IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.5991 OF 2026

Rohini Gupta and Anr. **...Petitioners**

V/s.

District Deputy Registrar, Cooperative Societies and Ors. **...Respondents**

Mr. Karl Tamboly with Mr. Nilesh Modi i/b M/s. Rustamji & Ginwala Law Firm *for the Petitioner.*

Mr. Mayur Khandeparkar with Mr. Devansh Shah, Mr. Hitesh Rajpurohit, Ms. Ami Oza, Mr. Bishwajeet Mukherjee, Ms. Humera Syed, Mr. Omkar Mendarkar, Mr. Naman Gupta and Ms. Akanksha Yadav i/b Impetus Legal Advocates & Legal Consultants *for the Respondent No.3*

Ms. Savina Crasto, AGP *for the Respondent-State.*

CORAM: SANDEEP V. MARNE, J.
RESD. ON: 25 AUGUST 2026
PRON. ON: 08 SEPTEMBER 2026

JUDGMENT:

1) Petitioners are the original landowners and are aggrieved by the order dated 23 June 2025 passed by the District Deputy Registrar, Co-operative Societies, Mumbai City-3 and Competent Authority **(Competent Authority)** issuing Certificate of unilateral deemed conveyance of land admeasuring 3901.70 sq.m. in favour of Respondent No.3-Society.

2) Petitioners' father late Kundanlal Laxmichand Gupta was granted land admeasuring 5356.1 sq.yds. equivalent to 4460.37 sq.m. at Survey no.71, CTS No. 1049/D of Juhu Village, Mumbai Suburban District under the subdivision sanctioned by Municipal Corporation of Greater Mumbai **(MCGM)** vide letter dated 8 November 1974. By Indenture of Lease dated 4 February 1975, Petitioners' father granted lease in respect of larger property in favour of Deepak B. Raheja (Respondent No.5) and Kamla C. Wadhwa for a period of 98 years commencing from 4 February 1975 and expiring on 14 October 2072. Respondent Nos.4 to 7 constructed building known as "Queens Park" on portion of the larger property, i.e., portion of land admeasuring 3901.70 sq.m. (**said property**). Respondent Nos.4 to 7 sold flats to various purchasers by executing agreements under Section 4 of Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) Act, 1963 **(MOFA)** with the purchasers. The flat purchasers formed Respondent No.3 Society. By Indenture of Assignment dated 17 March 1978, Respondent Nos.4 to 7 assigned the leasehold rights in respect of the said property in favour of Respondent No.3 Society for a term of 98 years.

3) On 25 February 2008, Respondent No.3 Society filed application before the Competent Authority under Section 11 of MOFA seeking unilateral deemed conveyance of the said property to which late father of the Petitioner was impleaded as a party Respondent. Upon receipt of notice in the name of their late father, Petitioners informed the Competent Authority that their father had passed away in the year 1981. The application was allowed by order dated 23 June 2025. Petitioners claim that they were served with copy of Writ Petition No.15689 of 2025 filed by Chandresh Desai and Shruti Desai on 16 November 2025 in which there were impleaded and that at this stage they acquired knowledge in respect of the order dated 23 June 2025 passed by the Competent Authority. In Writ Petition No.15689 of 2025 filed by Chandresh Desai & Shruti Desai, the order dated 23 June 2025 passed by the Competent Authority was challenged and the petition was dismissed on 1 December 2025 since the same was filed by members of the third Respondent-society.

4) Petitioners have now filed the present Petition challenging the order dated 23 June 2025 passed by the Competent Authority.

5) Mr. Tamboly, the learned counsel appearing for the Petitioners submits that the Competent Authority has grossly erred in exercising jurisdiction under Section 11 of MOFA in the facts and circumstances of the present case where there is no failure on the part of the Promoter to fulfill obligation under Section 11(1) of MOFA and towards fulfillment of that obligation, the Promoters have already assigned leasehold rights in the land in favour of Respondent No.3 Society vide Indenture of Assignment dated 17 March 1978. That therefore there is no failure on the part of the Promoters within the meaning of sub-sections (1) or (3) of Section 11 of MOFA and that therefore the Competent Authority did not have jurisdiction to entertain the application filed by the third Respondent Society. That in any case, the Competent Authority could not have conveyed ownership rights in respect of the land in favour of the third Respondent Society. That Petitioner's father had granted only leasehold rights in favour of the promoter and under Section 11(1), promoter can only convey to the Society what belongs to him. That what is not owned by the Promoter cannot be conveyed in favour of the Society. He invites my attention to the relevant clauses in the Agreement for Sale executed with the flat purchasers which envisaged assignment of only leasehold rights. That mere covenants in the lease deed for ownership of the building at the end of lease tenure does not mean that the lessors would lose title *qua* the land to the Society. He submits that a private arrangement agreed between the promoters and flat purchasers for acquisition and ownership rights in the land does not bind the Petitioners. That in any case, Petitioners/their father have not been paid the premium as agreed in the agreements for sale. That mere collection of amounts of Rs.10 per sq.ft. by the promoter for purchase of right of reversion of the said property did not mean that the Society would automatically acquire ownership in respect of the land. He submits that the Society is estopped from claiming ownership rights once it executed Indenture of Assignment of leasehold rights. He relies on judgment of the Apex Court in ***Sanjit Singh Salwan and Ors. Vs. Sardar Inderjit Singh Salwan and Ors.***[1] He relies on judgment of this Court in ***Vaidehi Akash Housing Pvt. Ltd. vs. New D.N. Nagar Co-op. Housing Society Union Ltd. and Others***[2] in support of his contention that provisions of MOFA cannot be foisted on Petitioners

1 2025 SCC Online SC 1697

2 2014 SCC Online Bom 5068

when there is no privity of contract between the society and them. That in the present case, Petitioners do not have any privity of contract with the Society and therefore Section 11 jurisdiction cannot be enforced against the Petitioners by assuming that Petitioners had any statutory or contractual obligation under the Act. He relies on judgment of this Court in ***Grand Paradi CHSL and Ors. Vs. Mont Blanc Properties & Industries Pvt. Ltd.***[3] in support of the contention that when agreements provide for assignment of lease, ownership in the land can never be conveyed in favour of society. The order passed by the Competent Authority is nullity since the same is passed against a dead person. That in any case, it is passed in violation of principles of natural justice. Mr. Tamboly accordingly prays for setting aside the impugned order of the Competent Authority.

