



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

**WRIT PETITION NO. 2453 OF 2018**

<b>B. K. Corporation</b>	}	
An Association of the Person, having its office	}	
Address at Meera Darshan, Ground Floor,	}	
Tejpal Road, Vile Parle (East), Mumbai – 400057.	}	<b>... Petitioner</b>

V/s.

1. <b>State of Maharashtra</b>	}	
A State as defined and constituted	}	
under the Constitution of India, through the	}	
office of Government Pleader, High Court	}	
O. S. Mumbai – 400 032.	}	

2. <b>Competent Authority and Deputy Registrar of Co-operative Societies (3) Mumbai</b>	}	
having its office address at Griha Nirman Bhavan,	}	
Ground Floor, Office No. 69,	}	
Bandra (E), Mumbai - 400051	}	

3. <b>Apeksha CHS Ltd.</b>	}	
A Co-operative Housing Society registered under	}	
The provisions of the Maharashtra Co-operative	}	
Societies Act, 1960 having Its address at	}	
Sundervan Complex, Lokhandvala Road,	}	
Andheri (W), Mumbai – 400053	}	

4. <b>Noble House CHS Ltd.</b>	}	
A Co-operative Housing Society registered under	}	
the provisions of The Maharashtra Co-operative	}	
Societies Act, 1960 having its address at	}	
Sundervan Complex, Lokhandvala Road,	}	
Andheri (W), Mumbai – 400053	}	

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Judgment dated 9<sup>th</sup> June 2026

5. **Valencia CHS Ltd.** }  
A Co-Operative Housing Society registered under }  
the provisions of the Maharashtra Co-Operative }  
Societies Act, 1960 having its address at }  
Sundervan complex, Lokhandvala Road, }  
Andheri (W), Mumbai 400053. }
6. **Camron Heights CHS Ltd.** }  
A Co-Operative Housing Society registered under }  
the provisions of Maharashtra Co-operative }  
Societies Act, 1960 having its address at }  
Sundervan Complex, Lokahndavala Road, }  
Andheri (W), Mumbai 400053. }
7. **Pannaben Jaswantilal Parikh** }  
Adult, Indian Inhabitant, residing at 116/7 Cross }  
9<sup>th</sup> Main,Rajmahal Vilas Extn. Bangalore 560080 }
8. **Urmilaben Jayantilal Parikh** }  
Adult Indian Inhabitant, residing at, }  
Mira Darshan, Ground Floor, Tejpal Road, }  
Vile Parle (East), Mumbai 400053. }
9. **Ashwin Jayantilal Parikh** }  
Adult Indian Inhabitant, residing at }  
Mira Darshan, Ground Floor, Tejpal Road, }  
Vile Parle (East), Mumbai 400053. }
10. **Competent Authority (ULC)** }  
The Competent Authority authorized and }  
constituted under the provision of the ULC }  
Act, having its office at Administrative Bldg. }  
Near Chetna College, Bandra (E), Mumbai 400051 }

... Respondents

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**Mr. Shishir Joshi** a/w Ms. Swati Pawar and Ms. Priti Shukla i/b S. K. Legal Associates LLP for Petitioner.

**Mr. Manish Upadhye – AGP** for Respondent nos. 1, 2 and 10.

**Mr. Saket Mone** with Ms. Shrushti Thorat & Mr. Archit Rao i/b Vidhii Partners for Respondent no. 3.

**Mr. Fraser M. Alexander** i/b Majumdar & Partners for Respondent no. 4.

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**CORAM : FARHAN P. DUBASH, J.**

**RESERVED ON : 24<sup>th</sup> MARCH 2026**

**PRONOUNCED ON : 9<sup>th</sup> JUNE 2026**

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**JUDGMENT:**

1. The present Writ Petition challenges an order dated 31<sup>st</sup> May 2017 (*impugned order*) passed by Respondent No. 2 / Competent Authority and Deputy Registrar of Co-operative Societies (*Competent Authority*) on an application for deemed conveyance preferred by Respondent No. 3 / Apeksha Co-operative Housing Society Ltd. under Section 11 of the Maharashtra Ownership of Flats Act, 1963 (*MOFA*), whereby deemed conveyance came to be granted in favour of Apeksha CHSL.
2. The principal challenge raised by the Petitioner who is the Promoter / Developer concerns the maintainability of a second deemed conveyance application filed by Apeksha CHSL on 3<sup>rd</sup> January 2017, pursuant to which

the impugned order came to be passed. The controversy arises in the backdrop of an earlier application filed by Apeksha CHSL seeking identical reliefs, which has been rejected by the Competent Authority by a reasoned order dated 4<sup>th</sup> August 2016. By the said order, the Competent Authority held that, in view of the pendency of a civil suit instituted by Noble House CHSL, seeking conveyance in respect of land forming part of the same layout, the application was not maintainable at that stage, while granting liberty to Apeksha CHSL to file a fresh application after the decision of the said civil suit. It is an admitted position that the order dated 4<sup>th</sup> August 2016 was not challenged and that the said civil suit continues to remain pending.

3. The Petitioner is the Promoter / Developer of the single layout on which four buildings have been constructed. Respondent Nos. 3 to 6 viz., Apeksha Co-operative Housing Society Ltd. / Respondent No. 3 (***Apeksha CHSL***), Noble House Co-operative Housing Society Ltd. / Respondent No. 4 (***Noble House CHSL***), Valencia Co-operative Housing Society Ltd. / Respondent No. 5, (***Valencia CHSL***) and Camron Heights Co-operative Housing Society Ltd. / Respondent No. 6, (***Camron Heights CHSL***) are the four Co-Operative Housing Societies formed by flat-purchasers in the respective four buildings constructed within the said layout.

**BRIEF CHRONOLOGY OF RELEVANT EVENTS**

4. For a proper appreciation of the controversy, the relevant factual background may briefly be noted as under:

4.1 The property comprises a single layout bearing survey no. 41, being plot nos. F-7 to F-14 of Block “F”, corresponding to CTS Nos. 626/6, 626/7, 626/8, 626/9 to 626/11, admeasuring about 10,130.56 sq. mtrs. (approximately 11,733.36 sq. yds.) situated at Village Oshiwara, Taluka Andheri, Sundarvan Complex, Lokhandwala Road, Andheri (West), Mumbai 400053. The layout is divided by a Development Plan Road into three portions: Plot “A”, on which building ‘Kalash’ stands, Plot “C”, reserved for DP Road; and Plot “B”, admeasuring about 8,259 sq. mtrs., upon which four buildings, namely, *Apeksha*, *Noble House*, *Valencia* and *Camron Heights* have been constructed.

