

3. One Champaben Hiralal Shah owned a plot of land being Final Plot No.61 in Town Planning Scheme III, Vile Parle (West), admeasuring 2814.38 sq.mtrs. (for short 'the larger plot'). On 1st April 1972, Champaben Hiralal Shah and the Hindu Undivided Family consisting of her three sons, Lalbhai, Ranjit and Arun, constituted a partnership firm M/s. CH Shah & Sons (for short, 'the firm') by executing a deed of partnership. The larger plot was Champaben Hiralal Shah's contribution to the firm's capital. After the death of Champaben, the firm was reconstituted, amongst the rest of the partners, as per the deed of reconstitution dated 30th June 1983.

4. A deed of dissolution of partnership was executed on 13th February 1987 ('the deed of dissolution') by which the firm was dissolved. The larger plot was partitioned between one Lalbhai H. Shah (predecessor of the 2nd to 5th respondents) and one Arun H. Shah (the Karta of the appellant). Under the deed of dissolution dated 13th February 1987, the portion of the larger plot shown in a

verged blue colour line on a plan attached (for short, 'Lalbai Plot') was allotted to Lalbai, being the Manager and Karta of Lalbai Hiralal Shah HUF. The remaining portion of the larger plot below building No.3 and the land surrounding it, shown in a verged yellow line (for short 'the Arun Plot'), was allotted to Arun as the Karta and manager of Arun Hiralal Shah HUF (the appellant). It was provided that construction on the Lalbai Plot will be restricted to the development potential thereof, and the construction on the Arun Plot will be restricted to the development potential thereof in accordance with the prevailing Development Control Regulations. Lalbai took over the firm as the sole proprietor. It was provided that if Lalbai transfers his interest in favour of an organisation of flat purchasers, then Lalbai/such organisation would execute a perpetual lease in favour of the appellant or its nominees in respect of the Arun plot.

5. 10th Respondent firm was constituted with Lalbai as one of its partners by a deed of partnership dated 30th

March 1987. Lalbhai brought in the Lalbhai Plot as his capital contribution to the firm. The 10th respondent constructed a building consisting of two wings, each with ground plus two upper floors on the Lalbhai Plot. The 10th respondent entered into flat purchase agreements (for short, 'the FPAs') from the year 1991 onwards with the flat purchasers in respect of flats in the building. It was claimed that the FPAs were executed in terms of Section 4 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer Act) 1963 (for short, 'the MOFA'). On 6th November 1993, the Municipal Corporation of Greater Mumbai (for short, 'the MCGM') issued an occupation certificate in respect of the building. It is pointed out by the appellant that the first respondent, a co-operative society of the flat purchasers in the building constructed on Lalbhai Plot, was formed and registered on 15th July 2005.

6. The first respondent filed a complaint before the Additional Consumer Disputes Redressal Forum, Mumbai, seeking conveyance of only the Lalbhai Plot. The District Forum allowed the complaint and directed the 10th respondent to convey the Lalbhai plot to the first respondent by order dated 19th August 2017.

7. Thereafter, on 13th January 2020, the first respondent filed an application under Section 11(3) of the MOFA seeking a deemed conveyance of the Lalbhai Plot along with the portion of Arun Plot (totally admeasuring 2,753 sq. mtrs). The conveyance was sought of the larger plot. But after taking into account the road setback area of 131.40 sq. meters, the area thereof was mentioned as 2753 sq meters. The application was filed before the District Deputy Registrar, Co-operative Societies, Mumbai City [3] (11th respondent), being the competent authority appointed under Section 5A of the MOFA. On 18th September 2020, the said application was allowed. *Ex parte* deemed conveyance in respect of the larger plot was

granted, and a certificate of deemed conveyance was issued to the first respondent on the condition of the first respondent executing a permanent lease in respect of the Arun Plot in favour of Arun Hiralal Shah HUF (the appellant) or its nominees. Being aggrieved by the said order, Arun Hiralal Shah HUF (the appellant), filed a writ petition before the Bombay High Court, which was decided by the impugned judgment and order of the Bombay High Court. The order of the competent authority was confirmed. But a liberty was reserved to the appellant to file a suit for adjudication of the title.