6) Mr. Khandeparkar, the learned counsel appearing for Respondent No.3 Society opposes the Petition submitting that the authority has rightly exercised jurisdiction under Section 11(3) of the MOFA That Petitioners, in their capacity as landowners, have also participated in construction of the building and accordingly assumed obligations of a promoter within the meaning of MOFA. That Petitioners have caused construction of the building. He takes me through various clauses of the lease deed in support of his contention that Petitioners have actively participated in construction of the building. That the lease was executed only for the purpose of construction of the building. That this is not a normal/regular lease. He submits that in similar circumstances, this Court in ***Haroon Hussain Khatri and Anr. vs. The***

[3] 2010 SCC OnLine Bom 608

Competent Authority and District Deputy Registrar, Co-operative Societies, Mumbai Suburban and Ors.[4] has held that when construction is actually caused by the landowners through the lessee, the landowners are also required to be treated as promoters within the meaning of Section 2(c) of MOFA.

7) Mr. Khandeparkar further submits that Clause 40 of MOFA agreements executed with the flat purchasers provide for the promoters to perfect their title in the land for the purpose of conveyance thereof in favour of the organization of flat purchasers. That the members of the Society have contributed for purchase of ownership rights in the land in accordance with the negotiations between the developers and landowners.

8) Mr. Khandeparkar submits that the plea of violation of principles of natural justice raised on behalf of the Petitioners is clearly misplaced. Petitioners have admittedly received the notice in the application but took a chance of not appearing before the Competent Authority. That in any case, no prejudice is caused to the Petitioners who are already divested of their title in respect of the land. He relies on the judgment of the Apex Court in ***Chairman, Board of Mining Examination and Chief Inspector of Mines & Anr. vs. Ramjee***[5] in support of his contention that natural justice is not an unruly horse and so long as fairness is shown by the decision maker to the man proceeded against, no breach of natural justice can be complained of. He submits that there is no warrant for interference in the impugned order in exercise of

4 Writ Petition No.7627 of 2026 decided on 19 June 2026
5 (1977) 2 SCC 256

extraordinary jurisdiction under Article 227 of the Constitution of India since the justice is not on the side of the Petitioners. He relies on judgment of the this Court in ***Sushanku Builders Ltd. vs. Apex Grievance Redressal Committee***[6] and submits that the SLP against the judgment is dismissed on 16 May 2025. In support of the plea of absence of prejudice, he relies on judgment of the Apex Court in ***State of U.P. vs. Sudhir Kumar Singh***[7]. Mr. Khandeparkar accordingly prays for dismissal of the Petition.

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

10) The short issue involved in the present Petition is whether Petitioners can be treated as "promoters" within the meaning of Section 2(c) of the MOFA. The Petitioners are actually the legal heirs of the original landowner late Kundanlal Laxmichand Gupta. He executed Indenture of Lease dated 4 February 1975 in favour of the lessees. The lease is in respect of the larger property for the period of 98 years. The building is constructed on the said property (forming part of larger property) by the lessees / Respondent Nos.4 to 7. The Petitioners have therefore come out with a case that the promoters in the present case are Respondent Nos.4 to 7, who had the statutory obligation to convey ‘their’ right, title and interest in the land and the building in favour of third-Respondent Society. The Petitioners therefore contended that the Society can, at the best, step into the shoes of the promoters and become lessee of the Petitioners for remainder period of lease, which is in subsistence

6 Writ Petition No. 8931 of 2024 decided on 27 March 2025.

7 (2021) 19 SCC 706

till 14 October 2072. It is also contended by the Petitioners that the leasehold rights have actually been transferred by Respondent Nos.4 and 7 in favour of the Society vide Indenture of Assignment dated 17 March 1978 and that therefore the Society has already secured rights of the promoters under Section 11 of MOFA and there was no 'failure' within the meaning of Sections 11(1) and (3) on the part of the promoters for the Competent Authority to exercise jurisdiction.

11) Thus, broadly, two objections are raised by the Petitioners viz., (i) Respondent No.1-Society cannot secure rights higher than that of promoters and that therefore they can only secure lease in respect of the said property, and (ii) since lease is already assigned in favour of the Society by Indenture of Transfer dated 17 March 1978, the Competent Authority did not have jurisdiction to entertain application for deemed conveyance under Section 11(3) of MOFA. I proceed to consider the objections.

12) To answer the first question as to whether the Petitioners can secure rights higher than the one possessed by the promoter, rival positions taken by the parties need to be appreciated. While Petitioners contend that under Section 11(1) of MOFA, Respondent No.3-Society cannot secure rights which the promoters did not possess and that therefore it can secure only leasehold rights in respect of the said property, it is the contention of the Society that role of the Petitioners/their father is not restricted in the present case as mere landowners, but they have actually assumed the obligations of being promoter(s) and that therefore, whatever rights were possessed by the

Petitioners, must necessarily be transferred to the Society. To decide the rival contentions, it would be necessary to have a quick look at only two provisions of MOFA. Section 2(c) of MOFA defines the term 'promoter' as under:

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

13) Thus, promoter is a person, who himself constructs the building of flats or even a person, who causes construction of a building comprising of flats. In a given case, the landowner himself can subject the land to a housing scheme and construct the building if he has necessary expertise and wherewithal. However, on many occasions, in absence of expertise and wherewithal with the landowner, he/she requires services of a professional developer for construction of the building. In the former case when building is constructed by the landowner himself, there can be no difficulty in identifying the promoter since the landowner himself becomes the promoter. In the latter case, a development agreement is usually executed under which the developer pays consideration to the landowner (*in cash or in the form of constructed area or both*) and in return gets to sell the flats in the building, as if they are his own. In the latter case therefore, the developer usually is the promoter.

14) However, use of the expression '*causes to be constructed*' in Section 2(c) of MOFA widens the definition of the term 'promoter' and brings within its net every person who causes construction of a building comprising of flats. Thus, if landowner merely engages a developer and constitutes the housing scheme giving full freedom to the developer to construct the building as per his choice, landowner cannot be said to have caused construction of the building. On the other hand, if the landowner participates in the construction activity, thereby deciding the manner in which the building should be constructed by the developer and/or takes part in construction thereof and/or sale of flats, in such circumstances, the landowner can be said to be wearing two hats i.e., landowner as well as promoter. Therefore, level of participation by the landowner in the housing project determines whether he is promoter or not.

