IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1184 OF 2026

Hasmukh Narrotamdas Malkan .. Petitioner

V/s.

The District Deputy Registrar
Societies, Mumbai City - 3 & Ors. .. Respondents

……...

Mr. Sharan Jagtiani, Senior Advocate a/w Mr. Aditya Thakkar, Ms. Rishika Harish, Mr. Ronish Mehta, Ms. Sonal Awasthi and Mr. Jerome Stephen i/b Vinod Mistry & Co. for the Petitioner.

Mr. Vikrant Parshurami, AGP for Respondent No. 1 – State.

Mr. Shiraz Rustomjee, Senior Advocate a/w Mr. Viraj Parekh, Mr. Jugal Haria, Mr. Rajesh Sharma, Mr. Wasim Shaikh and Ms. Tejashree Parab i/b Rajesh S. Sharma & Associates for Respondent No. 2.

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CORAM : FARHAN P. DUBASH, J.

RESERVED ON : 8th OCTOBER 2026
PRONOUNCED ON : 19th OCTOBER 2026

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JUDGMENT:

1. The present Writ Petition challenges the order dated 20th March 2025 passed by Respondent No. 1 – District Deputy Registrar of Societies, Mumbai City – 3 (the *"Competent Authority"*), granting deemed conveyance in favour of

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Respondent No. 2 – Society (the ***"impugned order"***). The property comprises Plot Nos. 157, 158 and 159 and Final Plot No. 324 of TPS II, Dixit Road, Vile Parle (East), Mumbai – 400057, admeasuring 4133.68 sq. mtrs., with a net area of 4059 sq. mtrs. after accounting for the setback (the ***"subject plot"***).

2. The principal question considered in this judgment is whether the impugned order addresses the material submissions advanced by the Petitioner and gives reasons for rejecting them. This question assumes particular significance because the application had earlier been remitted by this Court to the Competent Authority with an express direction to record reasoned findings on the parties' submissions.

BRIEF FACTS

3. The material facts and the proceedings leading to the present Writ Petition are set out below:

a) M/s. Vimal Builders was originally a partnership firm comprising the Petitioner and Respondent Nos. 3 to 8. The firm was dissolved with effect from 29th January 1988, whereupon M/s. Vimal Builders became the Petitioner's proprietorship.

b) By an Agreement for Sale dated 12th February 1973, the partnership firm agreed to purchase the subject plot from the Jani's. Certain old chawls and shops occupied by tenants then stood on the plot.

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c) On 31st May 1974, the Municipal Corporation of Greater Mumbai (**"MCGM"**) sanctioned a plan for construction of a building known as 'Vimal Apartments', comprising a ground floor and six upper floors, on the subject plot.

d) Construction of Vimal Apartments is stated to have been completed on or about 16th May 1975. A Building Completion Certificate of that date was also issued.

e) M/s. Vimal Builders entered into agreements for sale with individual purchasers of residential flats in Vimal Apartments. The sale of flats is stated to have continued until 1979.

f) On 26th February 1976, the MCGM is stated to have approved a layout plan permitting construction of a second building on the subject plot up to the plinth level. The plinth is stated to have been completed in 1976.

g) According to the Petitioner, encroachments and unauthorised extensions by tenants occupying parts of the subject plot prevented further progress, and the proposal for construction of the second building remained pending before the MCGM.

h) The flat purchasers formed Respondent No. 2 – Society, which was registered on 30th October 1982 under the Maharashtra Co-operative Societies Act, 1960, as 'Vile Parle Vimal Gauri Co-operative Housing Society Ltd.' (the ***"Society"***).

