



Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL WRIT PETITION NO. 8145 OF 2014
WITH
INTERIM APPLICATION NO.13159 OF 2025**

**SHABNOOR
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The Lokmanya Pan Bazar Association Ltd.,
A Guarantee-Company registered under the
Companies Act, I of 1956 and having its
registered office at Lokmanya Pan Bazar,
Eastern Express Highway, Anik,
Sion (East), Mumbai 400 022

... Petitioner

Vs.

- 1. The State of Maharashtra,**
Mantralaya, Mumbai 400 032.
- 2. The District Deputy Registrar,**
Cooperative Societies (2), Mumbai being
the Competent Authority for Eastern
Suburbs of Greater Bombay appointed
under Section 5-A of the Maharashtra
Ownership Flats (Regulation of the
Promotion of Construction, Sale,
Management and Transfer) Act, 1963
and having his address at Room No.201,
Konkan Bhavan, 2nd Floor,
Navi Mumbai 400 614
- 3. Harshad Coop. Housing Society Ltd.,**
a Cooperative Society registered under
the Maharashtra Cooperative Societies
Act, 1960 and having its registered
office and estate at Eastern Express
Highway, Sion, Mumbai 400 022

4. **Lokmanya Construction Co.,**
a partnership firm having its office at
545, Kanti Mahal, Tejookaya Park,
Dr. Ambedkar Marg, Matunga,
Mumbai 400 019.
5. **The Collector,**
Mumbai Suburban District,
Bandra, Mumbai 400 050
6. **The Superintendent of Land Records,**
Mumbai Suburban District, Bandra
Mumbai 400 050
7. **The District Inspector of Land Records
& City Survey Officer No.2,**
Mumbai Suburban District,
Mulund (West), Mumbai 400 080 ... Respondents

**WITH
CIVIL APPLICATION NO.2359 OF 2019
IN
WRIT PETITION NO.8145 OF 2014
WITH
CIVIL APPLICATION NO.2360 OF 2019
IN
WRIT PETITION NO.8145 OF 2014**

Harshad Coop. Housing Society Ltd. ... Applicant
In the matter between
The Lokmanya Pan Bazar Association Ltd. ... Petitioner
V/s.
The State of Maharashtra & Ors. ... Respondents

**WITH
CIVIL APPLICATION NO.2361 OF 2019
IN
WRIT PETITION NO.8145 OF 2014**

Jagshi Jethabhai Chheda ... Applicant
In the matter between

The Lokmanya Pan Bazar Association Ltd. ... Petitioner
V/s.
The State of Maharashtra & Ors. ... Respondents

Mr. Chetan Kapadia, Senior Advocate with Mr. Rohan Agarwal, Mr. Harshavardhan Nankani, Ms. Deeksha Jani, Haleema Marchant, and Mr. Jinay Jain i/by Jani & Parikh for the petitioner.

Mrs. V.S. Nimbalkar, AGP for respondent Nos.1 and 2-State.

Mr. Akash Menon with Ms. Anjana Vijay for respondent No.3.

Mr. Rajiv Singh with Mr. V.S. Vengurlekar i/by M/s. Nair Vengurlekar & Co., for the applicant/intervener in CAW/2361/2019.

CORAM : **AMIT BORKAR, J.**

RESERVED ON : **NOVEMBER 27, 2025**

PRONOUNCED ON : **DECEMBER 9, 2025**

JUDGMENT:

1. The petitioner has filed the present writ petition to challenge the judgment and order passed by Respondent No. 2, the Competent Authority. By the said order, deemed conveyance has been granted in favour of Respondent No. 3 Society in respect of Buildings B and C together with the land admeasuring 2989 square meters on which the said buildings stand.

2. Relevant facts as narrated by petitioner: The petitioner company was incorporated on 12 June 1968 as a company limited by guarantee without share capital. At that time, its registered

office was at Lokmanya Pan Bazar, Girgaum, Mumbai 400004. The Memorandum of Association contains clauses relevant to this dispute. Clause 4 permits the company to construct and develop land or premises for the use and benefit of its members. Clause 13 authorises the company to purchase or take on lease property essential for its activities and to acquire rights including Vahiwat and allied rights. Clause 115 permits the company to sell, improve, exchange, lease or otherwise deal with its property to earn income. The Articles of Association contain corresponding clauses governing administration and membership.

3. In 1969, the petitioner purchased land admeasuring 16,302 sq. mtrs. at Survey No.292, Hissa No.1 (Part), CTS No.628, Kurla East, off Eastern Express Highway, Mumbai. The petitioner also became owner of adjoining land admeasuring 3,840 sq. mtrs. by adverse possession. After enactment of the Urban Land Ceiling and Regulation Act, 1976, a substantial part of the land was declared surplus vacant land. On 13 October 1977, the State Government granted exemption under Section 20 of the ULCR Act for 17,550 sq. mtrs. of this land subject to strict conditions. The land was to be used only for construction for the members of the petitioner. No transfer was permissible except with prior permission of the State Government and upon payment of the differential amount between market value and the statutory acquisition price. On 31 October 1979, the State Government extended the timeline for commencement and completion of construction. On 21 November 1981, Respondent No.4 developer was authorised to construct four buildings for persons admitted as Special Patron Members of the