15) MOFA is a beneficial legislation aimed at the objective of protecting the interests of flat purchasers as well as their organisation. In that sense, the definition of the term promoter is deliberately kept expansive to bring within its net every person, who causes construction of a building through another person. Therefore, the promoter is not restricted only to a person, who actually constructs the building. Even a person, who engages services of professional developer, but also takes active part in cause of construction would be included in definition of the term promoter.

16) Mr. Tamboly has relied on judgment of this Court in ***Vaidehi Akash*** (supra) in support of his contention that the Petitioners cannot be treated as promoters even though they may have engaged a developer to construct the building. In ***Vaidehi Akash***, the issue with regard to rights of third-party flat purchasers in redevelopment project undertaken by the housing society was under consideration. In ***Vaidehi Akash***, the developer had created third party rights in favour of various flat purchasers in respect of sale component of the project during subsistence of the society's redevelopment agreement. After the redevelopment agreement was terminated by the society, flat purchasers sought to enforce obligations under the flat-purchase agreements against the society contending that the same were executed during valid subsistence of the redevelopment agreement. A coordinate Bench of this Court held that contract between the developer and the society was on a principal-to-principal basis and that the same did not constitute a partnership or a joint venture or agency between the two. It was therefore held that third-party purchasers with whom developer might have entered into agreements for sale would not have any privity of contract with the society and that the society would not be responsible for any claims made by such purchasers against the developer in their respective agreements for sale. This Court held in paragraphs 82 to 93 as under:

> **82.** The purchasers' rights may, thus, be examined from two angles, one from the standpoint of the contract between the Society and Vaidehi (who was their vendor) and the other from the standpoint of the obligations of the Society, if any, under MOFA.
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> **83.** No doubt Vaidehi had been conferred with the authority to deal with the free sale component of the project by the Society under the Society Development Agreement, but the question is whether such authority was to be exercised by Vaidehi for its own sake or on its own account as an independent contractor or as an agent of the Society. Some of the important clauses of the Society Development Agreement may be noted in this behalf. These are as follows:
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> … …
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> **84.** The clauses quoted above, read together and in their proper perspective to be gathered from the whole agreement, clearly envisage the development and sale of the free sale component of the project by Vaidehi on their own account and as an independent contracting party and not as agents of the Society. The contract between Vaidehi and the Society is on a principal to principal basis; it neither constitutes a partnership nor a joint venture or agency between the two.

The third party purchasers with whom Vaidehi might enter into agreements for sale would have no privity of contract with the Society and the Society would in no way be responsible for any claim made by such purchasers against Vaidehi under their respective agreements for sale.

85. There being no privity of contract between the Society and the third party purchasers claiming under Vaidehi, the third party purchasers cannot claim specific performance of their respective agreements for sale except through Vaidehi. They stand or fall by Vaidehi. If the rights of Vaidehi are brought to an end upon a lawful termination of the Society Development Agreement, the third party purchasers cannot lay any independent claim against the Society or anyone claiming through the Society. The agreements with third party purchasers are premised upon a valid, subsisting and enforceable agreement between their vendors, namely, Vaidehi and the owners, namely, the Society and in fact refer to the Society Development Agreement in this behalf. Admittedly, therefore, the third party purchasers had, or at any rate, ought to have, notice of the Society Development Agreement and its terms and conditions and Vaidehi's obligations to perform the same. If Vaidehi fails to perform these obligations, the purchasers cannot but suffer the consequences. In other words, the purchaser's rights are subject to Vaidehi's rights and not higher than those. Therefore, from a contractual standpoint, the third party purchasers have no case against the Society or Rustomjee, who claim through the Society.

86. Let us now consider if these third party purchasers have any rights under MOFA against the Society. It is submitted on their behalf that the Society is very much a 'promoter' within the meaning of MOFA as regards their respective agreements for sale. Learned Counsel for the purchasers rely upon the definition of "promoter" contained in Section 2(c) of the MOFA. The definition is in the following terms:

xxx

87. It is submitted that the Society can at any rate be said to have caused the building of flats to be constructed for the purpose of selling the same and as a person, who causes such building to be built, is as much a promoter as a person who sells premises in such building.

88. The Society is the owner of the property and has entered into an agreement with the developers, i.e. Vaidehi, for redevelopment of its property. The redevelopment envisages construction of the Society's building to accommodate its members and also construction of building/s of flats/premises to be sold to outsiders. The agreement authorizes or entitles the developers to construct such building/s and sell flats/premises therein to outsiders. Such authority or entitlement is to the developers' account and in their own right and as an independent contractor. If in exercise of such authority or entitlement, a building is constructed by the developers, it cannot be said that such building is caused to be constructed by the Society within the meaning of Section 2(c) of the MOFA.

89. Any other interpretation would lead to anomalous consequences, which could never have been contemplated by MOFA. The owners of lands entering into agreements for sale or development agreements with promoters/developers would be held as being subject to all liabilities of a promoter, such as liability of disclosure of plans and specifications, outgoings etc. under Section 3 of the MOFA, entering into agreements in accordance with Section 4, giving possession of flats and suffering the consequences of Section 8, forming co-operative societies of flat purchasers under Section 10 and so on. This would be plainly inconceivable.

90. Prima facie, thus, there is no case to treat the Society, who is merely in the position of an owner vis-a-vis the third party purchasers, as a 'promoter' within the meaning of MOFA and foist the obligations of a promoter on the Society in relation to the purchasers.

91. Besides what is discussed above, there are many other difficulties in the way of many of these third party purchasers. In the first place, it now transpires from the various proceedings that their vendor, Vaidehi, has proceeded to allot an area far in excess of its entitlement, which was merely 2,53,500 sq.ft. FSI to start with and thereafter restricted to 57050 sq.ft. (i.e. after the Rustomjee Agreement). In fact, what Vaidehi appears to have dealt with is an area far in excess of even the total FSI (at the rate of 2.4) available on the entire land. Secondly, the individual transactions are evidenced only in a few cases by registered agreements with Vaidehi. Many transactions are contained in unregistered agreements or even allotment letters which are not even stamped. Many of these transactions appear to be simply financial arrangements. Each individual case of a third party purchaser would thus be subject to different considerations based on the entitlement of Vaidehi at the relevant point of time and the nature and incidents of the individual transaction. But we are dealing here with the rights of the individual purchasers vis-a-vis the Society and Rustomjee claimed through Vaidehi and not their rights qua Vaidehi. All these purchasers certainly have independent rights to claim damages against Vaidehi, peculiar to their individual cases, but they have prima facie no right to claim anything from the Society and Rustomjee, much less specific performance of their individual agreements. In the premises, the individual features of their respective cases, as noted above, have no relevance to our discussion in this group of Motions and need not be discussed any further. Even the best placed amongst them have no leg to stand on as against the Society or Rustomjee.

