, 85-A and 320 of the Bombay Tenancy and Agricultural Lands Act (the said Act), 1948, and the orders passed in 1958 by the Appropriate Authority in the proceedings under the said Act, under sections 32G and 32M which orders are binding on Civil Courts.

(iv) Whether both the trial court and the Appellate Court whilst passing the impugned judgments and decree, erred in not applying the provisions of Article 65-B of the Limitation Act to the suit claim of partition and share in joint Hindu Family and also in the estate of the Hindu female (mother) who died in the year 1978 and Hindu male (father) who died in the year 1949".

[5] The following facts require consideration for determining the present Second Appeal and the points for determination framed by this Court:-

5.1. Suit property is nomenclatured as Survey Nos.21, 22 and 29/1 situated at Village - Vindhane, Taluka - Uran, District - Raigad, Maharashtra. Admittedly prior to the year 1949, Ramji Patil father of the original parties before the Court was the kul i.e. protected tenant of the suit property. He expired in the year 1949. Pursuant to which name of his wife Yenibai / Venibai was mutated in the Revenue Record vide Mutation Entry No.680 on 13.11.1952.

5.2. Record indicates that since Yenibai did not cultivate the suit property and her daughter Krishnabai (Appellant) was accepted as kul and her name was reflected as the protected tenant in the Revenue Record sometime in 1957. By operation of law, in the year 1961 title of Krishnabai in the suit property was perfected pursuant to order passed under Section 32G and sale certificate issued under 32M of the Bombay Tenancy and Agricultural Lands Act, 1948 (for short '**the said Act**') which were duly complied with by Krishnabai. Sale Certificate under 32M in respect of suit property was issued in favour of Krishnabai and record of rights were accordingly mutated to reflect her name.

5.3. In the year 1978, Yenibai / Venibai - mother of original parties to Suit i.e Savitribai and Krishnabai expired. Savitribai, and sister of Krishnabai filed Regular Civil Suit No.50 of 2002 seeking partition of the estate namely suit property belonging to her deceased parents i.e. Ramji Patil and Yenibai / Venibai. The learned Trial Court decreed the said suit on 08.02.2006. Being aggrieved, Krishnabai filed Appeal No.62 of 2006 which was dismissed by Appellate Court on 21.01.2017 leading to filing of present Second Appeal.

5.4. The judgments dated 08.02.2006 and 21.01.2017 are appended at page Nos.13 and 43 to the Second Appeal and form part of the paper book. With the able assistance of Mr. Joshi, learned Advocate for original Defendant (Appellant) and Mr. Patwardhan, learned Advocate for original Plaintiff (Respondent), I have perused the same and also perused the record and proceedings before the Trial Court which is produced before me.

[6] According to Mr. Joshi, learned Advocate for Krishnabai (Original Defendant) title in the suit property was already perfected in favour of Krishnabai by virtue of statutory proceedings adopted under Sections 32G and 32M of the said Act as far back as in the year 1961 and since then the Revenue Record reflected name of Krishnabai as owner of the suit property. He would submit that by virtue of Order under Section 32G and payment of sale price of the suit property as per Sale Certificate issued under Section 32M, the suit property vested in Krishnabai's ownership.

6.1. He would submit that since the year 1961 after the aforesaid statutory steps having being taken the suit property stood removed and excluded from the estate of her deceased father Ramji Patil and the mother Yenibai / Venibai and stood transferred and vested in Krishnabai. He would submit that it is an admitted position that all along since then Krishnabai not only enjoyed the suit property as owner thereof but cultivated the same.

6.2. He would submit that her mother Yenibai / Venibai lived with Krishnabai until her demise in the year 1978. He would submit that Plaintiff - Savitribai was already married at the then time and lived separately with her family in another village and had no nexus whatsoever with the suit property until in the year 2002, Savitribai decided to file the Regular Civil Suit No.50 of 2002 seeking partition of the suit property on the premise that the suit property belonged to the estate of their father and thereafter their mother.

6.3. He would submit that though the suit property was transferred in Krishnabai's name in the year 1961 as kul, her mother Yenibai / Venibai did not take any objection whatsoever neither challenged the Order under Section 32G or Sale Certificate under Section 32M of the said Act or the Mutation Entry until her demise in the year 1978. Neither did Savitribai maintain any challenge. He would submit that challenge was maintained to the 32G Order, 32M Sale Certificate and Mutation Entry but Civil Suit was filed in the year 2002, after a hiatus of 41 years, seeking partition and share in the suit property.

6.4. He would submit that despite being aware of the statutory proceedings which are prima facie reflected in the Revenue Record and public documents pertaining to the suit property, Plaintiff - Savitribai did not refer to them neither challenged them and filed Civil Suit for partition in the year 2002. He would submit that the statutory documents and incidents are such that once title of Krishnabai stood perfected under the said Act, jurisdiction of the Civil Court stood completely ousted and the suit proceeding itself was not maintainable.

6.5. He would submit that both the lower Courts did not consider this aspect in the facts of the present case and did not decide whether the suit property came within the domain of joint Hindu family property which was the defence advanced by Appellant. He would submit that Suit filed by Plaintiff - Savitribai was clearly barred by limitation which both the lower Courts failed to consider. He would submit that Sections 85, 85-A and 32-O of the said Act bars jurisdiction of the Civil Court. He would submit that Certificate issued under Section 32M is binding and a conclusive document of ownership of Appellant since the year 1961. He would submit that Krishnabai has been cultivating the suit property since then which has been corroborated by submitting accounts of her income from cultivation standing in her name. He would therefore submit that the Suit property cannot be construed as joint family property in the aforesaid circumstances.

6.6. He would submit that in view of Krishnabai's exclusive title to the suit property by virtue of Mutation Entry No.946 dated 29.09.1957 and Mutation Entry No.985 dated 29.09.1957 and Order under Section 32G and Sale Certificate under Section 32M issued under the said Act, the Trial Court and First Appellate Court ought to have dismissed the Suit on the ground of jurisdiction itself which goes to the root of the matter. That apart, he would vehemently argue that the Suit since filed in the year 2002 clearly suffers from the vice of limitation and is not maintainable since the father of the parties expired in the

year 1949 and the mother expired in the year 1978. He would therefore persuade the Court to answer the points for determination in the affirmative and allow the Second Appeal and set aside the twin judgments passed by both the Courts below.

[7] Per CONTRA, Mr. Patwardhan, learned Advocate for original Plaintiff - Savitribai i.e Respondent before me would submit that the learned Courts below have considered the orders passed by the Statutory Authorities under the said Act and their legal effect. He would submit that ownership right in the suit property on Tillers day and succession of the right in the suit property pursuant to demise of the father and mother has been correctly adjudicated by the Trial Court.