petitioner. Only two buildings, Harshad B and Harshad C, were constructed. A development agreement dated 23 November 1981 authorised Respondent No.4 to construct the buildings and enrol allottees as Special Patron Members. There was no clause permitting formation of a co-operative society or conveyance of land. Ownership of the land remained with the petitioner. Clause 1(b) of the development agreement recorded that the petitioner would enrol Special Patron Members and allot flats, shops, garages and parking spaces in the buildings to be constructed. A supplemental development agreement dated 30 November 1988 created an ad-hoc committee of eight Special Patron Members to manage Harshad B and C. The petitioner passed a resolution on 28 November 1988 approving constitution of this committee. Respondent No.4 completed construction of the two buildings and executed agreements with allottees. Each agreement stated that the petitioner would remain the owner and the allottee would not acquire any right, title or interest in the land. From 1992, the petitioner shifted its office to Sion, Mumbai. On 16 March 1997, the ad-hoc committee sought membership certificates for the Special Patron Members. On 7 April 1998, the petitioner called upon the members to collect their certificates. The petitioner explained on 13 June 1998 that it was not in a position to form a co-operative society. It handed over membership certificates to the committee for distribution. On 18 June 2002, the allottees, without consent or knowledge of the petitioner, procured registration of Respondent No.3 society by suppressing material facts, including the bar on conveyance under the exemption order.

On 3 October 2002, the petitioner's advocate objected before the Assistant Registrar to the fraudulent registration. On 7 October 2002, the petitioner informed Respondent No.3 that registration does not create any right to demand conveyance. Between 20 January 2008 and 23 March 2010, Respondent No.3 addressed letters to the petitioner at its correct Sion address. On 20 July 2010, an allottee filed a consumer complaint seeking conveyance. The petitioner filed its reply on 7 June 2012. The complaint was dismissed for default on 29 August 2012 and that order attained finality. On 16 May 2013, the managing committee of Respondent No.3 resolved to apply for deemed conveyance although it was barred from taking policy decisions due to the amendment to the Maharashtra Cooperative Societies Act. On 26 June 2013, Respondent No.3 issued a statutory notice to incorrect address, ensuring non-service, despite its knowledge of the petitioner's correct address.

4. On 12 July 2013, Respondent No.2 informed Respondent No.3 that its application was defective. Respondent No.3 then filed Application No.365 of 2013 for deemed conveyance with incorrect particulars including the wrong address of the petitioner. On 19 July 2013, Respondent No.2 issued notice to the petitioner at this wrong address. On 5 August 2013, Respondent No.2 proceeded with the matter despite non-service and directed issuance of a public notice. The public notice produced on 26 August 2013 was vague. It did not mention the petitioner or describe the property. Respondent No.2 closed the matter for orders and on 9 October 2013 granted an ex parte deemed conveyance certificate. The

petitioner filed the present writ petition on 4 August 2014 challenging the said order.

5. On 13 August 2018, Respondent No.3 filed Civil Application No.2359 of 2019 seeking permission to proceed with redevelopment pursuant to the deemed conveyance. On 14 August 2018, it filed Civil Application No.2360 of 2019 seeking recall of the order dated 17 February 2016 and admitted that redevelopment proposals had been prepared and that it had claimed FSI over the entire land. These applications show that Respondent No.3 understood that redevelopment could not proceed in view of the order dated 17 February 2016.

6. On 6 April 2025, Respondent No.3 held a Special General Body Meeting to discuss redevelopment and to consider steps to secure disposal of Suit No.8145 of 2014. On 15 June 2025, Respondent No.3 resolved to appoint Aadvi Home Developers Pvt. Ltd. as the developer. On 13 September 2025, Respondent No.3 issued notices for its Annual General Body Meeting scheduled on 28 September 2025 and circulated an invitation for a presentation of the draft development agreement. Redevelopment was listed as Agenda Item No.9.

7. Senior Advocate Mr. Kapadia submits that the impugned order cum certificate of deemed conveyance and the deemed conveyance document were procured by an improper and surreptitious procedure. Respondent 2 proceeded behind the back of the petitioner company. This violated the principles of natural justice and the statutory scheme of MOFA. Respondent 2 had a

duty to ensure proper and effective service of notice upon the petitioner company as the landowner. Respondent 3 deliberately served notice at an old and defunct address, despite full knowledge of the petitioner's correct address and despite regular correspondence at that address. Respondent 3 also published a defective public notice. The notice omitted essential particulars. It did not disclose the description of the land. It did not identify the landowner against whom conveyance was sought. In these circumstances, the petitioner submits that the matter requires remand. The impugned order was passed ex parte and without notice. A fresh hearing is necessary.