92. That brings us to sum up the result of the above discussion on the prima facie case on merits of individual stakeholders. Prima facie, it is clear that Vaidehi has committed breaches of the Society Development Agreement and that the termination of the Agreement by the Society was legal and proper. Vaidehi has not made out any case of its readiness and willingness to perform its obligations under the Society Development Agreement. Vaidehi is not entitled to specific performance of the Society Development Agreement or restrain the development of the suit property by the Society or Rustomjee. The Rustomjee Agreement and its confirmation by the Society by the Confirmation and Supplementary Agreements as well as further Agreement dated 29 January, 2011 between the Society and Rustomjee are valid and proper. Members of the Society opposing the development through Rustomjee are not entitled to any interim relief either on the basis of the aforesaid agreements being in breach of the Society Development Agreement or on the basis of breach of bye-laws or contravention of the State Government circular dated 3 January, 2009 or on account of the alleged non-performance of the offer letter by MHADA or the booklet or directives of MHADA or indeed on account of any alleged FSI violation or usurpation. The decisions of the Society in connection with the present dispute are prima facie taken bona fide and none of the challenges of the members opposing redevelopment are prima facie sustainable. None of the third party purchasers, who claim through Vaidehi under their respective agreements for sale/allotment letters, have any case for specific performance of their respective agreements against the society or Rustomjee. None of these purchasers has any enforceable right under MOFA against the Society or Rustomjee.

93. Even the considerations of balance of convenience and irreparable injury clearly weigh in favour of the Society and its members, who support the redevelopment project. The fundamental basis or rather the very raison d'etre of the entire redevelopment project is the need for housing of 480 members of the Society. These members have already surrendered their tenements to enable the Society to carry out the redevelopment project first through Vaidehi and later through Rustomjee, as noted above. Since 2006, these members have been living in temporary alternative accommodations. The buildings on the suit property occupied by these members have since been demolished and a rehab building for their permanent alternative accommodation is under construction. The development of the free sale component is inextricably linked to the construction of the rehabilitation component. The cost of the construction of the rehabilitation component has to be necessarily funded from and out of the development and sale of the free sale component. Any relief granted to either of the stakeholders, namely, Vaidehi or the members opposing the redevelopment project or the third party purchasers, who claim through Vaidehi, will necessarily impact the construction of the rehabilitation component adversely and jeopardize the members' right to their permanent alternative accommodation. The members cannot be asked to wait indefinitely for years for getting something which they are legally entitled to and which legal entitlement is not even questioned by any other stakeholders.

17) Relying on the judgment in ***Vaidehi Akash***, Mr. Tamboly has contended that since there is no privity of contract between the

Petitioners and flat purchasers, MOFA Agreements cannot be sought to be enforced against the Petitioners. Mr. Tamboly has also placed reliance on judgment of Division Bench of this Court in ***Deepak Prabhakat Thakoor and Ors. vs. Maharashtra Housing and Area Development Authority and Ors.***[8] in support of his contention that view adopted by this Court in ***Vaidehi Akash*** (supra) has been approved by the Division Bench, in which it is held in paragraph 11 as under:

> **11.** We are in respectful agreement with all these findings on law. We emphatically reaffirm *Vaidehi Akash*.

18) The judgment in ***Vaidehi Akash*** governs the relationship between flat purchasers, old developer, the housing society and the new developer *qua* a redevelopment contract. This Court held that the Society therein did not form any partnership or a joint venture or agency with the old developer. This Court held that contractual arrangement between the old developer and the Society was on a principal-to-principal basis. In my view, ***Vaidehi Akash*** principles have no application to the facts of the present case. This is not a redevelopment project where MOFA obligations are sought to be enforced against the cooperative housing society or against the new developer appointed by the society. The case involves execution of lease by the landowner and lessee constructing the building. Therefore, whether landowners are promoters or not needs to be decided on the basis of the terms of the lease.

8 2023 SCC OnLine Bom 2234

19) Accordingly, I proceed to consider the terms and conditions of the Lease Deed dated 4 February 1975. Relevant clauses of the Lease Deed are as under:

> (c) At their own responsibility and at their own costs and expenses of not less than Rupees Ten Lacs to construct and erect and complete and completely furnish for occupation within three years from the date hereof or within such extended period as may be agreed between the Lessor and the Lessee s upon the said demised premises one or more building or buildings for such purpose as may be allowed under the Development plan and the Rules of the Bombay Municipal Corporation..
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> (d) During the erection and construction of any building or buildings and during the making of any such alterations as aforesaid;
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> > ....
> > (ii) In the course of making such construction alteration or addition as aforesaid or in repairing the new building or buildings, the Lessees shall make use of materials which shall not be unsound or unfit for the purpose intended nor make any deviation in the new building or buildings from the plans and specifications approved by the Bombay Municipal Corporation;
> >
> > (iii) If the Lessees shall fall or neglect to fulfil and observe the aforesaid provisions, it shall be lawful for the Lessor and/or his Architects and Engineers and/or his agent and servants to require the Lessees to remove such unsound and unfit materials and to substitute such as shall be sound and fit in place and stead thereof, as also to correct every such deviation from the approved plans and specifications.
>
> (l) Throughout the said term, at his own expense to keep every building or buildings for the time being standing on the said demised premises (excluding the plinth) insured in the joint names of the Lessor and the Lessees against loss or damage by fire and in addition thereto such other causes as may be required by law from time to time in a sum equal to the full insurable value thereof in some reputable insurance company selected by the Lessor..... PROVIDED ALWAYS that in case the said building or buildings shall not be kept so insured as aforesaid, or in case the Lessees shall at any time fail to produce the said policy and/or the receipts as aforesaid, then in such cases without prejudice to the proviso for re-entry and all other rights and remedies of the Lessor, it shall be lawful for the Lessor but not obligatory upon the Lessor to insure the said building or buildings and all monies expended by the Lessor in doing so shall be paid by the Lessees in the same manner as rent in arrears....
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> (n) At the Expiration or sooner determination of the said term to equitly delivery up to the lessor the said demised premises including the building or

buildings which shall have been standing thereon during the said term and all drains and appurtenances together with all fixtures, windows, doors, fastenings, portions, pipes, pumps, rails, poles, locks and keys and all other fixtures which during the last seven years of the said term shall have been fastened to the said building or buildings or any part thereof in such good and substantial repair and condition and so maintained paved and cleaned as aforesaid and in all respect in such state and condition as shall be consistent with the due performance of the several provisions and covenants hereinbefore contained;