SUBMISSIONS

8. The learned senior counsel appearing for the appellant invited our attention to the relevant clauses in the dissolution deed dated 13th February 1987 by which the said firm was dissolved. He pointed out that the deed of dissolution recites that Ranjit (the predecessor of the 6th to 9th respondent) and Arun were not interested in carrying on the real estate business of the firm. He

pointed out that the deed of dissolution of the firm provided that on the dissolution, the goodwill and trade name of the firm as well as the right to recover all the outstandings of the said firm shall remain with Lalbhai who was entitled to carry on the business of the erstwhile firm as the sole proprietor in the name of M/s. CH Shah & Sons. However, it was provided that if any rental is received from any tenant of building No.3, the same shall be paid over by Lalbhai to Arun without any deduction whatsoever therefrom. It was also provided that Arun will bear all the outgoings of the said building No.3. The learned counsel pointed out that in the deed of dissolution, it is provided that the portion of the larger plot shown in verged blue colour line (the Lalbhai Plot) shall belong to Lalbhai as the Manager and Karta of Lalbhai Hiralal Shah HUF and the remaining portion of the said property being building marked no.3 and the surrounding land shown in verged yellow line on the said plan (the Arun Plot) shall belong to the present appellant

(Arun Hiralal Shah HUF). It is also provided in the deed that the Floor Space Index (FSI) of the Lalbhai plot shall be utilised by Lalbhai save and except the FSI which is utilised for the construction of the existing building No.3. It was provided that the appellant will be entitled to reconstruct structure or structures in place of existing building No.3. Another important clause which he pointed out was that after Lalbhai develops the remaining property excluding building No.3, the incorporated body of the purchasers of the premises in the redeveloped property/ Lalbhai shall execute a lease in perpetuity in favour of Arun at nominal yearly lease rent of Re.1 in respect of the Arun plot.

9. Thereafter, the learned counsel invited our attention to the order dated 18th September 2020 passed by the 11th respondent, which is the competent authority within the meaning of Section 5A of the MOFA. He submitted that the power of the 11th respondent was to enforce the rights of the first respondent society and the

corresponding obligation of the 10th respondent developer to execute the conveyance in terms of the agreements executed in favour of the flat purchasers. Learned counsel relied upon a decision of the Bombay High Court in the case of **Mazda Construction Company & Ors. v. Sultanabad Darshan CHS Ltd. & Ors.**¹. He submitted that the Arun Plot allotted to Arun under the deed of dissolution was not the subject matter of the agreement between the 10th respondent and members of the 1st respondent society. Therefore, the 11th respondent had no jurisdiction to pass an order granting deemed conveyance to the first respondent in respect of the Arun Plot allotted to the appellant. He further submitted that the appellant was not amenable to the jurisdiction of the 11th respondent.

10. After noticing that serious disputed questions regarding the title and demarcation of the land were arising, the competent authority ought to have directed

1 (2012) SCC Online Bombay 1266

the first respondent society to file a suit. Relying upon the judgment of the learned Single Judge of Bombay High Court in the case of **Marathon Next Gen Realty Ltd., Mumbai and another v. Competent Authority, District Deputy Registrar of Co-Operative Societies, Mumbai and others**², the learned counsel submitted that the competent authority under Section 5A of the MOFA is not empowered to adjudicate upon the disputed questions of fact and the questions which will have impact on third parties. He submitted that the competent authority is not empowered to decide any *lis* between the parties. He relied upon another decision of a learned Single Judge of the Bombay High Court in the case of **ACME Enterprises and Another v. Deputy Registrar, Co-operative Societies and Others**³. Learned counsel also placed reliance on a decision of this Court in the case of **Abdul Kuddus v. Union of India**⁴. He submitted that the competent authority is not empowered to receive any

2 (2015) 5 Maharashtra Law Journal 318

3 (2023) SCC Online Bombay 1102

4 (2019) 6 SCC 604

evidence. He submitted that the order passed by the competent authority under Section 11(4) of the MOFA is not final inasmuch as the registration officer is empowered under Section 11(5), after hearing the parties, to decide whether such a unilateral deed of conveyance ought to be registered or not.

11. Learned counsel appearing for the appellant submitted that the impugned order of the competent authority dated 18th September 2020 is as vague as possible, and even the terms and conditions on which the permanent lease deed is to be executed by and between the appellant and the first respondent have not been specified.