8. He submits that the application filed by Respondent 3 before Respondent 2 under Section 11 of MOFA was not maintainable. The petitioner company already held title to the land. Section 11 applies only where a promoter is obliged to convey title to an organisation of flat takers. In this case, the petitioner company itself is the body in whom the land vests. The allottees were enrolled as Special Patron Members of the petitioner company. Their rights arose only by virtue of such membership. They were not flat purchasers under MOFA. No obligation existed requiring the petitioner company to execute conveyance in favour of its own members. Respondent 3 society could not have been formed on the basis of such Special Patron Membership. It could not have sought conveyance from the very company of which its members formed part. The agreements with allottees did not provide for formation of a cooperative housing society. They did not grant any right in the land or promise conveyance. Therefore, the provisions of

MOFA do not apply. The deemed conveyance granted to Respondent 3 is contrary to law.

9. He submits that the Development Agreement did not create any right or interest in the land in favour of Respondent 4 developer. The ULC Exemption Order formed part of the Development Agreement. It restricted use of the land to members of the petitioner company. Respondent 4's role was limited to construction and to facilitating enrolment of Special Patron Members. Clause 5 of the agreement recognises that the company alone could admit members who would then be allotted premises. Respondent 4 could only process applications. The supplementary agreement of 30 November 1988 merely constituted a committee of eight Special Patron Members for management of the two buildings. Law is settled that a person cannot convey better title than he possesses. Respondent 4 had no title. It could not create title in favour of anyone. Clause 7 of the individual agreements expressly states that no right in the land is created in favour of any proposed member. Ownership of land and buildings remains with the company. The allottee obtains only the benefit of being a Special Patron Member. Clause 8 reserves the petitioner company's authority to amend its Articles for better management. Clause 13 restricts transfer of benefits without consent of the developer. Allottees accepted these terms. They knew they were not acquiring ownership rights and that no conveyance of land was possible in view of the Development Agreement and the ULC Exemption Order.

10. He relies on the following decisions. *Mazda Construction Co. v. Sultanabad Darshan CHS Ltd.*, 2012 SCC OnLine Bom 1266. *ACME Enterprises v. Registrar, Cooperative Societies*, 2023 SCC OnLine Bom 1102. *Tushar Jivram Chauhan v. State of Maharashtra*, 2015 4 MhLJ 867. *A. H. Wadia Trust v. State of Maharashtra*, 2023 SCC OnLine Bom 1441.

11. He submits that the State Government granted exemption under Section 20 of the ULC Act by orders dated 13 October 1977 and 31 October 1979. The exemption was for 17,550 square meters of land and was subject to strict conditions. The land could be used only for members of the petitioner company. No allotment to outsiders was permitted. Transfer of the land in any manner was prohibited. Any proposed transfer required prior permission of the State Government and payment of the difference between market value and acquisition price. After repeal of the ULC Act, Maharashtra adopted the Repeal Act in 2007. The savings clause protects all orders under Section 20. It preserves all obligations and restrictions. A Full Bench of this Court in Maharashtra Chamber of Housing Industry v. State of Maharashtra held that Section 20 exemption orders survive repeal and all their consequences continue. The exemption order is therefore valid and enforceable. It binds all parties even today.

12. Learned counsel Mr. Menon for Respondent No.3 submits that Respondent No.3-Harshad Co-operative Housing Society Ltd. consists of flat purchasers of Buildings Harshad B and Harshad C. These purchasers were inducted into their premises under individual agreements for sale executed with the petitioner. Each

agreement records that the development and sale of the units are governed by MOFA. These agreements were executed even before the exemption order under the ULC Act dated 31 October 1983. Therefore, the later concept of “Special Patron Member” has no bearing on their status as flat purchasers. The petitioner cannot rely on that concept to defeat the statutory rights of flat purchasers under MOFA. The agreements describe allottees as “Special Patron Members”, yet deny them all substantive rights of membership. They have no voting rights, no role in management and no authority to participate in the petitioner’s affairs. The petitioner cannot now claim that these purchasers were members only to deny them their statutory right to form a society. This stand is inconsistent and contrary to the scheme of MOFA. The purchasers made payments as flat purchasers and not as members of the petitioner.

13. He submits that Sections 10 and 11 of MOFA confer an independent statutory right on flat purchasers to form and register a co-operative society or company. This right does not depend on the consent of the promoter. MOFA is based on the principle that flat purchasers must have control over the building where they reside and must be able to organize themselves into a legal entity to secure conveyance of land and building. The artificial category of “Special Patron Member” cannot override these statutory rights. Any such device cannot supersede the mandate of the statute.

14. He submits that the petitioner created this artificial category only to avoid its statutory duties. It was not a genuine organisational requirement. It was introduced to circumvent the

conditions under the ULC Act and the exemption order. The petitioner uses this concept to retain a false appearance of ownership and to avoid conveying property to flat purchasers. Further, the exemption order was issued after the execution of agreements for sale. Hence, the concept of Special Patron Membership is irrelevant in law and on facts.

15. He submits that Respondent No.3 society was duly registered in 2002. The purchasers exercised their statutory rights because the petitioner denied them any meaningful rights in the building. The petitioner was fully aware of the registration. Its solicitors wrote to authorities in October 2002. Despite this, the petitioner never invoked Section 21A of the Maharashtra Co-operative Societies Act to challenge the registration. The petitioner remained silent for more than ten years. It is now estopped from questioning the validity of the society. The challenge is an afterthought and lacks bona fides.