7.1. He would submit that pursuant to demise of the father who was a protected tenant, mother Yenibai / Venibai succeeded to his estate as protected tenant and on 01.04.1957, Yenibai / Venibai was the protected tenant. He would argue that though Krishnabai initiated proceedings under the said Act 32G Order and 32M Sale Certificate is issued in her name, the same is essentially required to be construed in a representative capacity on behalf of all three surviving family members at the then time in the year 1961 and for the benefit of the family and hence the suit property is joint family property.

7.2. He would vehemently argue that this fact has been considered in the light of Yenibai / Venibai being the protected tenant as on tillers day by both the Courts below and the Courts have therefore held that conclusion of statutory proceedings under the said Act cannot confer ownership right in the suit property exclusively in favour of Krishnabai to the complete exclusion of the other family members at the then time namely Yenibai / Venibai and Savitribai.

7.3. He would submit that Section 85 of the said Act bars the jurisdiction of Civil Court to settle, decide or deal with any question, which is to be decided by the Mamalatdar, Tribunal, Manager, Collector or Maharashtra Revenue Tribunal in Appeal or Revision or the State Government in exercise of their power or control. He would submit that the bar of Section 85 of the said Act will not apply to the present case in the aforesaid facts. He would submit that present case revolves around issue of succession and devolution of right to the legal heirs in the suit property as successors-in-title.

7.4. He would submit that Application under Section 32G was filed by Krishnabai only for herself and not on behalf of all family members, who were surviving at the then time and in that view he would argue that if Section 32G Order was granted in those facts then there can be no bar on the jurisdiction of Civil Court when rights of other legal heirs were never enquired or considered by the Statutory Authorities under the said Act.

7.5. In support of this submissons, he would vehemently refer to and rely upon decision in the case of **Ramakant Ganesh Naik and Ors. Vs. Anusaya Shantaram Naik and Ors.**, 2024 3 MhLJ 389 passed by this Court to contend that both the learned Courts below have concurrently decided the issue of succession and right of successors-in-title to the suit property correctly in accordance with law.

7.6. On the issue of applicability of Article 65 of the Limitation Act, 1963, he would argue and submit that the said provision will not apply since the Suit filed by Plaintiff is not a Suit based on possession or title but it seeks partition of ancestral property and share of Plaintiff in the suit property. He would submit that Plaintiff's specific case as averred in the Suit plaint is that both Plaintiff and Defendant stopped cultivating the lands for about two (2) years and therefore Plaintiff proposed the thought of partition but after the Defendant refused her proposal, Plaintiff had no option but to file the Civil Suit in the year 2002. Therefore according to Plaintiff, Article 110 of Limitation Act, 1963 would apply to the facts and circumstances of the present case and the Suit according to her is filed within limitation of 12 years from the date of knowledge of exclusion of Plaintiff from the joint family property.

7.7. He would therefore pursue the Court to answer the points for determination in the negative in the facts and circumstances of the present case. He has placed reliance on the decision in the case of Ramakant Ganesh Naik and Ors. (Supra) to vehemently argue that in the facts of the present case even though Section 32M Sale Certificate is issued in the name of Krishnabai (Defendant), mere purchase of property by Krishnabai in her individual name under the provisions of 32G and 32M of the said Act cannot make her the exclusive owner thereof and the suit property continued to be joint family property and most importantly Civil Court has jurisdiction to decide entitlement and share of co-parceners in such suit property purchased in the name of one of the co-parceners under the said provisions in the event of nonconduct of any enquiry into that issue by the Agricultural Land Tribunal / Tahasildar.

7.8. He would submit that both Yenibai / Venibai and Savitribai were both surviving heirs and alive at the then time in 1961 and therefore Krishnabai cannot claim exclusivity of title in her favour in respect of the suit property under the BTL Act to their exclusion. He would therefore urge the Court to dismiss the Second Appeal comprehensively in view of concurrent orders passed by both the Courts below.

[8] I have heard, Mr. Joshi, learned Advocate for Appellant and Mr. Patwardhan, learned Advocate for Respondents and with their able assistance perused the record of the case. Submissions made by both the learned Advocates at the bar have received due consideration of the Court.

[9] In the present case, it is seen that original Plaintiff - Savitribai and original Defendant - Krishnabai are both daughters of Ramji Patil. Ramji Patil was a tenant in respect of the suit property. Admittedly much prior to the tillers day, he expired in the year 1949 pursuant to which the name of Yenibai / Venibai was mutated in the Revenue Record vide Mutation Entry No.680 as protected tenant. Thus on Tillers day i.e. 01.04.1957, Yenibai / Venibai was the protected tenant. Yenibai / Venibai expired in the year 1978. Between 1952 - 1978 certain incidents took place. These incidents primarily relate to creation and relinquishment of substantial rights in the suit property. Firstly, even though on 01.04.1957 Yenibai / Venibai, mother of Plaintiff and Defendant was the protected tenant of the suit property and it is argued on behalf of original Plaintiff that

she became the deemed purchaser of the suit property. However what has transpired thereafter is of material consequence and significance.

[10] It is seen that Krishnabai one of the daughter succeeded in obtaining a 32G Order on the strength and basis of Mutation Entry No.946 dated 29.09.1957 whereby name of Yenibai / Venibai was deleted and by a subsequent Mutation Entry No.985 dated 29.09.1957 Krishnabai's name was mutated as protected tenant of the suit property. In what circumstances this was done is crucial and goes to the root of the matter. Pursuant to this sale price was fixed by the Statutory Competent Authority namely Tahasildar and Agricultural Land Tribunal at Rs.510.59 on 25.02.1961 and Sale Certificate under Section 32M was issued in favour of Krishnabai. Krishnabai admittedly paid the purchase price determined under the Sale Certificate in installments over the next few years.

[11] Mutation Entry No.946 is appended at page No.34 of the paper book. It was taken on record and marked as 'Exhibit No.50' in the trial. Mutation Entry No.985 is appended at page No.19 of the paper book. It was taken on record and marked as 'Exhibit No.33' in the trial. Sale Certificate under Section 32M is appended at page No.27 of the paper book. It was taken on record and marked as 'Exhibit No.38' in the trial. The effect of the aforesaid statutory documents and fructification of title of Krishnabai is the question to be decided by this Court for determination of the twin points for determination in the present Second Appeal.