12. Another submission of the learned counsel appearing for the appellant is that the first respondent had already filed a consumer complaint before the State Consumer Disputes Redressal Commission (the State Commission) and therefore, the first respondent should not have taken recourse to the proceedings under the

MOFA. Lastly, he submitted that the High Court ought to have interfered and set aside the impugned order of the competent authority.

13. Learned senior counsel appearing for the first respondent on facts submitted that the larger plot was not subdivided after the execution of the deed of dissolution, and the building constructed by the 10th respondent developer is an extension of the building No.3. He submitted that no prejudice has been caused to the appellant by the impugned order of the 11th respondent, as admittedly the appellant will be entitled to perpetual leasehold rights in respect of land below building No.3 and the land abutting thereto (the Arun Plot). He invited our attention to the FPAs between the members of the 1st respondent and the 10th respondent under the MOFA. He submitted that the leasehold rights of the appellant have been protected under the impugned order passed by the 11th respondent.

14. He submitted that there are 93 flat purchasers who are members of the first respondent. Even after the grant of the occupation certificate, the 10th respondent delayed the execution of the conveyance. He pointed out that the occupation certificate was granted as far back as in 1993. In fact, the obligation of the 10th respondent was to execute a conveyance within four months from the date of registration of the first respondent society. He submitted that the execution of the conveyance in respect of the larger plot has been pending for over three decades, and the appellant, in collusion with the 10th respondent, has always been making efforts to delay the execution of the conveyance.

15. He invited our attention to Rule 13 and other relevant rules forming part of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Rules, 1964 (for short, 'the MOFA Rules'), which explain the powers of the competent authority. He also invited our

attention to the object of incorporating Section 11(3) of the MOFA with effect from 25th February 2008. The object was to curb malpractices by the developers. The object of the said amended provision is to safeguard the interests of flat purchasers. After inviting our attention to various provisions contained in the MOFA Rules, learned counsel appearing for the first respondent relied upon a decision of this Court in the case of **Indian National Congress (I) v. Institute of Social Welfare & Ors.**⁵. He submitted that, looking to the powers of the competent authority, it is required to adhere to the principles of natural justice and act judicially. He submitted that the object of the provisions of the MOFA cannot be defeated by allowing parties to raise frivolous disputes. The learned counsel relied upon a decision of the Bombay High Court in the case of **Tanish Associates & Ors. v. State of Maharashtra & Ors.**⁶, which was confirmed by this Court. He also relied upon observations made in

5 (2002) 5 SCC 685

6 (2016) SCC Online Bombay 12653

paragraph 7 of the decision of the learned Single Judge of the Bombay High Court in the case of **Tanish Associates & Ors.**⁶. He also relied upon a decision of the Bombay High Court in the case of **Subash Ramchandra Navare v. Premji Megji Rambia & Ors.**⁷. He submitted that the observations made in paragraph 7 of the said decision protect the appellant. He also relied upon a decision of the Bombay High Court in the case of **Mazda Construction Company & Ors.**¹, which was relied upon by the appellant. He submitted that the decision of the learned Single Judge of the Bombay High Court in the case of **Mazda Construction Company & Ors.**¹ has been affirmed by a Division Bench of the Bombay High Court in the case of **M/s. Shree Chintamani Builders v. State of Maharashtra and Ors.**⁸. He also relied upon a decision of the Bombay High Court in the case of **Mahanagar Housing Partnership Firm and Others v.**

7 (2020) SCC Online Bombay 316

8 (2016) SCC Online Bombay 9343

***District Deputy Registrar of Co-operative Societies
(Pune City), Pune and Others⁹.***

CONSIDERATION

**POWER OF THE COMPETENT AUTHORITY UNDER
SECTION 11 OF THE MOFA**

16. Now, we turn to the scope of powers conferred on the competent authority under the MOFA. The term 'promoter' is defined in Section 2(c), which means a person or a partnership firm or a body or association of persons who constructs or causes to be constructed a building consisting of flats or apartments. Thus, the developer (10th respondent) is a promoter. Under Section 4(1) of the MOFA, a promoter is required to execute a registered agreement for sale in favour of the flat purchasers in the form prescribed under the MOFA Rules. Under Section 10, it is the promoter's obligation to take steps to form a cooperative society or a company representing the flat purchasers.