16. He submits that after possession was handed over, the society alone has shouldered all responsibilities. It has maintained the buildings, paid taxes and carried out all management functions. The petitioner has not discharged any duty that an owner or promoter is expected to discharge. Nor has the petitioner exercised any ownership rights after handing over possession.

17. He submits that the petitioner's contention regarding lack of service is unsustainable. The petitioner was served at its registered office address. That is the address stated in the agreements, in the pleadings and in the records of the Ministry of Corporate Affairs.

The petitioner's own documents show this address as its registered office. Under Section 51 of the Companies Act, service at the registered office is valid service. In addition, notice was published. The allegation of fraud is unfounded. If the petitioner failed to update its registered office, it cannot rely on its own default. The Deputy Registrar satisfied himself regarding proper service and compliance with statutory requirements before issuing the deemed conveyance certificate. The petitioner chose not to appear despite opportunities. There is no procedural illegality in the proceedings.

18. He submits that the society fulfilled all requirements under Section 11 of MOFA. The promoter did not execute conveyance within the statutory period. The society has been in possession for many years and has acted as owner in all respects. The petitioner has no valid objection to conveyance except reliance on the concept of Special Patron Membership, which has no legal foundation. The petitioner and Respondent No.4 both fall within the definition of "promoter" under Section 2(c) of MOFA. Their obligation to convey arose in 2002 when the society was registered. Having failed to do so for more than ten years, they cannot now claim prejudice. The petitioner seeks to avoid compliance with MOFA and to retain wrongful control. It has not approached the Court with clean hands. No legal infirmity exists in the impugned order.

19. In these circumstances, Respondent No.3 submits that the writ petition be dismissed. The impugned order of deemed conveyance and the certificate issued in favour of the society be upheld. Respondent No.3 seeks imposition of exemplary costs and

all consequential reliefs in the interest of justice.

Consideration of Rival Submissions:

Applicability of MOFA to the Present Transaction:

20. The first issue that calls for determination is whether MOFA applies to the present transaction. This question has to be answered primarily on the basis of the written agreements between the parties. The law attaches great weight to the terms of a written contract, voluntarily agreed to and signed by both sides, unless it is shown to be vitiated. No such challenge is even suggested in the present case. The individual agreements executed between the developer and the purchasers, under which the purchasers obtained their respective premises in Harshad B and Harshad C, are on record. Each of these agreements in clear terms states that the development and sale of the units shall be governed by the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, commonly known as MOFA. This is not a stray or casual recital. It is a conscious incorporation of the statutory regime under which the parties agreed to be governed. Clause 26 of each agreement further reinforces this position. It specifically records that the agreement shall always remain subject to the provisions of MOFA and the rules framed thereunder. The use of the expression “shall always remain subject” leaves no manner of doubt. It indicates a continuing submission of the contractual relationship to the discipline of the statute. It is not open to either party, after having entered into such a stipulation, to contend that MOFA does not

apply, unless it is first shown that the clause is illegal or void. No such case is made out. The Court cannot ignore that these agreements were drafted by or at the instance of the promoter side. The promoter chose to clothe the transaction in the character of a flat purchase governed by MOFA. The purchasers paid consideration and altered their position on that footing. The promoter, having derived benefit under these very agreements, cannot now resile from the statutory character expressly given to them. To permit such a stand would be to allow a party to both approbate and reprobate, which the law does not countenance. Therefore, on a plain reading of the agreements, particularly Clause 26, and in the absence of any credible material to suggest a different intention, the only reasonable conclusion is that the parties themselves subjected the transaction to MOFA. The Court, accordingly, holds that MOFA applies to the present transaction and governs the relationship between the petitioner as promoter and the flat purchasers of Harshad B and Harshad C.

Effect of the “Special Patron Member” Description:

21. The petitioner argues that MOFA does not apply because the purchasers were described as “Special Patron Members” of the petitioner-company and because the land continued to remain in the ownership of that company. On this basis, the petitioner contends that Section 11 of MOFA, which requires a promoter to convey title to an association of flat takers, has no application. After examining the documents and the conduct of parties, the Court finds no merit in this submission. The Court proceeds on a clear and well-settled principle. When a statute is enacted to

protect purchasers, the Court must look at the real nature of the transaction. The law does not permit the promoter to change the true character of the arrangement merely by affixing a different label. The evidence before the Court shows that the purchasers acted as flat buyers in every material respect. They paid the price for the flats. They received possession of clearly defined units. They assumed responsibility for outgoings connected with the premises. These are the usual and defining features of a flat purchase under MOFA.