4.2 Between 7<sup>th</sup> January 1989 and 8<sup>th</sup> October 1999, various exemption orders and corrigenda were issued under the Urban Land (Ceiling and Regulation) Act, 1976, granting exemption under Section 20 with respect to land admeasuring about 4,792.49 sq. mtrs., subject

to surrender of specified built-up area to the State Government and compliance with stipulated conditions. The amalgamated layout thereafter received approval from the Municipal Corporation of Greater Mumbai on 6<sup>th</sup> May 1991.

4.3 Between 1989 and 1993, the Promoter constructed two buildings on Plot “B”, namely *Apeksha* and *Noble House*, pursuant to Intimation of Disapproval (IOD) dated 10<sup>th</sup> May 1991. Both buildings comprise ground plus seven upper floors, with *Apeksha* having 41 flats and FSI consumption of 1,740 sq. mtrs. and *Noble House* having 49 flats and FSI consumption of 1,885 sq. mtrs. Occupancy Certificates were issued on 12<sup>th</sup> October 1996 (for *Apeksha*) and 26<sup>th</sup> March 1997 (for *Noble House*). Both societies were subsequently registered in 1999.

4.4 Thereafter, two additional buildings were constructed within the same layout. *Valencia*, with FSI consumption of about 5,950 sq. mtrs., received IOD dated 5<sup>th</sup> July 1997, Occupancy Certificate dated 17<sup>th</sup> November 2003, and its society was registered on 30<sup>th</sup> November 2004 and *Camron Heights*, with FSI consumption of about 5,600 sq. mtrs., received IOD dated 25<sup>th</sup> May 2004,

Occupancy Certificate dated 21<sup>st</sup> April 2008, and its society was registered on 11<sup>th</sup> September 2009.

- 4.5 MOFA was amended with effect from 25<sup>th</sup> February 2008 to expressly provide for unilateral deemed conveyance. By virtue of this amendment, the office of the Competent Authority was created under Section 2(a) read with Section 5A, and Section 11 was amended, to empower the Competent Authority to issue a certificate of deemed conveyance where the promoter fails to execute conveyance within the prescribed period.
- 4.6 By a letter dated 23<sup>rd</sup> October 2010, the Petitioner informed all four societies that it proposed the execution of a common conveyance in favour of all societies jointly. By a communication dated 18<sup>th</sup> December 2010, Noble House CHSL demanded an independent conveyance. The Petitioner, through its advocate's reply dated 2<sup>nd</sup> September 2011, declined this request and reiterated its willingness to execute only a common conveyance for the entire layout.
- 4.7 In or about June 2012, Noble House CHSL instituted Suit No. 1481 of 2012 before the Bombay City Civil Court at Dindoshi against the

Petitioner, its partners, the original landowners and the remaining societies, seeking conveyance of the exempted land admeasuring 4,792 sq. mtrs. forming part of Survey No. 41 along with ancillary reliefs. Ad-interim reliefs sought by Noble House CHSL were refused vide order dated 29<sup>th</sup> November 2012, *inter alia* noting the existence of multiple societies on the suit property. A challenge to this order has since also been negated by the High Court.

4.8 By order dated 20<sup>th</sup> February 2013, the City Civil Court decided a preliminary issue under the then Section 9A of the Code of Civil Procedure, 1908, (CPC), upholding its pecuniary jurisdiction. The Petitioner challenged the said order by filing Civil Revision Application No. 359 of 2013 before this Court, which on 15<sup>th</sup> April 2014 admitted the revision and stayed further proceedings in the suit.

4.9 On 2<sup>nd</sup> January 2016, Apeksha CHSL filed its first deemed conveyance application (Application No. 2 of 2016) before the Competent Authority under Section 11 of MOFA. The application was opposed by the Promoter as well as the other three societies.

4.10 By an order dated 4<sup>th</sup> August 2016, the Competent Authority rejected the application, holding that, in view of the pending civil suit concerning the same layout, the application was premature. However, liberty was granted to Apeksha CHSL to file a fresh application after the decision of the civil suit. The operative part of the said order is reproduced hereunder for convenience:

*“Also the suit in respect of area claimed by Applicant Society is already pending before the Hon'ble Court, therefore in these circumstances, it will not be correct to allow the application of Applicant Society. Therefore I came to the conclusion that the present application of Applicant is incorrect and is liable to be rejected.*

*I further order that, after the order in aforesaid dispute, if necessary Applicant Society can again file new application before this Authority.”*

4.11 Without challenging the order dated 4<sup>th</sup> August 2016 and while the civil suit continued to remain pending, Apeksha CHSL filed a second application on 3<sup>rd</sup> January 2017 (Application No. 2 of 2017). It was contended that the earlier order had been passed without the Competent Authority being apprised that ad-interim reliefs sought in the civil suit had been refused and that Section 10 of the CPC was inapplicable since Apeksha CHSL was not the Plaintiff in the said civil suit. The application was opposed by the Petitioner and Noble House CHSL.

- 4.12 Upon hearing the parties and considering the additional material placed on record therein, the Competent Authority passed the impugned order dated 31<sup>st</sup> May 2017, granting deemed conveyance in favour of Apeksha CHSL in respect of the land admeasuring 1,740.97 sq. mtrs., including 1,384.65 sq. mtrs. stated to be in its physical possession, together with the Apeksha building and proportionate rights in common amenities.
- 4.13 The present Writ Petition came to be instituted on 6<sup>th</sup> November 2017 challenging the impugned order. During pendency, Respondent No. 2 executed a unilateral Deemed Conveyance Deed dated 12<sup>th</sup> January 2018, registered on 16<sup>th</sup> April 2018 (Registration No. BDR-4/421/2018) in favour of Apeksha CHSL.
- 4.14 By an interim order dated 23<sup>rd</sup> April 2018, this Court directed cancellation of the registration of the unilateral deemed conveyance deed and further directed that all deemed conveyance applications concerning the common layout would remain subject to the outcome of the present Writ Petition.
- 4.15 Aggrieved thereby, Apeksha CHSL filed Special Leave Petition

(Civil) No. 12294 of 2018 before the Supreme Court. By an order dated 18<sup>th</sup> May 2018, the Supreme Court stayed the specified directions of this Court while clarifying that the registration of the conveyance would remain subject to final adjudication of the present Writ Petition. On 12<sup>th</sup> April 2019, the Supreme Court dismissed the Special Leave Petition and directed continuation of the interim protection granted on 18<sup>th</sup> May 2018 till the final disposal of the present Writ Petition.