⁹ (2018) SCC Online Bombay 19563

17. Section 11 is the most important provision, which calls for interpretation in this appeal. Section 11 reads thus:

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

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

(2) It shall be the duty of the promoter to file with the Competent Authority, within the prescribed period, a copy of the conveyance executed by him under sub-section (1).

(3) If the promoter fails to execute the conveyance in favour of the Cooperative society formed under

section 10 or, as the case may be, the Company or the association of apartment owners, as provided by subsection (1), within the prescribed period, the members of such Co-operative society or, as the case may be, the Company or the association of apartment owners may, make an application, in writing, to the concerned Competent Authority accompanied by the true copies of the registered agreements for sale, executed with the promoter by each individual member of the society or the Company or the association, who have purchased the flats and all other relevant documents (including the occupation certificate, if any), for issuing a certificate that such society, or as the case may be, Company or association, is entitled to have an unilateral deemed conveyance, executed in their favour and to have it registered.

(4) The Competent Authority, on receiving such application, within reasonable time and in any case not later than six months, after making such enquiry as deemed necessary and after verifying the authenticity of the documents submitted and after giving the promoter a reasonable opportunity of being heard, on being satisfied that it is a fit case for issuing such certificate, shall issue a certificate to the Sub-Registrar or any other appropriate Registration Officer

under the Registration Act, 1908, certifying that it is a fit case for enforcing unilateral execution, of conveyance deed conveying the right, title and interest of the promoter in the land and building in favour of the applicant, as deemed conveyance.

(5) On submission by such society or as the case may be, the Company or the association of apartment owners, to the Sub-Registrar or the concerned appropriate Registration Officer appointed under the Registration Act, 1908, the certificate issued by the Competent Authority alongwith the unilateral instrument of conveyance, the Sub-Registrar or the concerned appropriate registration Officer shall, notwithstanding anything contained in the Registration Act, 1908, issue summons to the promoter to show cause why, such unilateral instrument should not be registered as 'deemed conveyance' and after giving the promoter and the applicants a reasonable opportunity of being heard, may on being satisfied that it was fit case for unilateral conveyance, register that instrument as, 'deemed conveyance '."

(emphasis added)

18. Thus, sub-section (1) of Section 11 contains the obligation of the promoter to convey title in respect of the

land and the building developed by him. Sub-section (3) of Section 11 gives a remedy to a cooperative society or a company formed under Section 10 or the association of apartment owners, as the case may be, to apply to the competent authority appointed under Section 5A for issuing a certificate that the said society or the company, as the case may be, is entitled to have unilateral deemed conveyance executed in their favour and have it registered. This provision has been enacted to ensure that a speedy remedy is available to the flat purchasers for enforcing the promoter's obligation under sub-section (1) of Section 11. The MOFA has been enacted with the object of protecting the flat purchasers.

19. The procedure for dealing with applications made under sub-section (3) of Section 11 has been laid down in the MOFA Rules. Rule 11(2) provides for the competent authority to issue a notice of the application to the promoter. Even the form of application under Section 11(3) has been prescribed by the MOFA Rules. Under

Rule 13(3), the opponent to whom a notice is issued is entitled to file a written statement. Rule 13(4) permits the production of documents. Sub-rule (5) of Rule 13 provides for the procedure for the hearing of the application. It provides that on receiving a written statement of the opponent, the applicant shall prove the contents of the application and also deal with the contention of the defence. However, it is specifically provided that no cross-examination of any of the parties shall be permitted. Clause (c) of sub-rule (5) of Rule 13 provides that the outer limit for passing an order on a Section 11 application is six months. It provides that the competent authority shall make such enquiry as may be deemed necessary, and after verifying the authenticity of the documents submitted by the parties and after hearing them, the competent authority shall pass an order. The requirement to comply with the principles of natural justice is also incorporated in clause (c). Considering the nature of the power conferred on the

competent authority, it follows that while passing orders on the application under Section 11(3), the competent authority must record reasons.