[12] There are two specific arguments advanced by Mr. Patwardhan, learned Advocate for original Plaintiff - Savitribai in support of the twin judgments which are impugned in the present Second Appeal. He would submit that as on 01.04.1957 i.e. on Tillers day mother Yenibai / Venibai was the protected tenant and thus she automatically became the deemed purchaser. However, admittedly he is unable to show fructification of title as deemed purchaser in favour of Yenibai / Venibai or whether any 32G Order or 32M Certificate was obtained by the said Yenibai / Venibai. His second limb of argument is that the suit property was ancestral property belonging to the father of Plaintiff and Defendant namely Ramji Patil which devolved upon his wife Yenibai / Venibai after his demise in the year 1949. He would submit that pursuant thereto assuming for the sake of argument that Krishnabai was even declared as protected tenant (kul) of the suit property, her such declaration was representative in character on behalf of the estate of Ramji Patil for the benefit of all 3 family members alive at that time. He would lay thrust on the ratio of the decision cited by him in the case of Ramakant Ganesh Naik and Ors (Supra) to contend that even though the Sale Certificate issued under Section 32M must be accepted as a document of title in the facts and circumstances of the present case, mere purchase of the suit property by Krishnabai in her individual name under the provisions of Section 32G and 32M of the said Act does not make her the exclusive owner of the suit property and the suit property all along continued to be a joint family property. He would therefore submit that both the learned Courts below have completely disregarded the effect of Section 32G and 32M

proceedings in the present case due to the aforesaid reasons. Mr. Patwardhan would have been right in his above contention only if there was specific evidence on record either in the form of admission of Krishnabai or that of the landlord of the suit property that the tenanted land was in cultivation of the entire family from their forefathers / predecessors-in-title. Reliance on the decision in the aforesaid citation is prima facie misplaced rather misconceived in the facts and circumstances of the present case.

[13] In the case of Ramakant Ganesh Naik and Ors. (Supra), not only there was specific evidence on record in the form of admission given by the protected tenant himself that the tenanted land was in cultivation of the entire family but most importantly in that case the landlord had given specific evidence before the Trial Court that the suit property was owned by his forefather and while purchasing the said land the protected tenant had given a statement that property was a joint family property being cultivated by the entire family. Once this is the situation, then it is conclusively proved that even though the property may stand in the name of protected tenant, it stand proven that the tenanted land was joint family property and in joint cultivation of all family members, such is not the case herein.

[14] It is seen that Ramji Patil was survived by his wife - Yenibai / Venibai and two daughters Savitribai and Krishnabai. From 1952 - 1957 the name of Yenibai / Venibai was mutated as tenant in respect of the suit property pursuant to demise of Ramji Patil in the year 1949. In the year 1957, name of Krishnabai was mutated as protected tenant. However Plaintiff - Savitribai has failed to show that the name of Krishnabai was mutated as tenant in a representative capacity on behalf of the entire family. There is virtually no evidence led by Savitribai in this regard. She has failed to show that the suit property was joint family property and in joint cultivation of the family members all along. There is no iota of evidence in this regard which impels the Court to determine the questions of law namely points for determination framed by this Court while admitting the present Second Appeal so as to consider applicability of the ratio of Ramakant Ganesh Naik and Ors. (Supra) to the Plaintiff's case.

[15] What is the significance of 32G Order and 32M Certificate is evident from the facts and circumstances of each case. The ratio in the case of Ramakant Ganesh Naik and Ors. (Supra) cannot be ipso facto applied to all cases where mutation of tenanted property takes place in the name of one of the family member to contend that the said transfer cannot create any individual right of the said family member and the suit property would all along continue to be joint family property. Unless and until there is evidence placed on record to justify the aforesaid, the same cannot be held against the transferee.

[16] In the present case, the only point of contention made by Plaintiff - Savitribai is that name of Krishnabai was entered as protected tenant without making any enquiry in the year 1957. If that is the issue raised, then nothing prevented Savitribai from approaching the Court of law within a reasonable time to agitate her right. In the first instance at the threshold it was incumbent upon Savitribai to prove that enquiry made

before granting Section 32G Order and 32M Certificate was issued to Krishnabai was without following the due process of law. Savitribai has failed to prove the same. Save and except her statement in the suit plaint amended for the first time in the year 2002 cannot be considered as true and correct without there been substantive evidence to substantiate the said statement.

[17] In the suit plaint filed by Plaintiff in paragraph No.4 it is Plaintiff's contention that pursuant to demise of her father and mother in 1949 and 1978 the suit property ought to have been partitioned. Admittedly, no steps were taken by her whatsoever. She has averred that two years prior to filing the Suit, she was unable to visit the suit land for cultivation and therefore she called upon Defendant to partition the suit property which was denied by Defendant leading to filing of the Suit in the year 2002. Prima facie such contention and averment made in the suit plaint without any substantive evidence in that regard is not tenable at all. Neither any evidence has been led by the Plaintiff to show that she cultivated the Suit property jointly alongwith Krishnabai and shared the spoils / rewards. Both the learned Courts have clearly erred in accepting the case of Plaintiff that the suit land was in cultivation of Plaintiff and Defendant jointly without there being any evidence. There is no evidence whatsoever led by Plaintiff in this regard to show her nexus with the suit property.

[18] Sale Certificate under Section 32M of the said Act fixing purchase price dated 24.02.1961 is appended to the paper book. From the said order it is gathered that Krishnabai was cultivating paddy in the suit property since several years. It is gathered that a public notice calling upon all tenants and all interested persons was published in the village on 17.04.1960 and after its publication, individual notices were served on all interested persons specifying the date of hearing and accordingly all parties appeared before the Competent Authority and recorded their objections to determine the six points for determination as stated in the said order.

[19] The stoic silence of Plaintiff - Savitribai from the year 1957 onwards until 2002 speaks volumes. There is not a thread of evidence produced by Savitribai between the aforesaid period which would lend credence to her claim. Substantial documents are produced before the Trial Court issued by the Competent Authority and Agricultural Land Tribunal addressed to Krishnabai during the aforesaid period. The Mutation Entry which has been carried out has been effected after following the due process of law after recording the aforesaid facts. Exhibit Nos.41 to 50 are the copies of 7/12 extracts of the suit property at various points of time which justify the existence of Krishnabai in the suit property.