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i) In 1989, M/s. Vimal Builders instituted Suit No. 2430 of 1989 in this Court against the Jani's for specific performance of the Agreement for Sale dated 12th February 1973. The suit was decreed on 17th January 1992. Pursuant to the decree, the Prothonotary and Senior Master of this Court executed a Deed of Conveyance of the subject plot in favour of M/s. Vimal Builders.

j) The Society thereafter instituted Suit No. 4231 of 1993 in this Court seeking conveyance of the subject plot. In 2012, following the enhancement of the City Civil Court's pecuniary jurisdiction, the suit was transferred to the City Civil Court at Dindoshi and renumbered as S.C. Suit No. 1358 of 2014.

k) On 12th March 2020, the Society applied to withdraw that suit with liberty to institute a fresh suit or approach the Competent Authority for deemed conveyance. The application was allowed on 12th January 2021.

l) M/s. Vimal Builders challenged that order before this Court insofar as it granted liberty to institute a fresh suit on the same cause of action. By an order dated 16th March 2021, this Court recorded the Society's statement that it did not wish to file a fresh suit on the same cause of action and permitted unconditional withdrawal of S.C. Suit No. 1358 of 2014.

m) On 25th March 2021, the Society filed Application No. 50 of 2021 before the Competent Authority under Section 11 of the Maharashtra

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Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**"MOFA"**), seeking a certificate of deemed conveyance in respect of the subject plot.

n) By an order dated 11th August 2023, the Competent Authority dismissed the application on the ground that disputed questions of ownership could not be adjudicated in summary proceedings under Section 11 of MOFA.

o) The Society challenged that order in Writ Petition No. 13103 of 2023. By an order dated 29th November 2024, this Court, with the consent of the parties, set aside the order dated 11th August 2023 and remitted Application No. 50 of 2021 to the Competent Authority for fresh consideration. The Competent Authority was specifically directed to consider the submissions advanced by the parties, record reasoned findings on them and thereafter decide the application.

p) Upon remand, the Competent Authority reheard the application and passed the impugned order dated 20th March 2025, granting deemed conveyance of the subject plot in favour of the Society.

4. In these circumstances, M/s. Vimal Builders has filed the present Writ Petition. Mr. Sharan Jagtiani, learned Senior Counsel, appeared for the Petitioner, whilst Mr. Shiraz Rustomjee, learned Senior Counsel, appeared for Respondent No. 2 – Society.

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5. Both parties advanced extensive oral submissions and tendered written submissions and compilations of judgments, which were taken on record. The Petitioner challenged, amongst other matters, the authority of the Society's Secretary to file the application and the Society's entitlement to conveyance of the entire subject plot. It contended that the agreement(s) for sale contemplated a layout comprising more than one building; that the Society had acknowledged the Petitioner's right to construct a second building by utilising the balance FSI/TDR on three occasions, in 1989, 1993 and 2001; and that the plinth of that building, constructed pursuant to plans approved in 1976, continued to exist on the subject plot. The parties addressed arguments on these issues as well as on the absence of reasons in the impugned order.

6. Having considered the impugned order and the rival submissions, I consider it appropriate to decide the present Writ Petition on the ground that the Competent Authority failed to address material submissions and record reasons. The discussion that follows is therefore confined to that question. References to the Petitioner's other objections are made only to examine whether they received consideration. No opinion is expressed on their merits or on the Society's ultimate entitlement to deemed conveyance.

SUBMISSIONS OF THE PETITIONER

7. Mr. Jagtiani submits that the impugned order contains no cogent reasons for its conclusions and does not disclose consideration of the relevant material or the submissions advanced before the Competent Authority. He contends that

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the duty to give reasons is an integral part of the principles of natural justice and a safeguard against the arbitrary exercise of quasi-judicial power.

8. He submits that this duty applies to proceedings under Section 11 of MOFA, in which the Competent Authority must determine the applicant's entitlement to deemed conveyance by a reasoned order. He relies upon the decision of the Supreme Court in ***Arunkumar H. Shah HUF v. Avon Arcade Premises CHS & Ors.***[1]

9. Mr. Jagtiani invites attention to the order dated 29th November 2024 by which this Court remitted the application to the Competent Authority. He submits that, despite the express direction to record reasoned findings on all the submissions advanced by the parties, the impugned order does not address the Petitioner's material objections.