20. It is undoubtedly true that quasi-judicial powers have been conferred upon the competent authority while dealing with applications under Section 11(3) of the MOFA. However, proceedings before the competent authority under Section 11(3) are of summary nature, as can be seen from the MOFA Rules. Even cross-examination of the parties is not permissible. There is an absolute prohibition under Rule 13(5) on cross-examination of parties. Thus, it follows that the competent authority, while following the summary procedure, cannot conclusively and finally decide the questions of title. Therefore, notwithstanding the order made under sub-section (4) of section 11, aggrieved parties can always file a civil suit for establishing their rights.

21. The parties have relied upon several decisions of the Bombay High Court. We do not think that any of the decisions have taken a view which is contrary to the legal position explained by us, though none of the decisions exhaustively deal with the issues which we have considered.

SCOPE OF THE POWERS OF THE REGISTRATION OFFICERS UNDER SECTION 11(5)

22. Now, we deal with the scope of powers of the registration officer under the Registration Act, 1908 (for short, 'the 1908 Act') under sub-section (5) of Section 11. As provided in sub-section (4) of Section 11, a certificate regarding the entitlement of the applicant to deemed conveyance has to be issued by the competent authority to the appropriate registration officer under the 1908 Act. After receiving the certificate, the registration officer is required to issue a summons to the promoter to show cause why such a unilateral instrument should not be registered as a deemed conveyance. After giving an opportunity of being heard to the promoter and after

being satisfied that it was a fit case for registration of a unilateral conveyance, the registration officer can register the certificate as deemed conveyance. We may make it clear that the power conferred on the registration officer does not enable him to reopen or set aside the findings recorded by the competent authority while passing an order of grant of certificate. The registration officer is neither an appellate authority nor a revisional authority.

23. The requirement of sub-section (5) of Section 11 has been incorporated to enable the registering officer to give an opportunity to the promoter, as the certificate issued by the competent authority is a “unilateral certificate”. In a given case, there may be a statutory requirement of obtaining prior permission or consent of an authority before the execution and registration of a conveyance. The registering officer cannot register the instrument unless such statutory consent/permission is produced. Therefore, he can refuse to register the certificate of deemed conveyance till the permission/consent is

produced. There may be a prohibitory order of a competent court restraining the promoter from executing a conveyance. In such a case, the certificate cannot be registered as a conveyance till the restraint order is in force. Moreover, the registering officer must be satisfied that the requirements, such as payment of stamp duty and other procedural requirements under the 1908 Act, are complied with. This is the limited scope of adjudication by the registering officer under sub-section (5) of Section 11. The registering officer has no power to sit in appeal over the order of the competent authority while exercising the power under Section 11(5). He has no power to go into the correctness or otherwise of the order of the competent authority. He can refuse registration only on the grounds indicated above. Thus, the scope of the powers conferred on the registering officer is limited as indicated above. This is the only way sub-sections (4) and (5) of Section 11 of the MOFA can be harmoniously construed.

ON FACTUAL ASPECTS

24. A perusal of the deed of dissolution dated 13th February 1987 shows that Lalbhai, Ranjit and Arun were the three parties to the deed of dissolution who were the partners of the firm. The brothers executed the deed of dissolution after the demise of their mother Champaben. The description of the larger plot in the schedule to the deed of dissolution is final plot No.61 admeasuring 2726 sq. mtrs. more particularly described in the schedule. The setback area of 131.40 sq. mtrs. has been excluded. There is a plan annexed to the deed of dissolution marked as Exhibit 'A'. It is provided in the deed of dissolution that the goodwill and trade name of the firm, as well as the right to recover all the outstandings of the said firm, have been taken over by Lalbhai and accordingly, he was entitled to use the goodwill and trade name of the firm and continue the business of the firm as the sole proprietor of M/s CH Shah & Sons with authority to collect outstandings of the said firm in respect of building No.3 which is allotted to Arun. It was

provided that the right to develop the Lalbhai plot was allotted to Lalbhai, and the right to develop the remaining portion of the said property, being building No.3 and the land surrounding it, shown in a verged yellow line (the Arun plot), was allotted to Arun. Even the valuation of the properties was mentioned. Clause 6 reiterates that the Arun plot on the plan Exhibit 'A' shall belong to Arun HUF, representing the present appellant.