4.16 On 22<sup>nd</sup> June 2018, the State of Maharashtra issued a Government Resolution prescribing guidelines governing conveyance and unilateral deemed conveyance in layouts comprising multiple buildings and multiple co-operative housing societies, including a methodology for determining the proportionate undivided share of land based on FSI utilisation.

4.17 Civil Revision Application No. 359 of 2013 was ultimately disposed of on 30<sup>th</sup> October 2023 consequent upon repeal of Section 9A of the CPC. The said civil suit instituted by Noble House CHSL, however, continues to remain pending as on date.

**SUBMISSIONS OF THE PETITIONER**

5. Mr. Shishir Joshi, learned Counsel appearing for the Petitioner / Promoter, submits that the impugned order is vitiated at the threshold since it arises from what is, in substance, a second round of proceedings before the same Competent Authority at the instance of the same society, namely Apeksha CHSL. He submits that in the earlier round, the Competent Authority, by a reasoned order dated 4<sup>th</sup> August 2016, had declined to grant deemed conveyance to Apeksha CHSL upon recording a specific finding that, in view of the pendency of Civil Suit No. 1481 of 2012 instituted by Noble House CHSL concerning conveyance rights in respect of lands forming part of the same layout, the application was not maintainable at that stage. However, liberty was granted to file a fresh application only after the decision of the said civil suit. It is undisputed, that the order dated 4<sup>th</sup> August 2016 was never challenged and that the said civil suit continues to remain pending.
  
6. Mr. Joshi submits that notwithstanding the subsistence of the earlier order, Apeksha CHSL filed a second application on 3<sup>rd</sup> January 2017 by making, what he characterises as incorrect and misleading assertions. He relies upon paragraphs 4(a) to 4(c) of the application which is reproduced hereunder, to contend that Apeksha CHSL sought to reopen the matter on the basis of

alleged non-disclosure of certain orders passed in the civil proceedings and on an erroneous assertion that the condition imposed in the earlier order stood satisfied.

“4. *That we hereby further compliance with the grounds raised by this Hon'ble authority to refile this application before this Hon'ble authority.*

*(a) That in the aforesaid order it has been incorporated that Noble house CHS Ltd have filed S. C. Suit No. 1481 of 2012, Hon'ble City Civil Court and thereby claimed the full area of the layout and wherein they have also for moved for ad-interim relief by praying that no third party rights or conveyance be allowed to any other party/building and the same has been rejected by the Hon'ble court on the grounds that there are some other building in the layout. (Enclosed herewith the order of the Hon'ble City Civil Court for your ready reference as Exhibit "B").*

*That it is pertinent to note that the said fact was not disclosed by the opponent No. 6 being Noble House CHS Ltd in the hearing before this Hon'ble authority and therefore, the said matter shall be rehear to clarify the factual position of the case and kindly note that Section 10 of Civil Procedure Code does not implement as the matter has not been filed by an applicant society and even the Hon'ble City Civil Court have also rejected the ad-interim relief prayed by the opponent No. 6 being Noble House by considering the other building or society's entitlement in the layout.*

*(b) Subsequently, the aforesaid rejected order of the Hon'ble City Civil Court has been challenged by the said opponent no. 6 being Noble House CHS Ltd., before the Hon'ble High Court by filing civil application no. 33 of 2016 and after hearing the said matter by the Hon'ble High Court the same was again rejected on 14/06/2016 and the matter has been disposed from the Hon'ble High Court. (Enclosed herewith the Order and status of report of High Court as Exhibit "C").*

*Therefore it is pertinent to note that even Hon'ble High Court has also consider the entitlement of the other societies or building's entitlement in the layout and therefore, this Hon'ble authority may grant conveyance to the applicant society as per their entitlement.*

*(c) That it has been also mentioned in the order of this authority pertaining to the justification of an area claimed by the applicant society, in this*

*regard as per an order of this Hon'ble Authority, it has been clearly mentioned that after decision of Competent courts the applicant may reapplying for the conveyance before the authority, wherein the Hon'ble High Court has disposed of the aforesaid matter on dated 14/06/2016 and therefore at this juncture, therefore, we hereby re-file this application for our legitimate rights.”*

7. According to Mr. Joshi, the second application was, in effect, an attempt to review or recall the earlier order dated 4<sup>th</sup> August 2016. He submits that the MOFA confers no power of review upon the Competent Authority. In support, reliance is placed upon decisions of this Court passed in ***Kashish Park Reality Pvt. Ltd. & Anr. vs. State of Maharashtra & Another***<sup>1</sup> and ***M/s Aakansha Construction Co. vs. State of Maharashtra & Another***<sup>2</sup>. He therefore submits that the impugned order amounts to an impermissible exercise of review jurisdiction which requires intervention from this Court.
8. It is further contended that the second application was barred by the principles of *res judicata*, which apply equally to proceedings before quasi-judicial authorities. Reliance is placed on the decision of the Supreme Court in ***Faime Makers Private Limited vs. District Deputy Registrar, Co-operative Societies (3) Mumbai & Others***<sup>3</sup>. Reliance is also placed on the decision of this Court in ***Magnum Unit 'A' CHS Limited vs. State of Maharashtra***<sup>4</sup>.