[20] I have perused the evidence which has been led by respective parties. On behalf of Plaintiff, her son stepped into the witness box. He averred and deposed that his knowledge of the facts and circumstances of the present case are derived from his mother. He has stated that his mother got wedded into the Gharat family 55 years ago i.e. around 1950. It is seen that the Gharat family was residing in Village Jambhulpada, Taluka Uran situated at 7 kms. from Village Vindhane where the suit property is

situated. Plaintiff's witness has given a categorical admission in cross-examination that there is no evidence made available by Plaintiff except the say of Plaintiff to show that the suit property is /was joint family property. There is further categorical admission of Plaintiff's witness that there is no material or evidence to show that cultivation of the suit property was undertaken or done by Plaintiff jointly with the Defendant. This virtually gives away the case of the Plaintiff.

[21] Plaintiff's witness admitted that in the year 2002 a challenge was maintained to the Section 32M Sale Certificate dated 24.02.1961 before the Competent Authority / SDO. In the cross-examination of Defendant, she has categorically answered that challenge to the Sale Certificate on behalf of Plaintiff was rejected by the SDO. On behalf of Krishnabai herself stepped into the witness box. She has categorically deposed that from 1957 - 1978 by way of 19 installments the entire purchase price of the suit property was paid by her and her husband to the Competent Authority pursuant to which 19 original receipts of payments were issued in her name which were produced in evidence by her.

[22] On an overall reading of the evidence of the parties, the evidence of Plaintiff completely falls short of proving the fact that the suit property was in joint cultivation of both the sisters namely Savitribai and Krishnabai and as observed above there is not an iota of evidence to substantiate this claim. On the contrary in the crossexamination Plaintiff's witness has categorically admitted the fact that Plaintiff is not in a position to place on record any evidence whatsoever in this regard. This is the primary reason as to why the facts and circumstances in the present case are clearly distinguishable with the ratio in the case of Ramakant Ganesh Naik and Ors. (Supra). Therein there was a categorical deposition of the tenant that the property was joint family property and more importantly the landlord / owner of the property also deposed that cultivation of the property was undertaken jointly by the entire family which led to the decision in that case. No such deposition is there in the present case. In the present case Plaintiff's witnesses deposition is rather to the contrary. The facts in the present case are therefore clearly distinguishable on this issue.

[23] There is no challenge maintained whatsoever to the title of Krishnabai by Savitribai until filing of the partition Suit in the year 2002 for the first time alongwith the Revenue proceedings. In order to overcome limitation the stance taken by Savitribai that she was cultivating the suit property alongwith Krishnabai prior to two years of filing of the Suit has not been proven prima facie by her in evidence by leading any cogent evidence whatsoever.

[24] In that view of the matter, the ratio of the decision in the case of Ramakant Ganesh Naik and Ors. (Supra) cannot be made applicable to the facts and circumstances of the present case.

[25] In view of the above observations and findings, learned Trial Court in the first instance ought to have made a reference to the Civil Court rather than treating the claim of Plaintiff for partition under the law of Succession in view of the subsistence and

existence of 32G Order and 32M Certificate alongwith the Mutation Entries standing in favour of Defendant - Krishnabai.

[26] In that view of the matter, both the judgments passed by both the Courts below clearly suffer from the aforesaid legal infirmity and therefore I answer the twin law points for determination framed by this Court on 03.07.2017 in the affirmative.

[27] Hence both the judgments dated 08.02.2006 and 21.01.2017 passed by the learned Trial Court and the learned first Appellate Court in First Appeal are quashed and set aside.

[28] Suit filed by Plaintiff namely Regular Civil Suit No.50 of 2002 is dismissed as a consequence thereof. Record and proceedings including all original records which are placed in the present Second Appeal are directed to be returned back to the Trial Court. The original record is permitted to be taken back by the Defendant - Krishnabai at the request made by Mr. Joshi. If any such request is made, the same shall be considered by the Trial Court after the Appeal period is over without any further delay in accordance with law.

[29] All parties to act on a server copy of this Judgment downloaded from the website of the High Court.

[30] Second Appeal is allowed and disposed in the above terms

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2026(1)MLPJ119

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

(Hon'ble Judge: N J Jamadar)

Writ Petition No 9413 of 2025 **dated 11/11/2025**

Shivam Co-operative Housing Society Ltd

Versus

Vileparle Co-operative Housing Society Ltd; Shashikant Kuberbhai Patel (Promoter); Kalidas Amarsi Khimji (Land Owner); District Deputy Registrar, Co-operative Societies Mumbai City

DEEMED CONVEYANCE CORRECTION

Maharashtra Ownership Flats (Regulation of The Promotion of Construction, Sale, Management and Transfer) Act, 1963 Sec. 11 - Deemed Conveyance Correction - Petitioner challenged corrigendum issued by Competent Authority correcting land area in certificate of unilateral deemed conveyance - Authority enlarged area based on building plan including portion from adjoining CTS number - Petitioner contended authority lacked power of review and order amounted to substantive modification - Observation made that review power not inherent and absent statutory provision cannot be exercised - Corrigendum permissible only to correct clerical or inadvertent errors not to change substantive rights - Authority exceeded jurisdiction by revising

area on disputed ownership facts - Held corrigendum beyond scope of procedural correction and unsustainable - Corrigendum Set Aside - Order quashed

Law Point: Competent Authority under MOFA has no inherent power of substantive review; corrigendum can correct only clerical mistakes, not alter property extent or rights determined under deemed conveyance certificate.

Acts Referred:

Maharashtra Ownership Flats (Regulation of The Promotion of Construction, Sale, Management and Transfer) Act, 1963 Sec. 11

Counsel:

Ashish Kamat (Senior Advocate), Rubin Vakil, Maulik Tanna, Krupesh Bhosale, Shrushti Bhatuse, Vishal Kanade, Vishaki Bhatia, V R Raje

JUDGEMENT

N.J.Jamadar, J.- [1] Rule. Rule made returnable forthwith, and, with the consent of the parties, heard finally.

[2] This Petition under Article 227 of the Constitution of India calls in question the legality, propriety and correctness of an order dated 6 May 2025 passed by the District Deputy Registrar and Competent Authority (R4), thereby issuing a Corrigendum to an order dated 5 July 2022 passed by the Competent Authority, granting a Certificate of Unilateral Deemed Conveyance under Section 11 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA), to the extent of correcting the area of the land to be conveyed from 738.80 sq. mtrs. to 823.72 sq. mtrs., out of land bearing CTS No.974, 974/1, 974/2 and 972 situated at Village Vileparle, Taluka Andheri, Mumbai Suburban District (the subject premises).

[3] The background facts necessary for the determination of this Petition can be stated, in brief, as under:

3.1 Respondent No.3 was the owner of the properties bearing Survey Nos.974, 974/1 and 974/2. Respondent No.3 entered into a development agreement with the Respondent No.2. The latter constructed buildings on the said properties and executed agreements for sale of the flats therein in favour of the flat purchasers. Eventually, the flat purchasers formed the Respondent No.1 Society. It was registered on 18 April 1978.