22. On the other hand, there is no evidence that the purchasers were ever treated as genuine members of the petitioner-company. Corporate membership ordinarily carries rights. These include the right to vote, to attend and participate in meetings, to influence management decisions and to exercise a voice in the affairs of the company. The purchasers were denied all such rights. The petitioner's own Memorandum and Articles of Association describe Special Patron Members as persons who hold no rights in governance, no rights in management and no rights in the company's internal affairs. This is admitted from the documents. These facts demonstrate that the Special Patron Membership was not intended to create any real corporate relationship. It was a nominal description without any substance. If such a description were accepted as sufficient to take purchasers outside the protection of MOFA, it would allow promoters to defeat the statute by a simple device. A promoter could, in every case, call purchasers "members", deny them all real rights and then claim that MOFA has no application. This would undermine the purpose

of the legislation. The Court cannot endorse such an outcome, especially when credible evidence shows that the purchasers acted as flat takers and not as members of a corporate entity.

23. Sections 10 and 11 of MOFA confer a clear right on flat purchasers to form a co-operative society, company or association and to seek conveyance of the land and building in favour of that body. This right is statutory. It does not depend on the promoter's consent. It cannot be taken away by describing purchasers as Special Patron Members when those so-called members have no voting rights, no power to manage the property and no authority in the petitioner-company. The Court, therefore, finds that the petitioner's argument is contrary to the documents and unsupported by evidence. The mere description of purchasers as Special Patron Members does not override the nature of the transaction, which is that of a flat purchase under MOFA. The purchasers were not functioning members of the petitioner-company. They were flat takers with statutory rights. Their right to form a society and to seek conveyance cannot be neutralised by a nominal and ineffective form of membership. For these reasons, the Court rejects the contention that MOFA does not apply, and holds that Sections 10 and 11 of MOFA fully govern the rights of the parties.

Maintainability of the Application for Deemed Conveyance:

24. The petitioner next argues that the application for deemed conveyance was not maintainable. According to the petitioner, the land always stood in the name of the petitioner-company, and

because the purchasers were described as Special Patron Members of that company, they could not demand conveyance from the very same company. This argument does not withstand legal scrutiny and is not supported by the evidence on record.

25. Section 11 of MOFA must be interpreted in its plain and practical sense. The section does not say that the association of flat takers must be a different legal entity from the land-owning entity. What the section requires is simple. There must be a promoter as defined under Section 2(c). That promoter must have constructed or caused the construction of a building consisting of flats. Flat purchasers must have acquired premises under agreements governed by MOFA. Once these conditions are satisfied, the promoter must, within the stipulated time, form an association of flat takers and convey the land and building to that association. The Act does not permit the promoter to escape this obligation by adopting a particular corporate structure or label. If a promoter decides, for his commercial convenience, to keep title in his own company and then calls purchasers by a different name, that choice cannot dilute the statutory mandate. Credible evidence shows that the petitioner-company held the land and the developer constructed the buildings. Both the petitioner-company and Respondent No.4 developer have acted as promoters. The documents executed with purchasers were agreements for sale of flats. These facts bring the case squarely within the statutory structure of MOFA. Therefore, the petitioner cannot avoid conveyance on the ground that the purchasers were Special Patron Members. As already noted earlier, these so-called members had

no actual membership rights in the company. They held no voting rights, no management rights, no rights in the company's affairs, and were treated as flat takers in every practical sense. For MOFA, the real position of parties must be seen, not their labels. The evidence supports only one conclusion: the purchasers are flat takers and the petitioner and Respondent No.4 are promoters. It is also necessary to note that the society was registered in the year 2002. From that point onward, MOFA required the promoter to execute the conveyance within the statutory time. The record before the Court shows no effort on the part of the petitioner to comply with this obligation. The statutory period expired long ago. Once that period elapsed, the law conferred on the society a right to apply for deemed conveyance. This right flows directly from the statute and does not depend on the will of the promoter.

26. The Competent Authority therefore acted within its jurisdiction in entertaining the society's application. The application met the legal requirements. The objection raised by the petitioner is based on an incorrect understanding of Section 11 and is unsupported by credible material. The Court holds that the application for deemed conveyance was maintainable in law.

Validity of Respondent No.3 Society and the Challenge to Its Formation:

27. The petitioner then argues that Respondent No.3 society itself is not a valid entity. The petitioner claims that the purchasers were already Special Patron Members of the petitioner-company and therefore could not legally form a separate co-operative

society. This argument is not supported by credible evidence on record.

28. The undisputed facts show that the society was registered in the year 2002. The flat purchasers took this step only after they realised that, despite being called Special Patron Members, they had no voting rights, no participation in management, and no control over the affairs of the petitioner-company. They were, in substance, treated as outsiders in all matters of decision making. Their formation of the society was therefore a lawful exercise of their statutory rights under MOFA, which expressly permits flat purchasers to constitute themselves into a co-operative society when the promoter fails to do so. The petitioner cannot say that the society's formation was unknown to it. The record shows that the petitioner's own solicitors wrote letters to the authorities in October 2002 in which they referred to the society. Despite this knowledge, the petitioner never exercised its legal remedy under Section 152 or 21A of the Maharashtra Co-operative Societies Act to challenge the registration. Section 152 or 21A provides a clear mechanism for seeking cancellation of a society's registration when valid grounds exist. The petitioner did not take that step at any time. Instead, the petitioner allowed the society to function for more than a decade. During this entire period, the society managed and maintained the building, undertook repairs, paid municipal taxes and handled administration. The petitioner neither objected nor assumed any of these responsibilities. The society became, in fact and in law, the representative body of the flat purchasers and the manager of the property.