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1 2021 (3) Mh.L.J. 778

2 Order dated 5<sup>th</sup> May 2025 passed in Writ Petition No. 19417 of 2024

3 (2025) 5 SCC 772

4 Order dated 24<sup>th</sup> February 2026 passed in Writ Petition No. 11328 of 2023

9. Mr. Joshi submits that the Petitioner had expressly raised the bar arising under Section 10 of the CPC and the continuing pendency of the civil suit in its written submissions before the Competent Authority. Despite this, the impugned order does not deal with or adjudicate upon this jurisdictional objection, rendering the order vulnerable to challenge.
10. He additionally points out that Noble House CHSL, in its reply dated 12<sup>th</sup> February 2017 had independently raised the plea of *res judicata*. The Competent Authority, however, has returned no finding on this issue. According to him, failure to decide an objection going to jurisdiction itself vitiates the impugned order.
11. On merits, Mr. Joshi submits that the conveyance granted in favour of Apeksha CHSL travels beyond its lawful entitlement. He relies upon the Government Resolution dated 22<sup>nd</sup> June 2018, which prescribes the methodology for apportionment of land where multiple co-operative housing societies exist within a single layout. The impugned order, according to him, is inconsistent with the principles embodied in the said Government Resolution. Reliance is placed on the decisions of this Court in ***Marathon Era CHSL vs. Competent Authority & District Dy. Registrar, Cooperative***

*Societies*<sup>5</sup>, *New Sonal Industries Premises Limited vs. District Deputy Registrar (2), Cooperative Societies and Others*<sup>6</sup>, *M/s. Kulshree Builders vs. Shri Shraddha CHSL & Others*<sup>7</sup>, and *Prestige Garden A-1 CHSL vs. State of Maharashtra & Others*<sup>8</sup>.

12. Mr. Joshi further submits that the unilateral deemed conveyance deed executed on 12<sup>th</sup> January 2018 and registered thereafter is itself inconsistent with the certificate issued by the Competent Authority under Section 11(4) of MOFA. According to him, there exists a discrepancy between the plot area and built-up area recorded in the certificate and those reflected in the registered conveyance deed, thereby furnishing an additional independent ground for interference. On these grounds, Mr. Joshi submits that the impugned order and consequential deemed conveyance deserves to be set aside.

13. Reliance is placed on the decision of this Court in *M/s. S & M Enterprises vs. The Palazzo Building No. 1 CHSL & Others*<sup>9</sup> and also in *Velentine Properties Private Limited vs. State of Maharashtra and Others*<sup>10</sup> to contend

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5 2024 SCC Online Bom 1115

6 2025 SCC Online Bom 391

7 Order dated 24<sup>th</sup> April 2024 passed in Writ Petition No. 915 of 2019

8 Order dated 8<sup>th</sup> March 2024 passed in Writ Petition No. 7668 of 2023

9 Order dated 28<sup>th</sup> July 2025 passed in Writ Petition No. 12297 of 2022

10 2025 SCC Online Bom 5424

that this Court can interfere in a scenario such as the present one and set aside the order of deemed conveyance.

**SUBMISSIONS OF RESPONDENT NO.4 / NOBLE HOUSE CHSL**

14. Mr. Fraser Alexander, learned Counsel appearing for Noble House CHSL, supports the challenge mounted by the Petitioner. He submits that the Competent Authority could not have entertained or decided the second deemed conveyance application during the pendency of Suit No. 1481 of 2012, instituted by Noble House CHSL and still pending before the Bombay City Civil Court at Dindoshi. The impugned order, according to him, is contrary to the earlier order dated 4<sup>th</sup> August 2016 which expressly permitted refiling only after disposal of the civil suit.
  
15. Mr. Alexander points out that Noble House CHSL had specifically raised the plea of *res judicata* in paragraph 2 of its reply dated 12<sup>th</sup> February 2017, the contents of which are also extracted below. The substance of that contention was that no subsequent change of circumstances had occurred after the earlier rejection order and that the second application constituted an abuse of the liberty granted by the Competent Authority.

“2. *At the outset I say and submit that the matter purported to be propounded by the Applicant under the present application is barred by*

*res judicata and there are no new facts which warrant for the filing of a fresh application by the Applicant. The Applicant is seeking to abuse the process of law by exploiting the liberty which was granted by this Hon'ble Tribunal for filing of fresh application on bonafide subsequent reasons. I repeat and reiterate that the matters relating to this Opponent's members entitlement of property are still sub-judice before the Hon'ble Bombay City Civil Court and the Hon'ble Bombay High Court in the suit filed by Opponent No. 6 viz. SC Suit No. 1481/2012 and there has been no change in the status of the matters after the passing of the Order by this Hon'ble Tribunal. I say that Opponent No. 6 has filed the said suit against the Builder (Opponent No. 7) praying for a conveyance of the plot of land promised under the Second Schedule in the Agreements for Sale. I say that the Applicant has been impleaded as Defendant No. 20 therein and the reliefs claimed against the Builder, which is pending on the file of the Hon'ble City Civil Court at Dindoshi, Mumbai. Hereto annexed and marked as Exhibit 'A' is the copy of the screen shot of the case status of the proceedings.”*

16. He submits that so long as the earlier rejection order continued to operate, the Competent Authority lacked jurisdiction to entertain a fresh application on the same subject matter. Reliance is placed on the decision of the Supreme Court in *Yadaiah & Another vs. State of Telangana & Others*<sup>11</sup>.
17. Mr. Alexander also adopts the submission that Apeksha CHSL was guilty of suppression and misrepresentation in presenting the second application and therefore seeks setting aside of the impugned order.

**SUBMISSIONS OF RESPONDENT NO. 3 / APEKSHA CHSL**

18. In response, Mr. Saket Mone, learned Counsel appearing for Apeksha CHSL, opposes the Petition and supports the impugned order. At the outset, he

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11 (2023)10 SCC 755

submits that the plea of *res judicata* cannot be entertained at the instance of the Petitioner since such a contention was not raised by them before the Competent Authority. In support, reliance is placed on the judgment of the Supreme Court in *V. Rajeshwari (SMT) vs. T. C. Saravanabava*<sup>12</sup>. He further submits that the ground was also not originally pleaded in the present Writ Petition and was introduced only by way of amendment in January 2026. Therefore, he submits that the plea of *res judicata* has been waived by the Petitioner and cannot be entertained by this Court for the first time, in the present Writ Petition.