3.2 Respondent No.2 - Promoter and Respondent No.3 - owner, committed default in their statutory obligation to convey their right, title and interest in the lands and buildings in favour of the Respondent No.1 Society in accordance with the provisions contained in MOFA and the rules thereunder. Respondent No.1, thus, filed an application being Application No.60 of 2022 before the Competent Authority under Section 11 of the MOFA, for grant of a certificate of Unilateral Deemed Conveyance.

3.3 In the said application, the Competent Authority issued notices to the Promoter and owner. None appeared for the Respondent Nos.2 and 3. After appraisal of the

averments in the application and the documents annexed thereto and the material on record, the Competent Authority came to the conclusion that the promoter and owner had committed default in the discharge of their statutory obligations, and, therefore, by an order dated 5 July 2022, granted a Certificate of Unilateral Deemed Conveyance in respect of the land admeasuring 738.80 sq. mtrs., and the buildings standing thereon,

3.4 It appears that the Respondent No.1 realized that there was some discrepancy as regards the area of the land which was ordered to be conveyed to the Respondent No.1 Society. In the property card, the area was shown 738.80 sq. mtrs., whereas the sanctioned building plan indicated that the area of the lands on which the building stood was 823.72 sq. mtrs. Reference was made to the approved building plan and the copy of the lease deed in respect of the lands bearing Survey No.185/A, Hissa No.1 Part and 185A/2A Part, to which subsequently, CTS Numbers were given. Hence, an application was filed for the issue of Corrigendum so as to correct the area of the land to 823.72 sq. mtrs.

3.5 In the said application, an amendment was sought so as to include an area admeasuring 84.92 sq. mtrs., out of CTS No.972, over which the buildings of the Petitioner's Society have been constructed. By an order dated 23 December 2024, the Competent Authority disposed of the said first application for issue of Corrigendum along with the application for amendment therein, on the ground that the requisite documents were not annexed with the said applications, albiet with liberty to file a fresh application along with the necessary documents.

3.6 On 16 January 2025, Respondent No.1 Society filed the second application with the assertions that the Respondent No.1 Society was entitled to conveyance in respect of 84.92 sq. mtrs., land out of CTS No.972 as well, apart from the area admeasuring 738.80 sq. mtrs., covered by CTS Nos.974, 974/1, 974/2. Since the name of the Petitioner was shown in the property card of CTS No.972, the Petitioner was impleaded as party Respondent to the said Application. It was averred that the certificate of deemed conveyance issued by the Competent Authority, pursuant to order dated 5 July 2022, did not take into account the area shown in the BMC approved plan, i.e. 985.20 sq. yards equilvant to 823.72 sq. mtrs. Reliance was also placed on an Architect's Certificate dated 5 October 2024 opining that the area to be considered for conveyance in favour of the Respondent No.1 would be 823.72 sq. mtrs., as per the BMC approved plan.

3.7 The Petitioner resisted the application. It was, inter alia, contended that the promoter and owner of the lands over which the buildings of Respondent No.1 stood had no concern whatsoever with CTS No.972. The Petitioner was exclusively entitled to the entire area of CTS No.972. The claim over the portion of CTS No.972 was actuated by malice.

3.8 After hearing the parties, by the impugned order, the Competent Authority was persuaded to issue a Corrigendum. The Competent Authority was of the view that in the approved building plan, the area of the land over which the buildings of the Respondent No.1 society were constructed was shown 823.72 sq. mtrs. However, the total area of

CTS No.974, 974/1 and 974/2 admeasure 738.80 sq. mtrs. Though the area of CTS No.972 as per the property card was shown 1171.80 sq.mtrs., there was an entry in the other rights column that the Petitioner society had only a right of way over the area admeasuring 115/7/9 sq.yards. It was noted that the total area of three CTS Nos.972, 972/1 and 972/2 was 1434.60 sq. mtrs., but under an Indenture dated 31 January 1963, only an area of 1337.79 sq. mtrs., was conveyed to the Petitioners' Society, and, resultantly, Respondent No.1 Society was entitled to the remainder area. Thus, the impugned Corrigendum was issued to the Certificate dated 5 July 2022 so as to correct the area of the land to be conveyed from 738.80 sq. mtrs., to 823.72 sq. mtrs.

3.9 Being aggrieved, the Petitioner has invoked the writ jurisdiction on the count that the impugned order is clearly in transgression of the jurisdiction vested in the Competent Authority, in as much as the Competent Authority has no power to review its own order and the Corrigendum, in question, is in the nature of a substantive review. Even on the merits of the matter, the Competent Authority has misconstrued the import of the documents and arrived at wrong findings.

3.10 An affidavit in reply has been filed on behalf of Respondent No.1 controverting the assertions of the Petitioner.

[4] In the wake of the aforesaid facts and pleadings, I have heard Mr. Ashish Kamat, learned Senior Advocate for the Petitioner, Mr. Vishal Kanade, learned Counsel for Respondent No.1 Society and Mrs. Raje, learned AGP for the Respondent No.4. Learned Counsel took the Court through the pleadings and material on record.

[5] Mr. Kamat, learned Senior Advocate for the Petitioner would submit that the Competent Authority has not only exceeded the jurisdictional limits in the matter of issue of Corrigendum to the Certificate of Unilateral Deemed Conveyance, but also completely misconstrued the ratio in the case of **Kashish Park Reality Pvt. Ltd. And Anr. V/s. State of Maharashtra and Ors.**, 2021 3 MhLJ 778 wherein this Court has underscored the jurisdictional limits of the Competent Authority in the matter of review. Mr. Kamat would urge that the Competent Authority harboured a patently incorrect impression that, if the aggrieved party is heard, the Competent Authority gets jurisdiction to have a substantive review of the matter which has been concluded by an earlier order.

[6] Amplifying the aforesaid submissions, Mr. Kamat would urge, the Competent Authority has no power to review its own order. It is well settled that review is a matter of creature of statute. In the absence of any authority to review the order, the Competent Authority cold not have proceeded to review the order dated 5 July 2022, which causes serious prejudice to a party, who was even not a party to the main application. It is this principle which was succinctly exposited by this Court in the case of **Kashish Park Reality Pvt. Ltd. and Anr. (supra)**, and which the Competent Authority has completely misconstrued. On this count alone, according to Mr. Kamat, the impugned order deserves to be quashed and set aside.