3. ... PROVIDED ALWAYS AND IT IS HEREBY AGREED AND DECLARED that these presents are on the express condition that if the new building or buildings on the said demised premises shall not be completed and made fit for occupation within the time aforesaid or within such extended time as may be mutually agreed upon or if the said monthly rent or any part thereof payable in the manner hereinbefore mentioned shall be in arrears for the space of three months after the same shall have become due and payable on any of the said days whereon the same ought to be paid as aforesaid or if any of the covenants and stipulations herein contained and on the part of the Lessees to be observed and performed by the Lessees shall not be performed or observed or if the Lessees shall raise any objection to the amount of the monthly rent hereby fired for any reason whatsoever then and in any of the cases it shall be lawful for the Lessor or any person or persons duly authorised by him in that behalf at any time thereafter to re-enter into and upon the said demised premises and the structures constructed or to be constructed thereon or any part thereof in the same of the whole and the same to have, possess and enjoy and thereupon this demises and all rights of the Lessees therein shall absolutely determine but without prejudice to the right or action of the Lessor in respect of any breach of the covenants by the Lessees herein contained PROVIDED ALWAYS that no re-entry shall be made under the foregoing power for breach of the covenants, stipulations herein contained and on the part of the Lessees to be observed and performed unless and until the Lessor shall have given to the Lessees a notice in writing specifying the covenants and conditions or stipulations which required to be complied with or carried out and the Lessees shall have failed to comply with or carry out the same within three months from the date of the receipt of such notice.

4. IT IS HEREBY EXPRESSLY AGREED AND DECLARED that during the subsistence of the term hereby created the building or buildings put up by the Lessees on the demised land shall always belong to the Lessees and on the determination of the term hereby created all the building or buildings and structures standing on the said demised premises shall automatically vest in the Lessor without payment of any compensation by the Lessor to the Lessees.

20) Thus, what is executed between Plaintiff's father and the developer was not a simple lease, but it was more in the nature of participation by the lessor in the process of construction of building on the leased land. Under clause 2(c), the Lessor determined the period during which the construction of the building was to be completed. Under clause 2(d) (ii) and (iii), the Lessor had the authority to determine use of material for construction and in the event of deviation from the plans and specifications sanctioned by the planning authority, the Lessor was empowered to direct the developer to substitute improper material and correct deviation from the plans and specifications. Under clause 2(l), insurance of the plot was to be bought in the joint names of Lessor and Lessee. In the event of failure on the part of the Lessee to insure the building, Lessor himself was to insure the same at the cost of the Lessee. Under clause 2(n), after expiry of the lease or its earlier determination, the Lessee was to deliver land alongwith building to the Lessor. Under clause (3), Lessor was entitled to enter upon and to take possession of the buildings constructed by the Lessees in the event of breach of conditions of lease or non-payment of rent. Under clause (4), the constructed buildings were to vest automatically onto the Lessor though during subsistence of the lease, buildings were to be owned by the Lessee.

21) Thus, in the present case, the Lessor has fully participated in cause of construction of the building on the demised land. He decided the period of construction, material to be used for construction, he had authority to verify whether construction was done in accordance with sanctioned plans or not, etc. The insurance for the building was to be in the joint names of Lessor and Lessee. Lessor had authority to himself to insure the building and most importantly, upon expiry or earlier determination of the lease, Lessor was to become owner of the building.

Considering the above contractual clauses, it can easily be discerned that Lessor had fully participated in construction of the building and therefore he would definitely fit into definition of the term 'promoter' under Section 2(c) of the MOFA.

22) In ***Haroon Hussain Khatri*** (supra), this Court has dealt with a clause in Lease Deed which made Lessor the owner of the building upon expiry of terms of lease. This Court held that the Lessor therefore would fit into the shoes of the promoter within the meaning of Section 2(c) of the MOFA. This Court held in paragraphs 10,11 and 12 of the judgment as under:

> 10) Under Clause 14 of the Indenture, it was agreed that upon expiry of term of 97 years or on determination of lease earlier, the lessee was under obligation to handover peaceful possession not only of the demised land, but also of the building. Clause 14 of the Indenture of Lease reads thus:
> On the expiration of the said term of ninety seven years or the sooner determination thereof to hand over peaceful possession of the demised land and the Buildings and fixtures then standing thereon in good and tenantable repair.
>
> 11) Thus, the building in the present case is not constructed by the lessee for his own benefit alone. The construction is actually caused by the landowner through the lessees. At the end of tenure of lease, lessor/landowner was to become owner of even the building. In these circumstances, the landowner would no longer remain in the capacity of mere lessor in respect of the land and would fit into the shoes of the Promoter within the meaning of Section 2 (c) of MOFA. Under Section 2 (c), the term Promoter is defined as under:
> xxx
>
> 12) Thus, every person who causes construction also becomes Promoter for the purpose of fulfillment of statutory obligations under MOFA. By having caused construction of the building, the lessor-Suleman Haji Khatri became Promoter in respect of the Project in question. Once the landowner assumed the characteristic of a Promoter, the statutory obligation under Section 11 to convey his right, title and interest in the land and the building applies to him. Thus, what needs to be conveyed in the present case by the land owner is his right, title and interest in the land, as well as his ownership in the building in accordance with Section 11(1) of MOFA.

23) The lease in the present case indicates much clear participation by the Lessor in the building than in ***Haroon Hussain Khatri***. Therefore, the Lessor would fit into the definition of the term 'promoter' in the present case.