19. Without prejudice, Mr. Mone submits that the earlier order dated 4<sup>th</sup> August 2016 proceeded on an erroneous understanding of law by treating pendency of a civil suit as a bar to consideration of deemed conveyance. According to him, an erroneous decision cannot operate as *res judicata* so as to perpetuate illegality. He submits that *res judicata* is a rule of public policy meant to prevent multiplicity of proceedings and not to prevent correction of legal error.
20. It is therefore contended that filing of the second application did not amount to a review of the earlier order but constituted a fresh invocation of statutory

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12 (2004) 1 SCC 551

jurisdiction upon placing complete and correct facts before the Competent Authority. Reliance is placed on the decision of the Supreme Court in ***Canara Bank vs. N. G. Subbaraya Setty and Another***<sup>13</sup>.

21. On merits, Mr. Mone submits that the land area granted under the impugned order and the consequent conveyance is fully consistent with the Government Resolution dated 22<sup>nd</sup> June 2018. According to him, the Resolution contemplates grant of deemed conveyance to an individual society in respect of land appurtenant to its building together with proportionate rights in common amenities, determined with reference to sanctioned plans, building footprint and FSI utilisation. He submits that the Competent Authority correctly applied this framework and was not required to insist upon a joint conveyance in favour of all societies.
22. Mr. Mone further submits that once a unilateral conveyance has been executed and registered pursuant to an order passed under Section 11 of MOFA, this Court ought not ordinarily to interfere in exercise of writ jurisdiction. Reliance is placed on the decisions in ***Satya Pal Anand vs. State of Madhya Pradesh***<sup>14</sup> and ***Amudhavali vs. P. Rukumani***<sup>15</sup>.

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13 (2018) 16 SCC 228  
14 (2016) 10 SCC 767  
15 (2022) 17 SCC 534

23. Reliance is also placed on the decisions in *Arunkumar H. Shah HUF vs. Avon Arcade Premises Co-operative Society Ltd. & Others*<sup>16</sup> and *Shri Chintamani Builders vs. State of Maharashtra & Others*<sup>17</sup> to submit that no interference is called for in the present matter since there is no manifest illegality in the impugned order and as a result, interference from this Court is not warranted. Reliance is also placed on the decisions in *Swastik Promoters and Developers vs. Competent Authority, District Deputy Registrar of Cooperative Societies and Another*<sup>18</sup>, *Zainul Abedin Yusufali Massawawala and Others vs. Competent Authority District Deputy Registrar of Co-Operative Housing Societies, Mumbai, and Others*<sup>19</sup>, and *Mazda Construction Company and Others vs. Sultanabad Darshan CHS Ltd. and Others*<sup>20</sup>.
24. Finally, he submits that it is now well settled that mere pendency of a civil suit does not bar consideration of an application for deemed conveyance, proceedings under Section 11 of MOFA being summary in nature and subject to the result of civil proceedings. Reliance is placed on decisions of this Court in *Om Shakuntal Co-Operative Housing Society Ltd. vs. Patel Wood*

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16 (2025) 7 SCC 249  
17 2016 SCC Online Bom 9343  
18 2025 SCC Online Bom 256  
19 2016 SCC Online Bom 6028  
20 (2013) 2 All MR 278

*Works & Timber Mart & Another*<sup>21</sup> and *New Manoday Co-Operative Housing Society Ltd. vs. Uday Madhavrao Jagtap*<sup>22</sup>.

ANALYSIS, REASONS & FINDINGS

25. I have heard learned Counsel for the parties at some length and with their assistance, perused the record placed before this Court. The controversy in the present Writ Petition essentially lies at the intersection of three legal questions, namely: (i) whether the second deemed conveyance application dated 3<sup>rd</sup> January 2017 was maintainable in light of the earlier order dated 4<sup>th</sup> August 2016 (ii) whether the impugned order amounts to an impermissible exercise of review jurisdiction by the Competent Authority and (iii) whether the grant of deemed conveyance in favour of Apeksha CHSL suffers from jurisdictional or procedural infirmity warranting interference under Article 226 of the Constitution of India. These issues are inter-connected and therefore require composite consideration.
26. The starting point of analysis must necessarily be the earlier order dated 4<sup>th</sup> August 2016 passed by the Competent Authority. By that order, the application for deemed conveyance preferred by Apeksha CHSL was

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21 Order dated 18<sup>th</sup> March 2024 in Writ Petition No. 2578 of 2020  
22 (2024) SCC OnLine Bom 1217

rejected upon recording a clear finding that, in view of the pendency of Civil Suit No. 1481 of 2012 instituted by Noble House CHSL concerning conveyance rights in respect of the same layout, it would not be appropriate to grant conveyance at that stage. The operative portion of the said order assumes decisive significance. The Competent Authority did not merely dispose of the application simpliciter but expressly granted liberty to Apeksha CHSL to file a fresh application after the decision of the civil dispute. The liberty was therefore conditional and not absolute.

- 27.** It is an admitted position that the earlier order dated 4<sup>th</sup> August 2016 was never challenged. The order thus attained finality between the said parties. Once an adjudicatory authority renders a reasoned decision and attaches a specific condition governing future recourse, the parties are bound by that determination unless set aside by a superior forum. The binding character of such an order flows not merely from the doctrine of *res judicata* in its technical sense but from the broader principle of finality of judicial and quasi-judicial decisions, which applies equally to statutory authorities exercising adjudicatory powers.
- 28.** The submission of Apeksha CHSL that the earlier order proceeded on an erroneous understanding of law cannot assist it. An order alleged to be

legally incorrect does not become non-existent. So long as it remains operative, it binds the parties. The remedy available was to challenge the order dated 4<sup>th</sup> August 2016 before the appropriate forum. Having elected not to do so, Apeksha CHSL could not indirectly nullify the earlier order by initiating a second round of proceedings before the same authority.