10. He further submits that the summary nature of the proceedings does not dispense with the duty to apply one's mind and give reasons. He refers to Rule 13(3)(d) of the Maharashtra Ownership of Flats Rules, 1964, which contemplates a hearing on merits when only one party is present, and Rule 13(5), which provides for oral arguments after receipt of the application and replies, followed by an appropriate order. According to him, these provisions require consideration of the material issues arising for determination.

11. Mr. Jagtiani also relies upon ***Mohan Lal v. Kartar Singh***[2] to submit that an authority exercising summary jurisdiction cannot disregard relevant and germane issues.

1 2025 INSC 524
2 1995 Supp (4) SCC 684

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12. Relying upon ***Daya Ram v. Raghunath***[3], he submits that reasons connect the material considered with the conclusions reached. They enable the affected party to understand why the decision has been made and enable a Court exercising appellate or judicial review jurisdiction to examine its validity.

13. Mr. Jagtiani places reliance upon ***Bharat Nidhi Limited v. SEBI***[4] and ***Bhansali Industries v. Union of India***[5] to submit that conclusions unsupported by reasons cannot sustain an order. He also relies upon ***ECGC Limited v. Nifty Labs Private Limited***[6] on the obligation of an adjudicatory authority to furnish reasons.

14. According to Mr. Jagtiani, the Competent Authority was required to consider the agreements for sale as a whole and determine the parties' respective entitlements in light of all the relevant clauses. He also refers to the sanctioned plan of 1974, demarcating the structures to be demolished; the sanctioned plan of 1976, pursuant to which the Petitioner claims to have commenced construction of the second building; and the alleged admission in the Society's plaint in Suit No. 4231 of 1993, acknowledging the Petitioner's balance FSI and expressing no objection to its use for that building. He relies upon ***Mazda Construction Company v. Sultanabad Darshan CHS Ltd.***[7], ***Marathon Next Gen Realty Limited, Mumbai & Anr. v. Competent Authority, DDR and Ors.***[8] and ***Tushar Jivram Chauhan v. State of Maharashtra***[9] to submit that the Competent Authority must consider the

3 2007 (11) SCC 241
4 Order dated 11th June 2025 passed in Writ Petition No. 3977 of 2024
5 2024 SCC OnLine Bom 3339
6 Order dated 19th December 2024 passed in Commercial Arbitration Petition (L) No. 8122 of 2023
7 2012 SCC OnLine Bom 1266
8 2015 SCC OnLine Bom 4889
9 2015 (4) Mh. L.J. 867

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agreements as a whole, together with the other relevant documents, whilst determining the extent of the Society's entitlement to deemed conveyance.

15. In response to the Society's submission that this Court may sustain the impugned order on an alternative ground, Mr. Jagtiani submits that such a course is not warranted where the Competent Authority has failed to consider the material issues placed before it. He contends that supplying reasons in these circumstances would cure a substantive defect in the decision-making process, rather than overcome a mere technicality. In this regard, he relies upon ***Mohinder Singh Gill v. Chief Election Commissioner***[10].

16. Mr. Jagtiani accordingly submits that the impugned order is liable to be set aside for failure to record reasons and comply with the principles of natural justice.

SUBMISSIONS OF RESPONDENT NO. 2 – SOCIETY

17. *Per contra*, Mr. Rustomjee submits that the impugned order gives sufficient reasons for granting deemed conveyance. He points out that the Competent Authority summarised the Petitioner's objections in paragraph 14 and recorded its reasons in paragraph 16. He submits that the Authority correctly held that disputes concerning title, FSI, development rights and the area of the property fall within the jurisdiction of the Civil Court.