[7] As a second limb of the aforesaid submission, Mr. Kamat would urge, the Competent Authority once having disposed first application for Corrigendum on the ground that there was no supporting material, could not have entertained a second application on the same cause of action on the self-same material.

[8] Thirdly, Mr. Kamat submitted with tenacity that, the Competent Authority could not have embarked upon an inquiry into the substantive rights of the parties under the guise of issue of a Corrigendum. A bare perusal of the impugned order, according to Mr. Kamat, would indicate that the Competent Authority has virtually adjudicated the proprietary interest of the parties in relation to the additional area of land which was ordered to be conveyed in favour of the Respondent No.1 Society. In fact, there was no jural relationship between the Petitioner and the Respondent No.1 Society, and, consequently, there was no statutory obligation upon the Petitioner which could have been enforced by invoking the provisions contained in Section 11 of the MOFA, qua the petitioners.

[9] Per contra, Mr. Vishal Kanade, learned Counsel for Respondent No.1 supported the impugned order. It was submitted that the review in question was in the nature of corrections of an inadvertent error and not a substantive review as was sought to be canvassed on behalf of the Petitioner. Mr. Kanade strenuously urged that the Respondent No.1 had indeed placed on record of the Competent Authority along with the Application No.60 of 2022 all the relevant documents, including the property cards, IOD dated 26 April 1972, commencement certificate and the occupation certificate, which indicated that the Respondent No.1 was entitled to an area of 823.80 sq. mtrs. Yet, the Competent Authority had granted a certificate of Unilateral Deemed Conveyance only in respect of the lands bearing Survey Nos.974, 974/1 and 974/2 aggregating to 738.80 sq. mtrs. It was this inadvertent mistake which was corrected by the Competent Authority by issuing a Corrigendum.

[10] Mr. Kanade by placing reliance on the observations in paragraph Nos.12 and 15 of the decision in the case of **Kashish Park Reality Pvt. Ltd. and Anr. (supra)**, submitted that, it is not the rule that under no circumstances, Corrigendum can be issued by the Competent Authority. If it could be demonstrated that what was done by the Competent Authority was a correction of the inadvertent mistake, then the challenge to the order of issue of Corrigendum looses substance, submitted Mr. Kanade.

[11] Laying emphasis on the copies of the property card and the sanctioned building plan, Mr. Kanade would urge that the Competent Authority had merely corrected an error in the area of the land ordered to be conveyed to the Respondent No.1 society on the basis of documents of unimpeachable character, namely, the sanctioned plan, IOD, commencement and completion certificates. If at all the Petitioner is aggrieved by the grant of certificate in respect of the area admeasuring 823.80 sq.mtrs., the Petitioner can work out its remedies before the Civil Court. Hence, no interference is warranted with the impugned order in exercise of the supervisory jurisdiction, submitted Mr. Kanade.

[12] In the case at hand, as noted above, Respondent No.2 - promoter and Respondent No.3 - owner of the lands on which the building of Respondent No.1 Society stands, did not contest the application for grant of certificate for unilateral deemed conveyance. Thus, the controversy between the Petitioner and Respondent No.1 Society essentially revolves around the question of the legality of the Corrigendum issued by the Competent Authority, thereby increasing the area of the land to be conveyed to the Respondent No.1 by including the area admeasuring 84.92 sq. mtrs., out of CTS No.972.

[13] Evidently, the Promoter (R2) and the owner (R3) did not claim any property title over the land bearing Survey No.972. The claim of the Respondent No.1 Society rests on the sanctioned building plan and the lease deed dated 5th day of January, 1972 in respect of Survey Nos.185/A and 185/A2. The primary question which, thus, wrenches to the fore is whether the Competent Authority was justified in exercising the power of review ? Whether the review in question was in the nature of a substantive review or exercise of inherent jurisdiction to correct the glaring procedural defect or jurisdictional infirmity ?

[14] As a matter of first principle, the power to review the order already passed by the judicial tribunal or quasi-judicial authority is not an inherent power. Review is a creature of statute. Before the judicial or quasi-judicial authority proceeds to review its own order, it must have the mandate under the statute. In the absence thereof, it is legally impermissible for the judicial or quasi-judicial authority to review its own order.

[15] In the off-quoted decision in the case of **Patel Narshi Thakershi and Ors. V/s. Shri Pradyumansinghji Arjunsinghji**, 1971 3 SCC 844 a three Judge Bench of the Supreme Court enunciated that it is well settled that the power to review is not an inherent power. It must be conferred by law either specifically or by necessary implication.

[16] Following the aforesaid pronouncement and the decision which take the same line, in the case of **Naresh Kumar and Ors. V/s. Govt. (NCT of Delhi)**, 2019 9 SCC 416 the Supreme Court postulated that the jurisdiction of review can be derived only from the statute and, thus, any order of review in the absence of any statutory provision for the same is a nullity, being without jurisdiction.

[17] The aforesaid strict rule of no review sans statutory mandate admits of one exception, where the judicial or quasi-judicial authority committed a grave procedural irregularity which vitiates the order passed by such authority, then such authority would be justified in reviewing its own order in exercise of its inherent power, which partakes the character of procedural review. That brings to the fore the distinction between the substantive review and the procedural review.

[18] In the case of **Grindlays Bank Ltd. V/s. Central Government Industrial Tribunal and Ors.**, 1980 Supp1 SCC 420 in the context of the contention that the order setting aside the ex-parte award, in fact, amounts to review, the Supreme Court clarified

that the decision in **Patel Narshi Thakershi and Ors.(supra),** is the authority for the proposition that the power of review is not an inherent power, it must be conferred either specifically or by necessary implication. The expression 'review' is used in two distinct senses, namely, (1) the procedural review which is either inherent or implied in a court or tribunal to set aside a palpably erroneous order passed under a mis-apprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in **Parel Narshi Thakershi (supra)**, held that no review lies on merits unless a statute specifically provides for it. When a review is sought due to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or tribunal.

[19] Adverting to the aforesaid judgment in the case of **Grindlays Bank Ltd. (supra)**, and other judgments which take a similar view, in the case of **Kapra Mazdoor Ekta Union V/s. Management of Birla Cotton and Spinning Mills and Ors**, 2005 13 SCC 777 a three judge Bench of the Supreme Court illuminatingly postulated the distinction between the substantive review and the procedural review, in the following words:

"19. Applying these principles it is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the quasi judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be re-heard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding. In Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and others(supra), it was held that once it is established that the

respondents were prevented from appearing at the hearing due to sufficient cause, it followed that the matter must be re-heard and decided again."