29. My aforesaid view is fortified by the decision in ***Faime Makers*** (supra), wherein the Supreme Court has expressly held:

“23. *It has been settled by this Court that the principle of res judicata applies to and binds quasi-judicial authorities. This Court in Ujjam Bai v. State of U.P.<sup>23</sup> has taken the view that principles of res judicata equally apply to quasi-judicial bodies. Whenever a judicial or quasi-judicial tribunal gives a finding on law or fact, its findings cannot be impeached collaterally or in a second round and are binding until reversed in appeal or revision or by way of writ proceedings.*

24. *The characteristic attribute of a judicial act or decision is that it binds, whether right or wrong. Thus, any error, either of fact or law, committed by such bodies cannot be controverted otherwise by way of an appeal or revision or a writ unless the erroneous determination relates to the jurisdictional matter of that body.*

25. *This position has been further reinforced in Abdul Kuddus v. Union of India which relies upon Ujjam Bai. In Abdul Kuddus<sup>24</sup>, this Court held that the opinion by the Foreigners Tribunal is a quasi-judicial order. Therefore, it would be incorrect to hold that the opinion of the Tribunal and/or the consequential order passed by the registering authority would not operate as res judicata. Further, it was established that any quasi-judicial authority would not ordinarily have the power to unilaterally take a contrary view taken by a coordinate or predecessor authority at an early point in time.*

26. *From the foregoing discussion, it is evident that once a competent authority (quasi-judicial in nature) settles an issue, that determination attains finality unless it is set aside in accordance with law.”*

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23 1962 SCC Online SC 8  
24 (2019) 6 SCC 604

30. Also, the ratio of the decision in ***Yadaiah*** (supra) is that the doctrine of *res judicata*, being founded upon considerations of public policy, finality of adjudication, and judicial discipline, is attracted wherever a competent authority has finally determined an issue after affording due opportunity to the parties. Once a matter directly and substantially in issue has been adjudicated upon between the same parties by an authority exercising judicial or quasi-judicial functions, such determination binds the parties in subsequent proceedings and precludes reopening of the very same issue under a different form or proceeding. The principle applies with equal force to statutory and administrative adjudications, so long as the earlier decision was rendered within jurisdiction and has attained finality. Re-agitation of concluded questions is impermissible except where the earlier order is demonstrated to be vitiated by lack of jurisdiction, fraud, or has been duly set aside by a superior forum. The doctrine thus operates to prevent multiplicity of proceedings, conflicting findings, and abuse of adjudicatory process, and must be respected by all authorities exercising adjudicatory powers.
31. Moreover, the decision in ***Canara Bank*** (supra) is of no assistance to Apeksha CHSL. In paragraph 34 of the said judgment, the Supreme Court, after discussing the law has expounded three exceptions to the doctrine of *res judicata* that is statutorily embodied in Section 11 of the CPC which

prescribes that all issues, including issues of fact, mixed questions of fact and law, and issues of law that arise directly and substantially in a former suit or proceeding between the same parties are *res judicata* in a subsequent suit or proceeding between them. *Firstly*, where an issue of law decided between the same parties in a former suit or proceeding relates to the jurisdiction of the court; *Secondly*, where an erroneous decision is given on a statutory prohibition in the former suit or proceeding and the statutory prohibition is not given effect to; and *Thirdly*, when the issue of law is different from that in the previous suit or proceeding. In the present case, none of the said three exceptions are attracted. The order dated 4<sup>th</sup> August 2016 neither decides an issue of law, nor erroneously rejects a statutory prohibition. Moreover, there is no change or difference in the issue of law between the earlier order dated 4<sup>th</sup> August 2016 and the impugned order. Therefore, Mr. Mone's reliance on this decision is entirely misplaced.

- 32.** The crucial question therefore is whether the application dated 3<sup>rd</sup> January 2017 represented a genuinely fresh cause of action or amounted in substance, to a review of the earlier order. To determine this question, it would be profitable to rely upon the decision of this Court in *Magnum* (supra) where this Court has noted the Governing Principles of Finality and *res judicata*, and held:

“17. The doctrine of *res judicata* rests on this basic principle. A matter which has been directly and substantially decided between the same parties cannot be reopened in a second round. It also bars issues which could and ought to have been raised in the earlier proceeding. The law does not permit a party to split its claims or hold back part of its case and then attempt to agitate it later in a fresh proceeding. The Court must examine whether the parties are the same, whether the foundation of the claim arises from the same transaction set of facts, and whether the core issue was directly and substantially in issue earlier. If these elements are present, then the earlier adjudication binds, whether right or wrong, unless it has been set aside in appeal or appropriate proceedings. A litigant cannot avoid this bar by changing the wording of the relief or by reducing or enlarging the area claimed. If in substance the claim arises from the same cause of action and seeks what was earlier refused, it remains barred. Merely fragmenting the relief, or presenting it in a slightly altered form, does not create a new cause of action. The law looks at the real nature of the dispute, not the label attached to it. Therefore, once a quasi-judicial authority has finally decided a matter on merits and no liberty to reapply has been granted, the parties are bound by that determination. The only lawful course for an aggrieved party is to challenge the decision before a higher forum.”

33. In the following paragraph of the said decision, the Court further noted the tests for identification of points that are directly and substantially in issue versus collateral issues by relying on the principles explained in *Sajjanashin Sayed vs. Dadabhai Ummer*<sup>25</sup> which provide guidance for courts in deciding whether an earlier finding binds the parties in later proceedings and held that only those findings which form the real foundation of the earlier decision will operate as *res judicata*.
34. In the present case, a comparative reading of both applications would show that not only did the parties remain identical, but even the subject matter, namely, conveyance of land forming part of the same layout remain the

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25 (2000) 3 SCC 350

same. Additionally, the foundational factual situation, namely, pendency of the said civil suit also remained unchanged. Considering this, it is clear that the principles of *res judicata* would apply to the facts of the present case and the second deemed conveyance application dated 3<sup>rd</sup> January 2016 was not maintainable in light of the earlier order dated 4<sup>th</sup> August 2016. Moreover, the liberty granted in the earlier order was conditional upon disposal of the said civil suit. Since that contingency admittedly never occurred, I am of the considered view that the second application was not only premature but the same was also barred by principles analogous to *res judicata* and by the doctrine of finality of proceedings.

35. A perusal of the record would also reveal that the grounds urged in the second application are essentially that certain orders passed in the said civil suit had allegedly not been brought to the notice of the Competent Authority earlier and Section 10 of the CPC was allegedly inapplicable. These grounds do not constitute new circumstances. Instead, they are arguments directed against the correctness of the earlier order itself. In substance therefore, Apeksha CHSL sought reconsideration of the very issue already decided, namely, whether deemed conveyance could be granted during pendency of the said civil suit. Such reconsideration squarely falls within the domain of review.