18. Mr. Rustomjee submits that the Competent Authority considered the provisions of MOFA and the agreements for sale, particularly clause 22. He

10 (1978) 1 SCC 405

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contends that disputes over ownership of the chawls and shops do not, by themselves, prevent deemed conveyance and that the parties would remain bound by the final orders in the pending civil proceedings. He further submits that the Authority correctly recognised the Petitioner's statutory obligation as promoter to convey the property and the Society's corresponding right to apply under Section 11(3) of MOFA.

19. Relying upon ***S. N. Mukherji v. Union of India***[11], Mr. Rustomjee submits that a quasi-judicial authority need not give reasons with the same degree of elaboration as a Court of law. It is sufficient that the reasons are clear and explicit and disclose consideration of the points in controversy.

20. Alternatively, Mr. Rustomjee submits that, even if the reasons are found inadequate, this Court should sustain the impugned order on an alternative ground. He relies upon ***Assistant General Manager, State Bank of India v. Tanya Energy Enterprises***[12] to submit that fairness and justice should prevail over technicalities. He also relies upon ***Gayatri Construction v. State of Maharashtra***[13] to contend that a remand should be avoided where it would serve no useful purpose.

21. Mr. Rustomjee accordingly seeks dismissal of the Petition, submitting that the reasons recorded by the Competent Authority are sufficient to sustain the grant of deemed conveyance.

11 (1990) 4 SCC 594
12 2025 INSC 1119
13 2024 SCC OnLine Bom 438

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REASONS, ANALYSIS AND FINDINGS

22. I have heard both parties and, with their able assistance, perused the record. The question is whether the impugned order discloses consideration of the material objections to the Society's application. In response to a specific query from this Court, Mr. Rustomjee identified the following portions of paragraph 16 as containing the relevant reasons and findings:

> *"16. … …*
>
> *… …*
>
> *v. This authority has power to decide the deemed conveyance application which are summary in nature.*
>
> *w. This Authority under Section 5-A of the MOFA has limited jurisdiction to try and entertain the application on the basis of the Agreements executed under Section 4 of MOFA between the Promoters and the purchasers of the Flats.*
>
> *x. Opponent No. 01 and 02 as owner and Developer, is falling in the definition of the "Promoter", under 2 (C) of MOFA, 1963 and therefore liable to comply with the obligation of granting conveyance within the time stipulated under the provisions of the MOFA.*
>
> *y. This authority perused all the submissions and documents placed before this authority and concluded that there is dispute regarding the ownership of chawl and shops and various cases are pending but though there is litigation regarding the property and regarding the ownership of chawl and shops and also there are cases pending in various court, the Opponent no. 01 & 02 have not produced any restriction orders from any forum to hold up the deemed conveyance proceeding. Therefore society's legal right to get unilateral conveyance can not be held up. But it is observed that the final order passed in the pending suit will be binding on the concerned parties.*
>
> *z. The Competent Authority has summary & limited powers only to exercise & enforce the statutory obligation of Conveyance u/s. 11 of*

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MOFA based on sale agreement. Any grievances of rights on FSI or dispute regarding the property is a matter under Jurisdiction of Civil Court.

aa. The opponent no. 01 and 02 as the builder and landowners fall within the definition of promoters under 2 (C) of MOFA, 1963 and as per MOFA agreement executed with the flat purchasers, the builder as promoter was under an obligation to execute conveyance in favour of applicant society of subject property.

bb. As per the provisions of MOFA, 1963, if promoter fails to convey the land and building to the organization of person who takes flats, which is registered either as Co-operative Societies, or as accompany or to an association of flat takers, then they can make application in writing to concern Competent Authority as per section 11(3) of MOFA, 1963. Reading of section 10 and 11 together with section 5 A the Competent authority is a duty and obligation which the promoter is to perform in law. That is to convey the title and execute the documents according to the agreement.

cc. In clause no. 22 of the agreement for sale executed between the flat purchasers and the builder/developer, the builder to convey the plot of land described in the first schedule together with the building standing thereon in favour of society after the said building is complete and after the said society is registered.