24) Once Petitioners fit into the definition of the term 'promoter', obligations under Section 11 of MOFA gets attached to them. Under Section 11(1), there is a statutory obligation on the promoter to perfect his title and transfer his right, title and interest in the land and building to the organisation of flat purchasers within the prescribed period. Section 11 of MOFA provides 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 5 [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 Co-operative society formed under section 10 or, as the case may be, the Company or the association of apartment owners, as provided by sub-section (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 (16 of 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 (16 of 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 (16 of 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'.

25) Relying on use of the expression '*his right, title and interest in the land and the building*', Mr. Tamboly contends that since the developer possesses only leasehold rights, Respondent No.3-Society can secure only leasehold rights in the land. What is sought to be contended by Mr. Tamboly is in accordance with the ratio of the judgment of this Court in ***A.H. Wadia Trust and Others V/s. State of Maharashtra and Ors.***[9] in which it is held as under:

A. The position in law is well settled i.e., the society/flat purchasers in an Application for Unilateral Deemed Conveyance are only entitled to whatever right, title and interest the Promoter has in the said land. In the facts of the present case it is not in dispute that the Petitioners have only granted a Lease in respect of the said land to

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> the Lessee. The Lessee in turn has assigned all it's right, title and interest in the said land to the Promoters/Developers. Thus, even assuming that such assignment was valid, all that Respondent No. 3 could have sought for in the Application for Deemed Conveyance was for a Lease of the said land and not a Conveyance. Respondent No. 3 however, whether consciously or then ill-advisedly in the Application for Deemed Conveyance sought a Conveyance of the said land in its favour and not a Lease. The submission of learned Amicus Curiae that the impugned order is vulnerable on this ground alone is therefore one which is not without merit, and I am in full Agreement with the same. The impugned order in my view deserves to be set aside on this ground alone since the effect of impugned order is firstly, to convey to Respondent No. 3 right, title and interest in the said land which the Lessee and/or the Promoter/Developer themselves did not have and secondly to divest the Petitioners of divested its right, title and interest in the said land, without so much as affording the Petitioners an opportunity of a hearing.

26) However, as observed above, the Petitioners in the present case no longer remained in restrictive role as landowners and have actively participated in construction of the building. Therefore, they are also promoters within the meaning of Section 2(c) of the MOFA. In that sense, statutory obligation under Section 11(1) of MOFA is applicable to the Petitioners as well.

27) Even if the Petitioners were not to be held as promoters, still, conveyance of ownership rights in the building in favour of third Respondent-Society does not appear to be contrary to the scheme of Section 11 of MOFA. Under Section 11(1), promoter first needs to take all necessary steps to complete his title in the land and then to convey the same to the organisation of flat purchasers. In the present case, there was a deal between the Lessor and the Lessees, under which Lessor had agreed to sell the right of reversion in the land after accepting the agreed premium from flat purchasers. Arrangement is noted in paragraph 40 of Agreement for Sale executed with flat purchasers, which reads thus:

> 40. The tenure of the plot at present is leasehold, and the lease money payable by the Purchasers works out at 9 paise per square foot. The vendors have however negotiated with the Lessor of the said land for the purchase of the right of inversion of the said land. The purchaser's contribution for the said purchase would work out as Rs. 10/- per square foot of the saleable built up area of their flats. The purchaser agrees to contribute his/her/their proportionate share for purchasing the right of reversion of the said leasehold land at the of Rs. 10/- per square feet of saleable built up area of the flats. Till the said purchase is finalised the said amount shall be deposited with the vendors who in turn shall deposit the same with a bank for and on behalf of the flat holders. After the formation of the society by the flatholders the said deposit shall be transferred to the name of the society formed by the flatholders. The said deposit shall earn interest equivalent to the lease money payable in respect of the said plot. The said deposit amount shall be contributed by the purchaser at the time of taking possession of flats or shops to effect offset the payment of the lease money. This contribution shall be in addition to the purchase price mentioned in clause 3 above.
>
> If for any reason the said sale is not finalised or negotiations fail the said deposit amount shall be invested by the society, formed by the flat holders on interest with any Bank or a Public Body and income derived therefrom shall be sufficient for the payment of lease money.

28) Thus, the developers collected amount of Rs.10 per sq.ft. of saleable built-up area from the flat purchasers for the purpose of purchasing the right of reversion in the land. Thus, a specific representation was made by the developers to the flat purchasers that ownership rights in the land would be perfected by paying over to the landowners the amount collected from the flat purchasers and that the organisation of flat purchasers would ultimately acquire ownership rights in the land. Thus, the concept of perfection of title by the Developer from the landowner was specifically reflected in Agreement for Sale executed with the flat purchasers.

29) In any case, the arrangement under Clause 40 is taken into consideration only as a fallback situation and the main right of the Society to secure conveyance of ownership rights in the land flows through capacity of the Petitioners as promoters. By subjecting the land to housing scheme and by actively participating in construction of the building, Petitioners/their father assumed on to themselves the obligations of a promoter. If the intention of the Petitioners/their father was to simply grant lease of vacant land with permission to construct a building, they may not have been treated as promoters. However, on account of active participation in construction activity as well as contractual stipulations for acquiring ownership of the building, Petitioners clearly stepped into the shoes of promoters within the meaning of Section 2(c) of the MOFA.

30) The right of securing ownership of the building upon expiry or early determination of lease is an important factor for determining role of Lessor as promoter. In a case where lessee constructs the building and defaults in payment of rent or commits breach of lease terms, the Lessor acquires ownership of the building. In such case, from whom the organisation of flat purchasers would acquire ownership of that building becomes questionable. Obviously, the Lessor who is entitled to acquire ownership of the building comes under the statutory obligation to convey his ownership. In that sense, Lessor becomes the owner of the building. He is obligated under the MOFA to transfer his ownership of the building onto organisation of flat purchasers. Therefore, in a case where there is an arrangement for acquiring ownership in the constructed structure by the Lessor, such Lessor is required to be treated as promoter within the meaning of Section 2(c) of the MOFA. Otherwise, the organisation of flat purchasers would never acquire ownership in respect of the building and the same would always remain with the Lessor. In the present case also, upon expiry of the Lease in the year 2072, the Petitioners would acquire ownership of the building. In that sense, if the role of a promoter is restricted only to a developer/lessee, he not being absolute owner of the building, would not be able to convey ownership in the building to the organisation of flat purchasers. Therefore, the ultimate owner of the building (lessor) needs to be roped into the definition of the term 'promoter' for the purpose of ensuring that ownership in the building is assigned to the society. In view of the above discussion, I am of the view that Petitioners/their father are required to be treated as promoters on account of unique arrangement of lease executed with the lessees.