29. When a society has been functioning openly and continuously for years, and when the promoter has taken no timely steps to challenge its registration despite full knowledge, the Court must apply the principles of acquiescence and estoppel. These principles prevent a party from challenging, at a belated stage, a state of affairs that it has knowingly allowed to continue.

30. In writ jurisdiction under Article 226, the Court does not ordinarily disturb long-standing structures, especially where third-party rights, property management and public obligations such as taxes are involved. Interference at this stage would unsettle the rights and responsibilities that have been operating for many years. Applying these principles, the Court finds no basis to entertain the petitioner's delayed objection to the existence or validity of Respondent No.3 society. The society was lawfully formed. Its registration was never challenged at the appropriate time. It has acted as the functioning body of flat purchasers for over a decade. There is no credible evidence on record. The petitioner then argues that Respondent No.3 society itself is not a valid entity. The petitioner claims that the purchasers were already Special Patron Members of the petitioner-company and therefore could not legally form a separate co-operative society. This argument is not supported by credible evidence on record.

Allegations of Denial of Natural Justice and Surreptitious Proceedings:

31. The petitioner next claims that the deemed conveyance order was obtained by violating the principles of natural justice. Three

allegations are made. First, that Respondent No.3 gave an incorrect address in the application. Second, that notices were sent to a defunct address even though the society knew the petitioner's operational address. Third, that the public notice issued by the Competent Authority lacked proper particulars. After examining the record, the Court finds no credible evidence to support any of these allegations.

32. The society has produced documents from the Ministry of Corporate Affairs. These documents show that the address used for service was the same address declared by the petitioner-company as its registered office. The agreements with the flat purchasers also show this address. The pleadings filed by the petitioner in earlier proceedings contain the same address. When a company states an address in statutory records and in its contracts, it is bound by that declaration. Section 51 of the Companies Act also states that service at the registered office constitutes good service. This legal rule exists so that parties dealing with a company may rely on the public records maintained by it. If the petitioner-company later shifted its operational address but failed to update its statutory records, the responsibility rests entirely on the petitioner. A company cannot be permitted to keep a wrong or outdated address on official records, receive statutory benefits from that address, and then claim, when service is effected on that same address, that the service is invalid or mala fide.

33. The petitioner also argues that the public notice was vague. However, the petitioner has not produced any material to show that the notice omitted essential particulars or misled any person.

The record shows that a public notice was issued as a supplementary measure, after service was already effected at the registered office. When the primary service is valid in law, the burden shifts to the petitioner to demonstrate real prejudice. Apart from a general statement, no such prejudice has been shown. The Competent Authority recorded that service was complete. It then issued a public notice and fixed the matter for hearing. The petitioner did not attend. When a party chooses not to respond after proper service, it cannot later claim that natural justice has been violated. Natural justice protects the right to be heard. It does not protect a deliberate absence.

34. On the basis of the evidence, the Court is satisfied that the plea of fraud or surreptitious conduct is unfounded. Service was carried out at the correct statutory address. A public notice was also issued. The petitioner did not participate despite these steps. The allegation of non-service is, therefore, rejected.

Effect of the ULC Exemption Order and Its Continuing Operation:

35. A major part of the petitioner's argument is based on the exemption order issued under Section 20 of the Urban Land Ceiling Act. The petitioner relies on three conditions found in that order. First, that the exempted land must be used only for the petitioner's own members. Second, that it cannot be transferred to outsiders. Third, that any transfer requires prior permission of the State Government. The petitioner submits that, although the Urban Land Ceiling Act has been repealed, the exemption order survives because of the savings clause in the Repeal Act and the

Full Bench ruling in *Maharashtra Chamber of Housing Industry*. On that foundation, the petitioner argues that the land cannot be conveyed to Respondent No.3 society under any circumstances.

36. The Court accepts the legal position that a Section 20 exemption order continues to remain valid even after repeal of the main statute. Its conditions do not vanish. They continue to bind the parties. However, the real question is: what do these conditions actually mean and what consequence follows from them. This question must be answered based strictly on the language of the exemption order and the credible evidence on record.

37. The exemption order was granted so that the petitioner could retain and develop surplus land subject to strict controls. The essential purpose of the conditions was to ensure that the land was not commercially exploited in the open market, but was used exclusively to provide premises to a defined class described as the petitioner's own members. The prohibition on transfer to outsiders was directed at preventing speculative sale or commercial use of the exempted land. The order does not state anywhere that flat purchasers who occupy the premises after paying full price and who organise themselves into a co-operative society under MOFA will be treated as outsiders. Nothing in the exemption order suggests that a conveyance to such a body is forbidden. The credible evidence on record shows that the flat purchasers are the very persons contemplated as beneficiaries under the petitioner's development scheme. They paid consideration for their flats. They took possession. They have lived in the buildings for years. They formed a co-operative society as required by MOFA. They are not

strangers to the land. They are not outsiders seeking commercial benefit. They are the legitimate beneficiaries for whom the development was undertaken. A conveyance in favour of their society is only a formal transfer of title to the collective body that represents them. It does not change the identity of the beneficiary class.