(emphasis supplied)

[20] Indubitably, under the provisions of MOFA and the rules framed thereunder, the Competent Authority is not empowered to review its own order. This absence of the explicit power of review gives rise to the application for issue of Corrigendum to the order passed by the Competent Authority under Section 11 of MOFA.

[21] In the case of **Kashish Park Reality Pvt. Ltd. and Anr. (supra)**, on which a strong reliance was placed by Mr. Kamat, this Court after considering the precedents on the scope of review and the distinction between the substantive review and the procedural review, observed that, in the facts of the case, the question that arose for consideration was whether by the impugned Corrigendum, the Competent Authority has merely corrected a typographical error or whether it amounts to review of the earlier order and if so, whether such review is permissible ?

[22] A learned Single Judge enunciated that with the disposal of the application under Section 11(3) of the MOFA, the Competent Authority had become functous officio and not being in seisin of the matter, had no jurisdiction to review the order, unless vested with powers of review under the law. In the facts of the said case, it was found that the Corrigendum was in the nature of a substantive review and not merely corrections of typographical or clerical errors. Indeed, the learned Single Judge also adverted to the fact that the order impugned in the said petition was not passed in adherence to the fundamental principles of natural justice and without providing an opportunity of hearing to the aggrieved person. However, the ratio of the judgment in the said case was not limited to the vitiation that crept in on account of nonobservance of the fundamental principles of natural justice. The observations in paragraph Nos.21 and 22 make this position abundantly clear:

"21. The applications fled by Respondent -Society in other Petitions proceed on the same basis with variation in the area covered by the building and the survey numbers of the land. By the impugned Corrigenda, the Competent Authority has rectified the certificates and granted deemed conveyance not only in respect of the buildings but also in respect of the subject land and had thereby materially and substantively varied the order dated 22/07/2020. By no stretch of imagination this substantive and material change can be considered as a rectification of a clerical or typographical error, which could be rectified by issuing a Corrigendum.

22. It is also pertinent to note that with disposal of the Applications under Sub section 3 of Section 11, Respondent No.2 - Competent Authority had become functus officio and not being in seisin of the matter, had no jurisdiction to review the orders, unless vested with powers of review under the law. Learned counsel for the parties do not dispute that the statute does not vest the Competent Authority with powers of review. In the absence of such statutory powers, Respondent No.2 - Authority had no

jurisdiction to exercise the power of substantive review. Despite which Respondent No.2 - Competent Authority entertained and allowed the applications without notice to the Petitioners and without providing an opportunity of hearing, which is one of the fundamental principles of natural justice."

(emphasis supplied)

[23] The aforesaid position in law has been reiterated by this Court in the cases of Prem Villa CHL V/s. Uma Deep CHL,2024 SCCOnlineBom 2987 and **Surya Corporation and Ors. V/s. The Competent Authority and Ors**, 2025 2 BCR 780.

[24] Mr. Kamat, learned Senior Advocate for the Petitioner, was justified in canvassing a submission that the Competent Authority has completely misconstrued the ratio of the judgment in the case of **Kashish Park Reality Pvt. Ltd. (supra)**. While dealing with the said issue, in paragraph No.9-f, the Competent Authority observed thus:

"9-f It is observed that in the judgment passed by the Hon'ble High Court in the matter of Kashish Park Reality Private Limited v/s. The State of Maharashtra and others, the Hon'ble High Court has distinguished between the power and authority of this Authority to review/rectify the order. In the said case the corrigendum was passed by the Hon'ble Authorities without giving an opportunity of being heard by the other parties in the matter. In the present case, the hearing notice is issued to all opponents and the parties are appearing before this Authority. Bare perusal of the judgment of the Hon'ble Bombay High Court observe that this Authority has absolute power to rectify the mistake apparent on the face of the records and such rectification shall under no circumstances can be called as review of the order"

[25] The aforesaid observations of the Competent Authority leave no manner of doubt that the judgment in the case of **Kashish Park Reality Pvt. Ltd. (supra)**, was completely misread and the ratio wholly misconstrued. The observations that the High Court has held that the Competent Authority has absolute power to rectify the mistake apparent on the face of the record and such rectification under no circumstances amounts to review of the order, is diametrically opposite to the ratio in the case of **Kashish Park Reality Pvt. Ltd. (supra)**. It seems that an incorrect impression gathered by the Competent Authority from the judgment in the case of **Kashish Park Reality Pvt. Ltd. (supra)** vitiated the further consideration by the Competent Authority.

[26] The legal position which thus emerges is that, in the absence of statutory mandate, the Competent Authority is not empowered to embark upon the exercise which is in the nature of substantive review. The exercise of rectification of an earlier order passed by the Competent Authority can be justified as a procedural review, only in cases of clerical or arithmetical mistake or accidental slip or omission or patent and palpable errors. Grave procedural illegality which erodes the sanctity of the order, may, in a given case, justify the procedural review. A case of fraud, however, would be an exception to the aforesaid general rule. It is trite, if the order sought to be reviewed is obtained by fraud, then the restraint on review would not apply as the order which is obtained by

fraud can be attacked in any proceeding, including a collateral proceeding as fraud vitiates all solemn acts. Thus, in the absence of an egregious fraud or grave procedural illegality resulting in irretrievable prejudice to the party, like one that may occasion on account of passing an order without providing an effective opportunity of hearing to the aggrieved party, the Competenat Authority is not competent to review its own order by invoking the principle of procedural review.

[27] Applying the aforesaid principles to the facts of the case, it becomes explicitly clear that the Corrigendum in question has the trappings of a substantive review. The Competent Authority has proceeded to embark upon an inquiry as to the area which was allotted to the Petitioner under an Indenture dated 31 January 1963; the consequences that ensued the entry in the property card that the Petitioner Society had a right of access over the land admeasuring 114 sq. mtrs., out of Survey No.972 and the effect of the sanctioned building plan. These considerations, by no stretch of imagination, can be said to be in the nature of correction of any clerical or typographical error or a procedural irregularity.