25. We may note here that there was a subsequent partnership deed entered into on 30th March 1987 by and between Lalbhai and six other persons under which the firm Avon Enterprises (the 10th respondent) was incorporated. In the recitals of the said document, it is mentioned that the larger property, being the entire plot No.61, is delineated on a plan annexed to the said document. It refers to a portion admeasuring 1823 sq mtrs. thereof, which was brought into partnership by Lalbhai. It is stated that the said portion is shown in blue verged lines. That is the Lalbhai plot. It is also

specifically provided that the remaining portion of the said property on which building No.3 has been standing and the area shown by yellow verged lines (the Arun plot) will belong to Arun.

26. A prototype flat purchase agreement (FPA) between the 10th respondent and the flat purchasers has been placed on record. It refers to the property described as the said property admeasuring 1911.32 sq.mtrs. out of the larger plot. It is recorded that the remaining portion of the plot, admeasuring 903.06 sq. mtrs, on which building No.3 was standing, belongs to the appellant. The first schedule describes the larger property admeasuring 2814.38 sq. mtrs. (which includes the setback area) and the second schedule describes the area of 1911.32 sq. mtrs. Clause No.36 of the agreement is the relevant clause which deals with the execution of the conveyance.

The relevant portion of the clause reads thus:

“.....the Developer shall execute a Conveyance in respect of the said Property in favour of such Co-operative Society subject to the said

Deed of Lease dated 16th day of July, 1991 in respect of Arun's property in favour of Arun Hiralal Shah H.U.F. and/or his nominee or nominees as aforesaid. Until the execution of the Conveyance the possession of the said Property in the said Building and the Premises thereon shall be deemed to be of the Developers and the Purchasers who shall have been given possession of the premises sold to him/her/them shall be merely occupants thereof.”

(emphasis added)

27. At this stage, we may also refer to the deed of dissolution dated 13th February 1987 (‘the deed of dissolution’). Arun Hiralal Shah, the erstwhile Karta of the appellant, is a party to the said dissolution deed.

Clause 3 thereof reads thus :

“3. On such Dissolution the portion of the said property shown in verged blue colour line on the said plan with right to develop the same is allotted to Lalbhai being the party of the First Part as the Manager and Karta of Lalbhai Hiralal Shah H.U.F. The remaining portion of the said property being building marked No. 3 on the said plan Exhibit “A” hereto and assessed to tax by the Municipal Corporation of Greater Bombay vide No. KW-8653 (3) which is let out to Bank of Baroda, Post Office, a Shop and other residential Tenants, as per the

particulars given in Exhibit 'B' hereto and the land surrounding it and shown in verged yellow line on the said plan is allotted to Arun being the Party of the Third Part as the Karta and Manager of Arun Hiralal Shah, H.U.F.”

28. There is no dispute about the execution of the deed of dissolution. There is no dispute that the area allotted to Lalbhai for development is separate and distinct from the area allotted to Arun. The area allotted to Lalbhai is 1911.32 sq mtrs. (the Lalbhai plot) out of final plot No.61, which includes the area of the road set back admeasuring 131.40 sq mtrs. The remaining area of 903.06 sq mtrs. (the Arun plot) was allotted to Arun representing HUF out of the final plot No.61 on which building No.3 has been standing. The deed of dissolution specifically provides that the said area allotted to Arun as the Karta and manager of Arun Hiralal Shah HUF (the appellant) has been shown on the plan annexed to the deed of dissolution. It consists of the building marked as building No.3 and the surrounding land shown in yellow lines. The deed of dissolution and in particular sub-

clause (f) of clause 8 clearly provides that Arun, representing the appellant HUF, shall be entitled to reconstruct the structure or structures in place of building No.3 and consume Floor Space Index (for short 'FSI') to the extent of 9717 sq.ft. Sub-clause (a) of Clause 8 provides that the remaining FSI available in respect of the entire final plot admeasuring 2814.38 sq.mtrs. (Lalbhai plot) shall be utilised by Lalbhai. Sub-clause (g) of clause 8 also provides that in case of a future increase in FSI, 32% of it shall be owned by Arun, representing the HUF, and the remaining FSI shall be utilised by Lalbhai. There is one important clause incorporated in the deed of dissolution in the form of sub-clause (h) of

Clause 8. Sub-clause (h) reads thus:

"h) that Lalbhai in the process of his business as developer and dealer in real estates and consequent upon the construction of the new building conveys the property more particular description of the property is as per Schedule of the property hereunder written, to a Co-operative Society and/or similar body **Lalbhai and/or the Co-operative Society or similar body shall execute a Lease in perpetuity in favour of Arun**

at the cost of Arun including the cost of stamp and registration charges at the yearly lease rent of Re.1/- in respect of building No.3 together with the land underneath and shown under yellow verged line in the copy of the plan hereto annexed upon the terms and conditions as may be agreed and settled by the respective advocates of Arun and Lalbhai.”