dd. In the first schedule in MOFA agreement, the area is mentioned admeasure 4944 sq. yards equivalent to 4433.87 sq. mtrs. being a portion of big plot of land admeasuring 8118 sq. yards. Forming portion of S. No. 75 and 76 being plot no. 157, 158 and 159, final plot no. 324 (part of TPS no. II) Vile Parle.

ee. As per section 11 of the MOFA, the Competent Authority is required to convey the right, title and interest of the Promoter in accordance with the flat purchaser's agreement. Therefore it is necessary, to grant the certificate of entitlement for the land mentioned in the first schedule mentioned in the MOFA agreement.

ff. In view of all above facts and circumstances, the application of applicant society is accepted."

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23. A perusal of these paragraphs shows that the Competent Authority recognised both, its limited jurisdiction and its obligation to determine entitlement to conveyance on the basis of the agreement(s) for sale. It referred to clause 22 and the first schedule, but did not examine the other clauses on which the Petitioner relied to contend that the agreed development comprised more than one building. The impugned order does not explain why those clauses did not affect the Society's claim to conveyance of the entire subject plot. Merely recording the Petitioner's submissions in an earlier part of the impugned order does not answer them. The requirement to consider the agreements and other relevant documents, reflected in ***Mazda Construction*** (supra), ***Marathon Next Gen Realty Limited*** (supra) and ***Tushar Jivram Chauhan*** (supra), therefore remained unfulfilled.

24. The same difficulty arises in relation to the alleged admission in paragraph 12 of the Society's plaint in Suit No. 4231 of 1993. The Competent Authority recorded this objection in paragraph 14(e), but did not examine its relevance or effect. The Petitioner relied upon that pleading, the contractual clauses and the plan approved in 1976 to support its claim to the balance FSI and its right to construct the second building, whose plinth was stated to remain on site. The objection required consideration insofar as it bore upon the extent of conveyance sought under the agreement(s) for sale. The general observation that disputes concerning FSI and property rights fall within the Civil Court's jurisdiction does not explain why the documents relied upon had no bearing on that enquiry.

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25. The Petitioner also disputed the authority of the Society's Secretary to file the application. The Competent Authority was required to consider that objection and record its finding. The impugned order contains no such determination.

26. There is a further aspect. By its order dated 29th November 2024, this Court had expressly directed the Competent Authority to consider the parties' submissions and record reasoned findings before deciding the application afresh. The omission to address the material objections identified above is also a failure to comply with that direction. A recital of the submissions, followed by conclusions that do not deal with them, does not fulfil the purpose of the remand.

27. There is a further circumstance which underscores the need for a reasoned consideration of the parties' submissions. By its order dated 11th August 2023, the Competent Authority had dismissed Application No. 50 of 2021 on the ground that disputed questions of ownership could not be adjudicated in summary proceedings under Section 11 of MOFA. That order was subsequently set aside by this Court and the application remitted for fresh consideration. Upon remand, the Competent Authority, on the same factual material, allowed the application and granted deemed conveyance in favour of the Society. The Authority was entitled to arrive at a different conclusion upon reconsideration. It was, however, required to explain, by reference to the relevant material and the rival submissions, why the Society was entitled to the conveyance sought. In the circumstances of this case, the omission to address the Petitioner's material objections assumes added significance.

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28. The summary nature of the proceedings does not answer these deficiencies. It may bear upon the scope of the enquiry and the length of the order, but it does not relieve the Competent Authority of its duty to consider the issues germane to that enquiry and explain its decision. The Petitioner was entitled to know why its material objections did not affect the relief granted to the Society. This approach is also supported by ***Mohan Lal*** (supra), relied upon by Mr. Jagtiani.

