IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 895 OF 2026

1. Bakelite Hylam Limited,
a company registered under the provisions of the Companies Act, 1956 having its address at 'Surya Towers' 3rd Floor, 'C' Block, 104, S.P. Road Secunderabad 500 003.

SNEHA NITIN CHAVAN
Digitally signed by SNEHA NITIN CHAVAN
Date: 2026.10.28 20:53:02 +0530

2. Deve Paints Limited
(Earlier known as Garware Paints Ltd.)a company incorporated under the Companies Act, 1956 having address at GC-1, Ground Floor, Gundecha Enclave, Kherani Road, Sakinaka Andheri (E), Mumbai 400072

3. Mr. Abhishek Ashok Dutt.
Age 41 years, Occupation : Business having his address at 1101, Beach Classic, J.P. Road, Versova, Andheri West, Mumbai 400061.

4. Peak Agencies Pvt. Ltd.
a Company registered under the provisions of Companies Act, 1956 having its address at 101, Niranjan Building, 1st Floor, 99, Marine Drive 'E' Road, Mumbai 400002. ...Appellants/ Ori. Plaintiffs.

Versus

1. M/s. Dattani Constructions
a partnership firm which is the Sole Proprietor of M/s. Excel Builders having its address at Laxmi Shopping Centre, 2nd Floor, L.V. Lane, Kandivali (West), Mumbai 400 067 through its partner viz. Mr. Satish Jamnadas Dattani

Adult, Occupation : Business having his address at Laxmi Shopping Centre, 2nd Floor, L.V. Lane Kandivali (West), Mumbai 400067.

2. Gokuldas Khimji Pvt. Ltd.
a Company registered under the provisions of the Companies Act, 1956 having its address at Laxmi

Shopping Centre, 2nd Floor, L.V. Lane,
Kandivali (West), Mumbai 400 067

3. The Municipal Corporation of Greater Bombay, a Body Corporate constituted under the Bombay Municipal Corporation Act, 1888 having its office at Mahapalika Marg Opp. C.S.T., Fort, Bombay 400 001 ...Respondents/ Ori. Defendants

WITH
INTERIM APPLICATION NO. 6868 OF 2026
IN
APPEAL FROM ORDER NO. 895 OF 2026

Bakelite Hylam Limited ...Applicant

In the matter between:
Bakelite Hylam Limited and Ors. ...Applicants
V/s.
M/s. Dattani Constructions and Ors. ...Respondents

****

Mr. Mayur Khandeparkar a/w Mr. Kaustubh Patil, Mr. Rohan Sawant and Mr. Dixit Parmar for the Appellants.
Mr. R.D. Soni a/w Mr. Sanjay Agre i/b Vinod Singh for Respondent No.1.
Ms. Smita Tandwalkar i/b Komal Punjabi for Respondent No.3/Corporation.
Mr. Manoj More (Sub. Engg.) D.P. 'L' Ward, officer is present.

****

CORAM : M.M. SATHAYE, J.
DATE : 26th OCTOBER, 2026

JUDGMENT :

1. The Appellants are original plaintiffs in Suit No. 638 of 2022. The said Suit is filed for compliance of statutory obligations under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 ('MOFA' for

short), for declaration that the Respondent No. 3/Municipal Corporation cannot invoke Section 56 of the Maharashtra Regional And Town Planning Act, 1966 ('MRTP' for short) to divest the Appellants either of their title or possession over the suit property, for declaration that Respondent No. 1 can not claim any right, title, interest upon the suit property save and except area acquired by Respondent No. 3/ Municipal Corporation and for permanent injunction restraining Respondent No. 3/Municipal Corporation, from providing any compensation to Respondent No.1, restraining Respondent No. 3/ Municipal Corporation permanently from divesting the Appellants either of their title or possession over the suit property.

2. During pendency of the Suit, certain prayers are deleted and fresh prayers are made for permanent injunction restraining Respondent No. 1 from creating third-party interest/right in respect of DRC No. RES/0067/2025 dated 11.02.2025. Appellants have also sought declaration that certain letters issued by Respondent No. 3/ Municipal Corporation are illegal bad in law and permanent injunction is sought against Respondent No. 3 Municipal Corporation from taking any action pursuant to said letters.