(emphasis added)

29. The first part of clause (h) provides for Lalbhai executing a conveyance in respect of the property as per the schedule to a co-operative society. The property described in the schedule is the larger plot. The reason for providing the execution of conveyance in favour of a co-operative society in respect of the larger plot is apparent. The larger plot bearing the plot No.61 was not subdivided into the Arun plot and the Lalbhai plot in the records. Therefore, Lalbhai and Arun agreed to share the FSI, which may be available in future, to the extent of 68% and 32% respectively. This is why this clause provides for the execution of a lease in respect of the Arun plot in favour of Arun by Lalbhai or a cooperative

society formed after the construction of new buildings by Lalbhai. This is to protect the interests of the appellant. Admittedly, the deed of dissolution has been signed by Arun in his capacity as Karta of Arun Hiralal Shah HUF. Therefore, the deed of dissolution and the aforesaid clause are binding on the present appellant.

30. Based on the deed of dissolution, a deed of partnership was executed by Lalbhai Hiralal Shah by which a firm, Avon Enterprises, the 10th respondent-developer, was formed. The said document clearly specifies that the partnership firm has the right over an area of 1823 sq. mtrs. out of the larger plot bearing final plot No.61. It also records that the partners of the 10th respondent are aware that the remaining portion of the property on which building No.3 is standing as shown by yellow verged lines belongs to the present appellant and that 10th respondent will not have any claim over the same.

31. The said deed of partnership shows that the 10th respondent had no right over the property allotted to the appellant under the deed of dissolution. At this stage, we may note that in the FPAs for sale executed by the 10th respondent in favour of flat purchasers, there is a recital that the 10th respondent has executed a deed of lease dated 16th July 1991 in favour of the present appellant in respect of the area of 903.06 sq.mtrs. out of final plot No.61. Even in the application under Section 11(3) of the MOFA made by the 1st respondent, in paragraph 4, reliance was placed on the lease in perpetuity executed in favour of the appellant in respect of the Arun plot on 16th July 1991 by the 10th respondent. In the reply filed by the appellant, this fact is not denied. However, a copy of the lease is not placed on record.

32. The legal heirs of Arun, Lalbhai and Ranjit were the opponents to the application under Section 11(3) made by the 1st respondent. The prayer therein was for the execution of the conveyance in respect of the larger plot in

favour of the 1st respondent. By the order dated 18th September 2020 passed by the competent authority, a direction was issued in the exercise of powers under Section 11(3) of MOFA to grant *ex parte* deemed conveyance in favour of the first respondent society. A certificate of deemed conveyance was issued under the said order. The certificate records that the deemed conveyance shall be in respect of the entire larger plot bearing plot No.61 (admeasuring 2753 sq.mtrs. as per the Property Register Card and 2814.38 sq.mtrs. as per the Sanctioned Building Plan) subject to the first respondent executing a permanent lease deed in favour of the present appellant in respect of an area of 903.06 sq. mtrs. (Arun plot) as shown on the plan annexed to the FPAs executed by the 10th respondent in favour of the flat purchasers. We have already referred to the deed of lease dated 16th July 1991 executed by the 10th respondent in favour of the appellant in respect of the Arun plot. Therefore, the 10th respondent is the lessor of the

appellant. Hence, the effect of the order dated 18th September 2020 is that there shall be a deemed conveyance in favour of the first respondent in respect of the entire larger plot (final plot no.61) subject to the condition of executing a permanent lease deed in favour of the appellant or its nominees in respect of an area of 903.06 sq. mtrs. (the Arun plot). This order appears to have been passed, as plot No.61 has not been subdivided into Lalbhai plot and Arun plot. Moreover, the 1st respondent, after a conveyance in its favour, steps into the shoes of the appellant's lessor.