31) Mr. Tamboly relied upon clause 34 of the Agreement for Sale in support of his contention that the developers of flat purchasers had agreed to assign only leasehold rights in favour of the Society. Clause 34 of Agreement for Sale reads thus:

> 34. After the building is complete and ready and fit for occupation and after the society or Limited Company or an Association of Apartment Owners is incorporated and registered strictly complying with all the terms and conditions of their respective Agreements with the builders and only after all the flats/garages/shops in the said building have been sold and disposed of by the Builders and after the Builders have received all dues payable to them under the terms of the Agreement with various purchasers of flats/garages/shops the Builders shall assign the said building together with their leasehold rights in favour of such co-operative Housing Society or Private Limited Company or an Association of Apartment Owners as the case may be.

32) No doubt, the developers had agreed to assign only leasehold rights in favour of the Society, however, clause 34 has to be read with clause 40, which contains arrangement of perfection of ownership rights by the developer after collection of agreed sum from the flat purchasers. The case thus involves a unique arrangement under which developers agreed to assign leasehold rights and also promised to perfect their title for the purpose of transfer of ownership rights in favour of the Society. It therefore cannot be contended that Section 4 Agreement executed with the flat purchasers did not contemplate conveyance of ownership rights in the land in favour of the Society.

33) In ***Haresh Vijaysinh Bhatia & Ors. Vs. District Deputy Registrar & Ors.***[10], this Court has held that if the promoter is the owner of the land, he cannot agree to convey only leasehold rights in the land. This Court held thus:

> **56.** Thus, conjoint reading of provisions of Section 11(1) MOFA, Rule 5 and Clause 13 of Form V agreement under MOFA Rules leaves no manner of doubt that the promoter is required to transfer and convey in favour of a society, "his right, title and interest in the land and building". Thus, everything that is owned by a promoter must be transferred and conveyed in favour of a cooperative society or association formed by flat purchasers. Section 11 MOFA does not permit a promoter to hold onto himself any part of right in the land and building. Thus, MOFA contemplates automatic divesting of ownership of promoter in the land and transfer thereof in favour of society formed by home buyers. What is performed by the competent authority is to issue a certificate recognising and certifying such transfer, for the purpose of registration thereof for mutation of name of society in the revenue records.
>
> **57.** Thus, if the promoter is the owner of the land, he has no option but to transfer and convey his ownership in the land and building in favour of society. Section 11 MOFA does not permit a promoter, who is owner of land, to grant only leasehold rights in the land or building in favour of the Society. Whatever is owned by the promoter must fall in the ownership of the Society. This principle recognised under Section 11 MOFA is premised on the concept that with sale of each flat in the building, the title of the promoter in the land gets diluted. Section 4

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MOFA seeks to strike at the root of the mischief that was being played by the promoters in retaining ownership in the land despite sale of all flats in the building. The promoters/developers were indulging in malpractices of retaining ownership in the land with the ulterior motive of carrying out further construction upon increase of FSI or monetising ownership rights at the time of re-development of the building by denying transfer of ownership in the land in favour of association formed by flat purchasers. The promoters/developers were erroneously representing to the flat purchasers that what is being sold to them is only the constructed unit, without any title in the land on which building is constructed. Section 11 MOFA seeks to nip in the bud this malpractice by promoters and developers in seeking to segregate the concepts of "ownership in the land" and "ownership of constructed unit". The mischief played by promoters/developers in transferring ownership of only constructed units in favour of flat purchasers was contrary to the fundamental principle that construction of such sold unit has a direct nexus with the land. Planning norms permit construction of units corresponding to the area of land by application of floor space index (FSI). If permissible FSI is 1.00, construction of built-up area corresponding to the land area can be undertaken. If permissible FSI is 4.00, units totally admeasuring upto four times of land area can be constructed. Since flats/units are constructed utilising FSI generated out of the land and transfer of ownership in constructed units under MOFA would necessarily dilute ownership right in the land as well. Merely because construction of multiple flats/units can be undertaken as per permissible FSI, the promoters/developers were misusing this concept by representing to the home buyers that sale of constructed flats would not entail transfer of ownership in the land, which would always be retained by them.

62. Thus, a statutory right is created in favour of a society or association of flat purchasers to have in its favour conveyance and transfer of every right which the promoter possessed in respect of the land on which building is constructed. If promoter is the owner of land, he must transfer and convey his ownership right in favour of the Society. If on the other hand, promoter is a mere lessee, he must transfer his leasehold rights in the building in favour of the Society. Promoter cannot provide for demise of only leasehold rights if he is the owner of the land.

65. The expression "in accordance with the agreement executed under Section 4" cannot be read in isolation in such a manner that the other words used in the same sub-section are rendered superfluous. If agreement provides for non-conveyance of land in favour of society and application for deemed conveyance is to be decided strictly in accordance with the covenants of that agreement, the words "and convey ... his right, title and interest in the land and building" used in Section 11(1) would be rendered otiose. In my view therefore, the expression "in accordance with the agreement executed under Section 4" needs to be harmoniously constructed with the words "and convey ... his right, title and interest in the land and building". Thus while conveyance can be granted in accordance with MOFA Agreement, regard must be had to the provision which mandates conveyance of the whole of promoter's right, title and interest in the land and building. In that sense, the expression "in accordance with the agreement executed under Section 4" is controlled and guided by the words "and convey ... his right, title and interest in the land and building" used in the same sub-section. Therefore, while granting conveyance in accordance with the MOFA Agreement, the competent authority must convey promoter's entire title in the land and building. In other words, the contractual covenant in MOFA Agreement cannot defeat the statutory right of association of flat purchasers to have promoter's title in the land and building conveyed in its name in entirety.