36. The legal position emerging from the decisions in *Faime Makers* (supra), *Aakansha Construction Co.* (supra) and *Kashish Park* (supra) is well settled that a statutory or quasi-judicial authority does not possess any inherent power of review. Such authority may revisit or recall its order only where the governing statute expressly confers a power of review, or where interference is warranted to correct a patent jurisdictional or procedural illegality going to the root of the decision-making process. Upon passing an adjudicatory order, the authority becomes *functus officio* and cannot reopen the matter merely because another view is possible, additional submissions are advanced, or the earlier determination is alleged to be erroneous on merits, for a review cannot be permitted to assume the character of an appeal in disguise. Reconsideration is therefore confined to exceptional situations such as absence of jurisdiction, fraud, or an error apparent on the face of the record affecting the authority's competence. In the absence of a statutory power of review, the remedy of an aggrieved party lies before the appellate or supervisory forum and not in seeking a re-adjudication by the authority itself. Moreover, it is also not in dispute that the conditions set out in the earlier order dated 4<sup>th</sup> August 2016 have not been satisfied inasmuch as, the said civil suit still remains pending.

37. Neither Section 11 of MOFA nor any allied provision confers review jurisdiction upon the Competent Authority. Proceedings for deemed conveyance are summary adjudications intended to enforce statutory obligations of the Promoter. The Competent Authority has neither been conferred with any appellate nor any review powers. The impugned order therefore, suffers from a fundamental jurisdictional defect. Thus, in my view, by entertaining the second application for deemed conveyance dated 3<sup>rd</sup> January 2017, despite the subsisting earlier order dated 4<sup>th</sup> August 2016 and absence of changed circumstances, the Competent Authority effectively exercised a power of review which is neither recognised under MOFA nor has it been conferred upon the Competent Authority.
38. In any event, it is not an absolute proposition that if the plea of *res judicata* is not raised before the trial court, the same can never be permitted to be urged at the appellate stage. Such exception has also been observed in paragraph 12 of the said decision in *V. Rajeshwari* (supra), where the Supreme Court, after noting several past judicial pronouncements, including those of the Privy Council, has taken due notice of such exception. This was permitted in the case of *State of Punjab vs. Bua Das Kaushal*<sup>26</sup> where the necessary facts were known to the parties and were gone into by the trial court. Hence, the

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26 (1970) 3 SCC 656

Court concluded that the point of *res judicata* had throughout been in consideration and discussion and so the want of pleadings or the plea of waiver of *res judicata* was not permitted to be urged.

39. Even otherwise, the argument advanced by Mr. Mone that the plea of *res judicata* was not properly raised before the Competent Authority cannot be accepted in the facts of the present case. The record demonstrates that both the Petitioner and Noble House CHSL specifically objected to maintainability on the basis of the earlier order. Whilst the Petitioner had raised this issue by relying on Section 10 of the CPC, Noble House CHSL had specifically raised the issue of *res judicata* under Section 11 of the CPC. The issue therefore squarely arose for determination in the said proceedings. However, the Competent Authority has completely failed to deal with this issue, and the impugned order is conspicuously silent, containing no discussion or findings whatsoever on it.
40. Whilst it is true, as contended by Mr. Mone, by relying on the decisions of this Court in *New Manoday* (supra) and *Om Shakuntal* (supra), that mere pendency of a civil suit does not ordinarily operate as an absolute bar to consideration of deemed conveyance proceedings under Section 11 of MOFA and that proceedings under MOFA are summary in nature and operate subject

to adjudication by civil courts, however the present case stands on a materially different footing. The issue is not whether pendency of a civil suit in law bars deemed conveyance; rather, the question is, whether the Competent Authority, having earlier chosen to defer adjudication until the suit was decided, could subsequently ignore its own binding determination. The legality of the earlier reasoning is no longer open to examination before the same authority. Until the first order was set aside, the Competent Authority remained bound by its own earlier decision.

41. The impugned order, significantly, does not record any finding explaining how the condition imposed in the earlier order stood satisfied or why the Competent Authority was entitled to depart from it. Hence, I am of the view that the failure on the part of the Competent Authority to address this jurisdictional objection vitiates the decision-making process itself and accordingly, warrants interference from this Court exercising extra-ordinary writ jurisdiction under Article 226 of the Constitution of India.
  
42. The Petitioner and Noble House CHSL have alleged that the second application was founded upon misleading assertions regarding developments in the civil proceedings. However, I do not consider it necessary for this Court to return a conclusive finding of deliberate suppression. However, it is

evident that the material relied upon by Apeksha CHSL did not alter the core circumstance which formed the basis of the earlier rejection, namely, the continuing pendency of the said civil suit.

43. The Competent Authority was therefore required, at the minimum, to examine whether the liberty granted earlier had validly arisen. The absence of such examination, in my view, demonstrates complete non-application of mind to a jurisdictional pre-requisite. The said question goes to the jurisdiction of the Competent Authority and hence, the same may legitimately be examined by this Court exercising writ jurisdiction. Considering the facts of the present case, the decisions in *Arunkumar H. Shah HUF* (supra), *Shri Chintamani Builders* (supra), *Swastik Promoters and Developers* (supra), *Zainul* (supra) and *Mazda Construction* (supra) that are sought to be relied upon by Mr. Mone in support of his contention that this Court ought not to interfere would not assist Apeksha CHSL.
44. In view of the finding that the second application itself was not maintainable, I consider it unnecessary to undertake an elaborate examination of the rival submissions concerning apportionment of land under the Government Resolution dated 22<sup>nd</sup> June 2018 or alleged discrepancies between the certificate of unilateral deemed conveyance and the registered deed of

conveyance. Once the foundational jurisdiction to entertain the second application fails, all consequential actions, including issuance of the certificate under Section 11(4) of MOFA and execution of the unilateral deed of conveyance, cannot be sustained independently. Hence, it is not necessary to deal with the decisions of this Court in *Marathon Era* (supra), *New Sonal Industries* (supra), *M/s. Kulshree Builders* (supra) and *Prestige Garden* (supra) that are cited by Mr. Mone.