[28] The fact that the Competent Authority donned the role of an adjudicator becomes evident from the reasons which weighed with the Competent Authority in issuing the Corrigendum. The observations in paragraph No.9-g of the impugned order deserve to be extracted:

"9-g: It is observed from the building plan, the area on which the building of applicant society is standing is 823.72 sq mtrs. But the total area of CTS No. 974, 974/1 and 974/2 is admeasuring 738.80 sq mtrs. The area of CTS No. 972 is admeasuring 1171.80 sq mtrs. But there is an entry in the property card bearing CTS No 972 that the area admeasuring 115/7/9 sq. var is for right of way for the members of the society. It is clear from this entry that the area admeasuring 115/7/9 sq var out of total area admeasuring 1171.80 sq mtrs does not belongs to the society but the society is having only right of way of this area. Further observed that Under Registered Indenture dated 31/01/1963 Jayendra Keshavlal Shah and Smt. Prankuverbai Keshavlal Shah being the Vendors with the confirmation of Shashikant Kuberbhai Patel (the Developer/Promoter) conveyed the land admeasuring 1337.79 sq mtrs bearing old Survey No. 185-A, Hissa No. 1(part) New Survey No. 185-A, Hissa No. 2A (part) now corresponding CTS No. 972 (part), 972/1, 972/2, of Village Vile Parle (H-Ward), Taluka Andheri, in favour of Shree Shivam CHSL. In the schedule of the property clearly mention of 1600.00 square yards (equivalent to 1337.79 sq mtrs) has been conveyed to Shri Shivam CHSL. The area of CTS No. 972/1 is 45.90 sq mtrs., the area CTS No. 972/1 is admeasuring 216.90 sq. mtrs and the area of 972 sq mtrs is 1171.80 sq mtrs. Total area of three CTS Nos. i.e., CTS No. 972, 972/1 and 972/2 is 1434.60 sq mtrs. but vide Indenture dated 31/01/1963 the land is conveyed to opp No. 03 is only 1337.79 sq mtrs. There is difference of 96.81 sq mtrs. between the total conveyed land and the total area of CTS Nos. 972, 972/1 and 972. The Applicant society is claiming the area as per approved building plan. Therefore the applicant society rightly claiming the are admeasuring 84.92 sq mtrs from CTS No 972."

[29] The aforesaid observations would indicate that the Competent Authority proceeded to adjudicate the proprietary title of the predecessor in title of the Respondent No.1 and the Petitioner and its predecessor in title, weighed the relative merits of the claim over the land forming part of Survey No.972 and held that, in view of the entries in the PR Card recording the right of access, the claim of Respondent No.1 was sustainable. Keeping aside the question as to whether the Competent Authority is empowered to embark upon such an inquiry, the aforesaid consideration would indicate that the exercise was that of a substantive review and had no element of procedural review.

[30] Mr. Kanade attempted to salvage the position by forcefully submitting that the area of 823.80 sq. mtrs., to which Respondent No.1 was entitled to, was evident from the documents which were annexed to the application No.60 of 2022 itself, especially the sanctioned building plan, IOD, the commencement and completion certificates. Therefore, according to Mr. Kanade, the Competent Authority can be said to have corrected an inadvertent error in mentioning the area of the land, in respect of which a certificate of Deemed Conveyance was granted.

[31] The submission simply does not merit countenance. The fact cannot be lost sight of that, what the Competent Authority enforces is the statutory obligation of the promoter / owner to convey his right, title and interest in the land and building. The material on record, prima facie, indicates that the buildings were constructed on the land bearing Survey Nos.974, 974/1 and 974/2 and the units therein were sold by executing the Agreements for Sale. There was no reference to the land bearing Survey No.972 in any of the underlying documents which were relied upon by the Respondent No.1 while seeking a certificate of Unilateral Deemed Conveyance.

[32] At this juncture, a useful reference can be made to a recent pronouncement of the Supreme Court in the case of Arunkumar H. Shah HUF V/s. Avon Arcade Premises Co-op. Hsg. Soc. Ltd. and Ors [Civil Appeal No.5377 of 2025 dt. 21 April 2025] wherein it was enunciated that the Competent Authority while holding a summary inquiry under the provisions of the MOFA and the rules thereunder, is neither expected nor competent to determine the question of title and any party aggrieved by the decision of the Competent Authority is entitled to institute a suit before the Civil Court seeking declarations regarding title.

[33] The broad submission that, whenever Competent Authority grants a certificate of Unilateral Deemed Conveyance, the challenge thereto must laid before the Civil Court, cannot be readily acceded to, in all situations. In a case of the present nature, where there was no privity between the Petitioner and Respondent No.1 and by way of Corrigendum, a portion of the land which forms part of CTS No.972, standing in the name of the Petitioner Society, was sought to be conveyed to the Respondent No.1, it cannot be urged that, even though Corrigendum has been issued in excess of the jurisdiction vested in the Competent Authority, the challenge thereto must be mounted in a properly constituted civil Suit.

[34] The matter can be looked at from a slightly different perspective. A person aggrieved by an order passed by the Competent Authority granting a certificate of Unilateral Deemed Conveyance need not necessarily be the promoter / owner or third party in all the cases. Even the Society which had sought the certificate of deemed conveyance may be aggrieved by the grant of a lesser area than it perceives it is entitled to. In that situation, the Society would also be bound by the dictum that a person aggrieved by the grant of certificate of deemed conveyance shall workout its remedies before the Civil Court if it involves a question of title. Resort to the proceeding which is essentially in the nature of review, disguised as a Corrigendum application, cannot be, thus, countenanced.

[35] The conspectus of aforesaid consideration is that the Competent Authority clearly exceeded its jurisdictional limits in issuing a Corrigendum, which partakes the character of substantive review. Thus, the impugned order deserves to be quashed and set aside.

[36] Hence, the following order:

ORDER

(i) The Writ Petition stands allowed.

(ii) The impugned order dated 6 May 2025 issuing Corrigendum to the order dated 5 July 2022 in Application No.60 of 2022 stands quashed and set aside.

(iii) It is clarified that the Respondent No.1 Society shall be at liberty to institute a suit before the Civil Court to substantiate its claim over the area admeasuring 84.92 sq. mtrs. out of CTS No.972.

(iv) In the event such a suit is instituted, the Civil Court shall decide the same on its own merits and in accordance with law, without being influenced by any of the observations in this judgment.

(v) Rule made absolute to the aforesaid extent.

(vi) No costs.

[37] At this stage, learned Counsel for the Petitioner informed the Court that pursuant to the impugned order, a Deed of Unilateral Deemed Conveyance in respect of an area admeasuring 823.72 sq. mtrs., has been executed and registered on 20 August 2025. A copy of Index-II is tendered for the perusal of the Court. Learned Counsel for the Respondent No.1 fairly submits that indeed the Deed of Unilateral Deemed Conveyance has been registered.

[38] In view of the aforesaid order, the Deed of Conveyance executed and registered on 20 August 2025 is required to be corrected and rectified, to the extent of the area ordered to be conveyed under the Corrigendum, which is set aside.

[39] Respondent Nos.1 and 4 are, therefore, directed to execute a rectification deed to accordingly correct the area of the land, within a period of three months from today

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