38. The petitioner's argument seeks to treat the flat purchasers as outsiders merely because they created a society. This interpretation finds no support in the terms of the exemption order. A society is only an organisational form for the same group of persons. It does not introduce any new beneficiary. It does not alter the composition of the class for whom the land was exempted. It is true that, as between the petitioner and the State Government, questions may arise whether any permission is required or whether any amounts must be paid under the exemption conditions. Those issues concern compliance between the State and the petitioner. They do not affect the rights of the flat purchasers under MOFA. The petitioner cannot use the exemption order as a defence to deny conveyance to the society, because MOFA casts a mandatory obligation on the promoter to convey the land to the association of flat takers. The exemption order does not override MOFA. Both laws operate in their respective fields.

39. Therefore, based on credible evidence and the actual language of the exemption order, the Court holds that the petitioner cannot rely on the Section 20 conditions to block conveyance. The purchasers are the intended beneficiaries of the development. Their society is not an outsider. A conveyance to the

society fulfills both the object of MOFA and the purpose of the exemption order.

Distinguishing the Precedents Cited by the Petitioner:

40. In *Mazda Construction*, the Court held that deemed conveyance conveys only the promoter's right, title and interest and cannot extend beyond what the promoter is legally entitled to convey. The case turned on disputes relating to extent of land, common areas, and FSI rights, and the Competent Authority had exceeded its jurisdiction. The judgment does not hold that contractual clauses can override MOFA. It only says that the Competent Authority cannot grant more than what the promoter himself had in law. It does not say that the promoter can rely on a contract to defeat conveyance. The focus is on the promoter's legal title, not on a contractual device. It does not support the proposition that the promoter's development agreement, or the "Special Patron Member" structure, can deprive flat purchasers of statutory rights under Sections 10 and 11 of MOFA.

41. In *ACME*, the Court reaffirmed two principles. First, that the Competent Authority must consider the Agreement for Sale, sanctioned plans and other relevant material. Second, the Competent Authority cannot adjudicate title disputes. It conveys only the promoter's right, title and interest. The Court clarified that the agreement for sale is a foundational document, because it records the nature of the transaction and the rights promised to purchasers. When an agreement shows that purchasers bought flats under MOFA, contractual language cannot later be used by

the promoter to claim that they were “members” instead of purchasers. This case supports the flat purchasers. It emphasises that MOFA agreements govern the transaction and that statutory rights cannot be defeated by clever drafting. The Competent Authority must look at the real nature of the agreements.

42. *Tushar Jivram Chauhan* involved land that was incapable of conveyance due to an overriding statutory disability. The Court held that deemed conveyance cannot be granted at all where title cannot legally pass under any circumstances. The judgment does not deal with contractual rights between promoter and purchaser. It concerns inherent legal disabilities on transfer, not agreement-based restrictions. This case does not assist the petitioner because, the petitioner here does hold title. There is no absolute statutory bar on conveyance to the society. Therefore, contractual clauses like “Special Patron Membership” cannot take the case into the *Tushar Jivram Chauhan* category.

43. *A.H. Wadia Trust* judgment concerned land belonging to a public trust, where alienation required prior permission under Section 36 of the Maharashtra Public Trusts Act. The Competent Authority granted deemed conveyance without hearing the owner. The decision deals with mandatory statutory requirements for alienation, not with contractual restrictions between promoters and flat purchasers. The Court held that deemed conveyance cannot override a statute. Not applicable to the petitioner’s case because the petitioner’s land is not subject to such statutory bar, and nothing in the development agreement creates a legal impossibility of conveyance. A self-created contractual structure

(like “Special Patron Membership”) cannot be equated with a statutory prohibition on transfer.

44. From all four judgments, the following principles emerge: Contractual terms cannot defeat MOFA. Any clause that tries to restrict or postpone conveyance contrary to Sections 10 and 11 is void in spirit and unenforceable in effect. The Competent Authority conveys only what the promoter lawfully possesses. If the promoter holds clear title, contractual restrictions cannot be used to avoid conveyance. Agreements for sale are central. Where agreements explicitly state that the transaction is governed by MOFA, the promoter cannot fall back on later characterisations like “Special Patron Membership”. Only statutory disabilities can bar conveyance. Cases like *Tushar Chauhan* and *Wadia Trust* involve legal incapacity to transfer, not contractual constructs. A promoter cannot create a contractual fiction to avoid a statutory duty. This principle is implicit in *ACME* and supported by the structure of MOFA, which protects purchasers and constrains promoters.

45. On the other hand, the broad scheme of MOFA and the consistent trend of judicial pronouncements emphasise the protective object of the statute. Promoters and developers are not permitted to devise ingenious structures to indefinitely postpone or evade conveyance. The device of describing purchasers as “Special Patron Members” without giving them any genuine corporate rights, and then using that very description to deny them the right to form a society or demand conveyance, falls squarely within what the statute seeks to prevent.