67. If above interpretation is not made, the same would result in incongruity and absurdity as statutory right of association of flat purchasers to have conveyance of promoter's title in entirety would get defeated by contractual covenant in MOFA Agreement. As observed above, Section 11 creates a statutory right in favour of societies to have conveyed to themselves promoter's "right, title and interest in the land and building" which would then get defeated by a contractual covenant in the agreement providing for demise of lease or non-conveyance of any portion of land. It is well-settled principle of law that any interpretation which leads to confusion or absurdity must necessarily be avoided.

72. In my view therefore, the competent authority possesses the necessary jurisdiction to direct conveyance of land and building on ownership basis where the promoter is owner of the land by ignoring covenant in the agreement, which does not provide for conveyance of land on ownership basis or grant of mere lease thereof.

Thus, in ***Haresh Vijaysinh Bhatia*** (supra), this Court has held that the Competent Authority possesses the necessary jurisdiction to direct conveyance of the land and building(s) on ownership basis where the promoter is the owner of the land by ignoring covenant in the agreement, which does not provide for conveyance of land on ownership basis but grant of mere lease thereof.

34) Mr. Tamboly's next objection to the impugned order of the Competent Authority is that the Authority did not have jurisdiction to try and entertain application for deemed conveyance since assignment of lease is already executed in favour of third Respondent-Society. No doubt, occurrence of 'failure' under Section 11(3) of MOFA becomes a jurisdictional fact for the Competent Authority to exercise jurisdiction. When there is no failure, Competent Authority cannot exercise jurisdiction under Sections 11 (3) and (4) of MOFA. In the present case, the act of execution of assignment of lease is performed by the developer/lessees and only part of obligations under Section 11(1) is fulfilled. It is not that in every case, there can be only single promoter and there can be multiple promoters in the facts of given case. In the present case, since construction is jointly caused by Lessor and the Lessees, both would be 'promoters' within the meaning of Section 2(c) of MOFA. What is executed through Indenture of Assignment is only partial fulfillment of obligation under Section 11 of MOFA by one of the promoters. The other promoter i.e. Petitioners, are yet to fulfill their obligation under Section 11(1) of MOFA and therefore, *qua* the Petitioners, there was a failure for the purpose of Competent Authority to exercise jurisdiction under Section 11(3) of MOFA. In my view therefore, mere execution of Indenture of Assignment dated 17 March 1978 would not result in absence of jurisdiction for the Competent Authority to decide the application for deemed conveyance filed by third Respondent-Society.

35) Respondent No.3-Society is entitled to convey in its favour right, title and interest on each of the promoters. Since the Petitioners had failed to convey their right, title and interest in the land, and were illegally retaining the same, the Competent Authority has rightly stepped in and exercised jurisdiction under Section 11(3) of MOFA.

36) Mr. Tamboly has raised argument of estoppel against Respondent No.3-Society on the strength of it executing the Indenture of Assignment dated 17 March 1978. However, it is well settled position that there can be no estoppel against statute in relation to MOFA obligations. This Court has held in ***Prestige Garden A-1 CHSL vs. State of Maharashtra and Ors.***[11] that there can be no estoppel against a statutory right. This Court held as under:-

> 38. The Unilateral Deed of Conveyance was registered conveying land admeasuring 3461.43 square meters. Thereafter subsequent to the objection raised by Respondent No. 10, the communication dated 10th June, 2021 was addressed to the Petitioner-Society directing it to register the Deed of Rectification which was done on 4th August, 2021. As discussed above, the statutory provisions entitle the Petitioner to the Promoter's right, title and interest in the land and building and by the impugned order the Competent Authority has conveyed only the constructed structure which was in clear violation of the mandate of MOFA. The submission on principles of estoppel and approbation and reprobation is premised on the reasoning that the Petitioner-Society has obtained a benefit under the impugned order and having obtained benefit and acted upon the order, cannot now turn back and assail the said order. The submission overlooks the position that under the statutory provisions, the Petitioner-Society was entitled to the conveyance of the land as well as the building. It is settled position in law that there cannot be any estoppel against statute. In view of the provisions of MOFA it cannot be said that the Petitioner Society has received any benefit under the impugned order which but for the impugned order the Petitioner was not entitled to and thus having accepted the benefit now cannot turn back and challenge the order. The Petitioner in the present case has been denied what is rightfully due to them under MOFA, i.e. conveyance of the land and the building. It cannot be said that the Petitioner-Society with full knowledge of its legal rights had accepted the impugned order. In my view, interest of justice demands that the Petition is not thrown out on procedural law of principle of estoppel or acquiescence. Weighed against the substantial justice, in my opinion, the submission on the aspect of estoppel and approbation and reprobation is liable to be rejected.

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Therefore, mere execution of Assignment of Lease with the developers would not estop the Respondent No. 3 Society from filing application under Section 11(3) of MOFA.

37) The objection of violation of principles of natural justice raised on behalf of the Petitioners also does not appeal to this Court. The Petitioners have admitted that they received notices issued in the name of their father. They in fact wrote to the Competent Authority after receipt of the notice. They ought to have appeared before the Competent Authority and opposed the Applications. However, they took a calculated chance. Now they cannot turn around and complain of violation of principles of natural justice.

38) In any case, order passed by the Competent Authority granting deemed conveyance under Section 11 of MOFA is not final determinative of rights and entitlement of the parties *qua* the conveyed land as held by the Apex Court in ***Arunkumar H. Shah HUF V/s. Avon Arcade Premises Co-operative Society Limited and Ors.***[12] Therefore, the remedy of the Petitioners to file suit challenging the conveyance is not barred.

39) As of now, the order of deemed conveyance granted in favour of Respondent No.3-Society appears to be just and fair. Reliance by Mr. Khandeparkar on judgment of this Court in ***Sushanku Builders Ltd.*** (supra) in this regard is apposite. The impugned order results in a situation where Respondent No.3-Society has acquired title in respect of the land admeasuring 3901.70 sq.m. on which its building is constructed.

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The order of deemed conveyance would assist the Petitioners in going for redevelopment of its building without cause of any hindrance by the Petitioners. In peculiar facts of the present case, if contention of the Petitioners is accepted, they would acquire ownership even in the redeveloped building upon expiry of Lease Deed on 14 October 2072. The order appears to this Court to be just and proper, which results in fulfillment of objectives for which MOFA has been enacted.

40) In view of the above discussion, I find no reason to interfere in the impugned order. Writ Petition is accordingly **dismissed.** There shall be no order as to costs.

[SANDEEP V. MARNE, J.]