33. Some criticism is made by the appellant of the impugned order of the competent authority on the ground that the terms and conditions of the lease have not been incorporated in the order and the certificate, and therefore, the order is vague. We may note here that the impugned order of the competent authority refers to sub-clause (h) of clause 8 of the deed of dissolution, which we have quoted earlier, and the fact that there was

already a lease deed dated 16th July 1991 in favour of the present appellant. Therefore, it is obvious that the lease deed to be executed by the first respondent must be in terms of the deed of dissolution, which provides for the appellant's entitlement to a specific FSI and percentage of additional FSI which may be available in future. Moreover, the lease to be executed will have to be in accordance with the terms and conditions of the lease deed dated 16th July 1991 and the deed of dissolution.

34. In view of the fact that sub-clause (h) of Clause 8 of the deed of dissolution is binding, the appellant cannot object to the condition of the first respondent executing a lease incorporated in the certificate. Sub-clause (h) itself provides for the Society of the flat purchasers after the construction of the building by Lalbhai executing a lease in favour of the appellant for yearly lease rent of Re.1. To protect the appellant's interest, the impugned order of the competent authority dated 18th September 2020 and the certificate provide for the execution of a permanent lease

in favour of the appellant. Thus, there will be a perpetual lease executed by the first respondent in favour of the appellant or its nominees in terms of sub-clause (h) of Clause 8 of the deed of dissolution and in terms of the lease deed dated 16th July 1991 at the instance of the appellant, no fault can be found with the order of the competent authority.

35. The MOFA is a beneficial legislation enacted to protect home buyers, considering the ever-increasing housing shortage in urban areas. The Legislature has noted the increasing malpractices by the developers. The provisions of Section 11 are for the benefit of the flat purchasers. In writ jurisdiction, the Court should not interfere with the order granting deemed conveyance under Section 11 (4), unless the order is manifestly illegal. The writ court should generally be slow in interfering with such orders. The reason is that, notwithstanding the order under Section 11(4), the remedy of aggrieved parties to file a civil suit remains

open. In this case, substantial justice has been done by protecting the appellant's rights as a perpetual lessee with a right to develop the Arun plot. Therefore, interference in writ jurisdiction was not warranted.

CONCLUSIONS

36. As held earlier, there is no reason to find fault with the impugned order dated 18th September 2020 of the competent authority and consequently, the impugned order of the High Court. The registration of the certificate issued under the impugned order of the competent authority shall be subject to the condition of the first respondent executing a permanent lease in favour of the appellant, as directed in the certificate appended to the impugned order dated 18th September 2020. The lease shall be on the terms and conditions incorporated in the deed of dissolution and the lease deed dated 16th July 1991. Even if such a lease is not executed in favour of the appellant, the rights of the appellant as a perpetual lessee under the deed dated 16th July 1991 and under

the deed of dissolution in respect of the Arun plot shall remain unaffected. The first respondent cannot dispute the appellant's rights as a perpetual lessee.

37. Our conclusions on the interpretation of subsections (4) and (5) of Section 11 of the MOFA are as under:

i. It is no doubt true that quasi-judicial powers have been conferred on the competent authority while dealing with applications under Section 11(3) of the MOFA. However, proceedings before the competent authority under Section 11(3) are of a summary nature, as can be seen from the MOFA Rules. Therefore, the competent authority, while passing the final order, must record reasons;

ii. The competent authority, while following the summary procedure, cannot conclusively and finally decide the question of title. Therefore,

notwithstanding the order under sub-section (4) of Section 11, the aggrieved parties can always maintain a civil suit for establishing their rights;

- iii.** The provisions of Section 11 are for the benefit of the flat purchasers. In writ jurisdiction, the Court should not interfere with the order granting deemed conveyance unless the same is manifestly illegal. The writ court should generally be slow in interfering with such orders. The reason is that, notwithstanding the order under Section 11(4), the remedy of aggrieved parties to file a civil suit remains open; and
- iv.** The registering officer has no power to sit in appeal over the order of the competent authority while exercising the power under Section 11(5). He can refuse registration only on the grounds indicated in paragraph 23 above and not beyond. Thus, the scope of the powers conferred on the registering officer is limited.

38. Subject to what is held in this judgment, the appeal is dismissed. There will be no order as to costs.

.....J.
(Abhay S Oka)

.....J.
(Ujjal Bhuyan)

**New Delhi;
April 21, 2025.**