45. The submission that this Court should refrain from interference merely because a conveyance has already been executed cannot be accepted. Registration of a deed of conveyance flowing from an order passed without jurisdiction does not create an irreversible situation. Where the decision-making process itself is fundamentally flawed, exercise of writ jurisdiction is not only permissible but necessary to preserve statutory discipline. Hence, the decisions in *Satya Pal Anand* (supra) and *Amudhavali* (supra) can be distinguished on facts and therefore do not apply to the present case and are therefore of no assistance to Apeksha CHSL.
46. For the reasons recorded above, I am of the view that the order dated 4<sup>th</sup> August 2016 attained finality and bound not only the parties but also the Competent Authority. Considering that the liberty granted therein permitted

filing of a fresh application only after disposal of Civil Suit No. 1481 of 2012, which admittedly has not occurred and since the second deemed conveyance application dated 3<sup>rd</sup> January 2017 did not arise from any new or changed circumstance and was, in substance, an attempt to secure reconsideration of the earlier decision, the Competent Authority lacked statutory power to review or reopen its earlier order and therefore acted without jurisdiction in entertaining the second application. The impugned order dated 31<sup>st</sup> May 2017 is thus vitiated by jurisdictional error, non-consideration of material objections, and violation of principles analogous to *res judicata*. The unilateral deed of deemed conveyance executed pursuant thereto cannot survive independently of the impugned order. Considering the above, the impugned order dated 31<sup>st</sup> May 2017 cannot be sustained in law and is liable to be set aside.

47. However, like in *Aakansha Construction* (supra), this Court is also at pains to set aside an order granting deemed conveyance in favour of an association formed by home buyers. MOFA is a beneficial legislation which has been enacted (and amended, from time to time) to prevent the mischief where Promoters and Developers were deliberately not conveying land in favour of the association of home buyers, even after exploitation of the rights in the land under the greed of further FSI being made available. MOFA is intended

to protect the interests of home buyers and hence, courts have always been slow in interfering with orders granting deemed conveyance in favour of co-operative housing societies of home buyers. The Competent Authority is a Tribunal of limited jurisdiction, which adjudicates the application of a co-operative housing society for conveyance of land and building after hearing the Promoter and in some cases, even Owners. A summary and speedy remedy is made available to co-operative housing societies to have land and building conveyed in their names. The Competent Authority is therefore required to exercise jurisdiction under Section 11 of MOFA by keeping in mind the legislative objective and any complicated issue sought to be raised by Promoters (or in some cases like the present one, another co-operative housing society situated in the same layout, namely, Noble House CHSL) can be left to be agitated before Civil Courts, as such parties always have the liberty of filing a suit for asserting their rights in the land.

- 48.** Having held that the impugned order dated 31<sup>st</sup> May 2017 passed by the Competent Authority is unsustainable, the issue which stares me in the face is about the remedy open to Apeksha CHS in respect of its statutory right of conveyance of the land and building. As observed above, Apeksha CHSL ought to have challenged the earlier order dated 4<sup>th</sup> August 2016, if it believed that the same is erroneous rather than filing the second application

for deemed conveyance. Suit No. 1481 of 2012 filed by Noble House CHSL still remains pending before the Bombay City Civil Court at Dindoshi despite it being filed almost 15 years ago. Therefore, if liberty is not granted to Apeksha CHSL to challenge the said order dated 4<sup>th</sup> August 2016, it would be rendered remediless in respect of its right of having the land and building conveyed in its favour. Therefore, while setting aside the impugned order dated 31<sup>st</sup> May 2017, Apeksha CHSL deserves to be granted liberty to challenge the said order dated 4<sup>th</sup> August 2016. There is a statutory right in favour of Apeksha CHSL to apply for deemed conveyance of the land and building. In its earlier order dated 4<sup>th</sup> August 2016, the Competent Authority whilst recognizing such right, has however granted liberty to Apeksha CHSL to file an application for deemed conveyance only after the said civil suit is disposed of. Whether the said decision of the Competent Authority is valid or not, must necessarily be permitted to be tested by Apeksha CHSL. In my view, therefore, liberty needs to be granted to Apeksha CHSL to challenge the earlier order dated 4<sup>th</sup> August 2016. Such a direction would necessarily be in the interests of justice.

**49.** Accordingly, the Writ Petition is allowed and the following order is passed:

**::ORDER::**

- a) The impugned order dated 31<sup>st</sup> May 2017 passed by the Competent Authority / Respondent No. 2 is set aside.
- b) Consequently, the Deed of Unilateral Deemed Conveyance dated 12<sup>th</sup> January 2018 executed between the Competent Authority / Respondent No. 1 and Apeksha CHSL / Respondent No. 3 and registered on 16<sup>th</sup> April 2018 under registration no. BDR-4/421/2018 is also cancelled and set aside.
- c) The Authorities are directed to take the necessary steps to give effect to such cancellation as may be required.
- d) This order shall not affect the rights and contentions of the parties in the pending Suit No. 1481 of 2012 and all contentions by parties taken therein are expressly kept open and the City Civil Court shall hear and decide the same, uninfluenced by this order, as expeditiously as possible and preferably, within a period of one year from today.

- e) Apeksha CHSL / Respondent No. 3 would however be at liberty to challenge the earlier order dated 4<sup>th</sup> August 2016 passed by the Competent Authority / Respondent No. 2 in Application No. 2 of 2016 and such challenge, if made, would be decided on its own merits. All rights and contentions of parties on merits are expressly left open.
- f) All interim applications, if any, also stand disposed of in terms of this order. There shall be no order as to costs.

( FARHAN P. DUBASH, J. )

**After pronouncement:-**

50. After the judgment was pronounced, Mr. Saket Mone, learned Counsel who appears on behalf of Apeksha CHSL / Respondent no. 3 seeks a stay of the judgment and prays that the earlier interim protection that was granted by the Supreme Court on 18<sup>th</sup> May 2018 be continued for a period of four weeks from today to enable his clients to challenge this judgment.
51. Considering the above, the said request is granted and the present judgment

shall remain stayed for a period of four weeks from today viz., till 7<sup>th</sup> July  
2026.

( FARHAN P. DUBASH, J. )

*Amol*