Conduct of Parties and Equitable Considerations:

46. The Court must also consider the conduct of the parties over the years, because conduct often reveals the true character of the relationship better than written labels or later explanations. The evidence on record shows that, from the time the society was formed, it has taken full responsibility for the buildings and the property. The society has been maintaining the common areas, carrying out repairs, paying municipal taxes and electricity charges for common spaces, engaging security services and managing all day-to-day affairs. These are the responsibilities that ordinarily fall upon an owner or a promoter until conveyance is executed. On the other hand, there is no evidence to show that the petitioner has discharged any such responsibility after handing over possession of the flats. The petitioner has not contributed to maintenance or repairs. It has not participated in the management. It has not paid any municipal taxes. It has not acted as a person in control of the property. This consistent course of conduct shows that, in reality, the petitioner stepped back from all responsibilities long ago, and the society stepped into the role of custodian and manager. The petitioner allowed this arrangement to continue for more than a decade. At no point did it object to the society performing these functions. It raised no protest regarding the society's management. It did not assert control over the buildings. It took no steps to convene meetings or exercise authority as an owner. The petitioner remained silent and inactive until the society exercised its statutory right under MOFA to seek deemed conveyance. Only then did the petitioner approach this Court and attempt to reassert

ownership by relying on technical objections.

47. In law, such prolonged silence and inaction carry significance. When a promoter knowingly allows a society to function as the effective owner and manager for many years, it cannot suddenly claim that the society has no right to ask for conveyance. Equity does not support such a position. A party that has benefited from inaction, avoided expenses, and allowed another party to shoulder all responsibilities cannot later claim legal disadvantage when the law requires it to fulfil its statutory obligations.

48. The evidence thus shows a clear pattern. The society behaved as the owner in every essential respect. The petitioner avoided all burdens connected with ownership. It is only when the society sought to formalise its rights that the petitioner raised objections. The Court cannot ignore this conduct, which strongly supports the society's case. Equitable considerations therefore weigh against the petitioner and reinforce the conclusion that the petitioner cannot now resist conveyance.

49. In light of the above discussion, the Court answers the principal issues thus , MOFA applies to the present project. Respondent No.3 society is a valid association of flat takers. The petitioner and Respondent No.4 are promoters within the meaning of Section 2(c). The right of the society to seek conveyance under Section 11 accrued upon its registration and the promoter's failure to convey within time. The ULC exemption order does not bar conveyance to the society; its conditions, to the extent they

survive, govern the relationship between the State and the promoter and do not negate MOFA rights of flat purchasers. The plea of non-service and violation of natural justice fails. No ground is made out to set aside the order-cum-certificate of deemed conveyance.

Compliance with Statutory Requirements and Scope of Judicial Review:

50. The petitioner argues that the certificate of deemed conveyance should be set aside because the procedure was improper and because the Competent Authority had no jurisdiction to pass such an order. After examining the entire record, the Court finds no credible evidence to support this claim. The Competent Authority acted strictly within the limits of Section 11 of MOFA. That section creates a clear mechanism. When a promoter does not execute the conveyance within the time fixed by law, the flat purchasers or their society may approach the Competent Authority to obtain a deemed conveyance. The materials placed before the Court show that all basic requirements of Section 11 were fulfilled. The society was properly registered. It represented flat purchasers who were already in possession of their respective premises. For many years, the society carried out all responsibilities connected with ownership. It maintained the buildings, paid taxes, undertook repairs and managed the property. On the other hand, the promoter did not execute the conveyance despite the statutory mandate. Once this failure continued beyond the permitted period, the society's right to apply for deemed conveyance arose in law.

51. The record also shows that the Competent Authority ensured service of notice in accordance with law. Service was effected at the petitioner's registered office address. A public notice was also issued. The petitioner had every opportunity to place its objections on record. It chose not to appear. A party that remains absent after proper service cannot later complain that the proceedings suffered from procedural defects.

52. The Court must also see whether the impugned order discloses any glaring error or illegality that would warrant interference under Article 226 of the Constitution. No such error is shown. The Competent Authority considered the documents placed before it, examined the statutory requirements and passed an order that falls squarely within its jurisdiction. There is nothing arbitrary, unreasonable or perverse in the reasoning adopted.

53. In these circumstances, the plea that the deemed conveyance order is procedurally defective or jurisdictionally unsound cannot be accepted. The order is lawful and does not call for interference in writ jurisdiction.

Final Conclusion and Order:

54. The inevitable conclusion is that the writ petition is devoid of merit. The impugned order and the certificate of deemed conveyance issued in favour of Respondent No.3 society are upheld. The petition is dismissed. In the facts and circumstances of the case, and having regard to the prolonged attempt of the petitioner to resist statutory conveyance, this is a fit case for imposition of costs.

55. The petitioner shall pay costs of Rs.50,000/- to Respondent No.3 society within a period of eight weeks.

56. All pending applications, if any, stand disposed of.

57. At this stage, learned Advocate for the petitioner seeks stay of the judgment and order. However, in view of the reasons recorded in the judgment, the request for stay stands rejected.

(AMIT BORKAR, J.)