29. The submission based on ***S. N. Mukherji*** (supra) must be considered in this light. A quasi-judicial authority need not write an elaborate judgment or answer every argument separately. Its reasons must, however, disclose consideration of the material points in controversy. Here, the deficiency is not the brevity of the reasons. It is the absence of any reasoned consideration of the contractual clauses, the alleged admissions and supporting documents, and the objection to the Secretary's authority. The paragraphs identified by Mr. Rustomjee state the promoter's obligation to convey and refer to clause 22, but do not explain why the Petitioner's objections to the conveyance sought were rejected. The decision therefore does not assist the Society.

30. ***Tanya Energy*** (supra) also does not assist the Society. That decision recognises that, in an appropriate case, an alternative ground traceable to the factual narrative or relevant record may sustain an administrative order, provided the affected party has notice and an opportunity to respond. The present case requires consideration of competing submissions concerning the agreements and the supporting documents, on which the Competent Authority has recorded no findings despite the earlier remand. Sustaining the impugned order would require this Court to undertake that examination in the

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first instance. In these circumstances, I do not consider it appropriate to uphold the impugned order by supplying an alternative basis for the grant of deemed conveyance.

31. The reliance upon ***Gayatri Construction*** (supra) also does not advance the Society's case. The principle invoked is that a remand need not follow where it would serve no useful purpose. In the present case, reconsideration would serve a specific purpose - the Competent Authority must examine the material objections, consider the Society's response and explain its determination of the application. The outcome of that exercise has not been decided by this Court. The defect, therefore, cannot be treated as an empty formality. In these circumstances, the principle relied upon by Mr. Jagtiani in ***Mohinder Singh Gill*** (supra) supports requiring the Competent Authority to give its own reasons for its decision.

32. The requirement is particularly clear and well settled in proceedings under Section 11 of MOFA. In ***Arunkumar H. Shah HUF*** (supra), the Supreme Court has emphasised the need for a reasoned order when deciding an application under that provision. The Competent Authority's reference to the statutory duty to convey does not dispense with the need to determine the entitlement claimed in the particular application and address the material objections to it.

33. The decisions in ***Daya Ram*** (supra), ***Bharat Nidhi Limited*** (supra), ***Bhansali Industries*** (supra) and ***ECGC Limited*** (supra) likewise underscore the importance of reasons in adjudication. Reasons enable the parties to understand the decision and permit meaningful judicial scrutiny. In the

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present case, the omissions identified above concern matters bearing directly upon the application. Taken together, they render the impugned order unsustainable.

OPERATIVE ORDER

35. For all these reasons, the impugned order is required to be set aside and Application No. 50 of 2021 remitted to the Competent Authority for fresh consideration. The Authority shall hear the parties, consider their material submissions and the relevant documents, and pass a reasoned order in accordance with law. All contentions on merits remain open. The present Writ Petition is accordingly disposed of in terms of the following order:

:: ORDER ::

A. The impugned order dated 20th March 2025 passed by Respondent No. 1 is set aside.

B. Application No. 50 of 2021 is remitted to Respondent No. 1 for fresh consideration. Respondent No. 1 shall afford all parties an opportunity of being heard, consider their material submissions and the relevant documents, and thereafter pass a reasoned order in accordance with law. Considering that the application was filed in 2021 and will now be heard and decided for the third time, Respondent No. 1 shall complete this exercise as expeditiously as possible and in any event, before 31st March 2027.

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C. It is clarified that this judgment is confined to the failure of Respondent No. 1 to address the material submissions advanced before it and record reasons for its decision. References to the Petitioner's other objections are made only to examine whether they received consideration. This Court has expressed no opinion on the merits of those objections or on the Society's entitlement to deemed conveyance. All contentions of the parties on the merits remain open for determination by Respondent No. 1 in accordance with law.

D. There shall be no order as to costs.

34. This judgment shall be digitally signed by the Personal Assistant / Private Secretary of this Court. All persons / parties shall act on the digitally signed copy of this judgment, downloaded from the official website of the Bombay High Court.

(FARHAN P. DUBASH, J.)

Shubham Gadhavepatil

SHUBHAM SHESHRAO GADHAVEPATIL

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