3. The Appellants filed Notice of Motion No. 1155 of 2022, 3177 of 2025 and 247 of 2024 in essence, seeking interim injunction restraining Respondent No. 1 from creating any third-party right, title, interest in respect of Transferable Development Rights ('TDR' for short) admeasuring, 4436.60 square meter FSI issued by Respondent No. 3 in respect of suit property and also seeking injunction restraining Respondent No. 3 from providing any compensation to Respondent No. 1. Direction is also sought to Respondent No. 3/Municipal Corporation

to determine the amount of compensation payable for open land acquired by Respondent No. 3/ Municipal Corporation along with details and basis of working.

4. Suit property includes suit building, land beneath it and open area around building. Appellant Nos. 1, 2 & 4 are Private Limited companies and Appellant No. 3 is a private individual. The Appellants have purchased godown No. 3, 4, 1A and 2 admeasuring respectively 6350, 7497, 3044.69 and 6350 sq. ft. carpet area situated at Kranti Nagar Bridge, Bail Bazar, Kurla West, Mumbai 400070. Plot No. 1 forming part of city survey No. 7603 admeasuring about 3344.80 square meter contains suit building of said godowns with open land around it.

5. Respondent No. 1 entity is the vendor/promoter of Appellants. Respondent No. 1 is in possession of 5th godown No. 1B in the suit property.

BACKGROUND

6. In May 2013, Respondent No. 3/Municipal Corporation served a notice under section 56 of MRTP Act, informing the Appellants that the suit property is coming in the alignment of proposed widening of Mithi river, which was sought to be widened and desilt as a result of heavy rainfall and deluge that Mumbai faced in the year 2005. The Appellants were called upon to submit documents for eligibility as to compensation. According to Appellants, till filing of the suit, their eligibility was not decided by Responding No. 3/Municipal Corporation.

7. Respondent No. 3 thereafter served a letter dated 18.03.2021, along with its enclosures to Respondent No. 1 and its copy was sent to

the Appellants being occupiers of the four godowns. This letter, according to Appellants, is an offshoot of order passed by this Court dated 21.11.2019 in Writ Petition No. 1741 of 2015. According to Appellants, they are not concerned with this petition and were not party to it. In furtherance of said order, Respondent No. 1 requested the Respondent No. 3 to takeover possession of the suit property (part) and grant compensation to Respondent No. 1.

8. According to the Appellants, Respondent No. 1 was duty bound as promoter/vendor to form society/company of Appellants and and convey the title of suit property but has failed to do so and it cannot take benefit of its failure and claim full interest in compensation on the suit property. The Appellants claim to have undivided right title interest in the suit property, for enforcement of which the suit is filed.

9. Correspondence ensued between parties, where Respondent No. 1 has taken a stand that since there are only four godowns constructed on suit property, co-operative society cannot be formed. According to Appellants, Respondent No. 1 has not given any reason for not forming co-operative society or company and has made a false claim that it alone is entitled to compensation in respect of Suit property which is open land and godowns.

10. Respondent No. 1 filed its reply opposing the notices of motion, contending there being only four members having godowns/industrial units, registered co-operative society cannot be formed. It is contended that Yamuna Development Corporation is involved and is necessary party, which is a partnership, in which Respondent No. 1 was one of the partners. It is further contended that

since differences arose between partners of Yamuna Development Corporation, dispute was referred to sole Arbitrator, who has given an award dated 10.12.1986, pursuant to which Retirement Deed dated 01.01.1987 is executed by all partners, including Respondent No.1 under which Respondent No.1 has become absolutely well and sufficiently entitled to all the rights, interest and possession of Plot No. 1 along with godown No. 1B. It is contended that Respondent No. 1 has made application to the Municipal Corporation and constructed godowns according to plan sanctioned by the Municipal Corporation, to which occupation certificate is issued in February 1990. It is contended that by agreements of sale, Respondent No. 1 has sold / transferred and assigned the godowns to respective Appellants.

11. Respondent No. 3/Municipal Corporation filed affidavit-in-reply in the reply, contending *inter alia* that notice under section 56 of MRTP Act has been issued to all the appellants and Respondent No. 1 in respect of land Plot No.1 and godown No.1B. It is contended that by virtue of sale agreements, owners are claiming joint ownership in open space of plot No.1. It is contended that after issuance of notice, Respondent No. 1 filed writ petition in this Court, which was disposed of with a direction to Respondent No. 3/Municipal Corporation to demarcate the affected portion by Mithi River widening and handover of affected portion. It is contended that joint survey and demarcation has taken place, however, possession has not been taken. It is further contended that Respondent No. 3 is ready to award compensation to persons having legal right and title in the affected portion. It is contended that according to demarcation plan, plot admeasuring 3143.30 sq. meter is affected by service road and Mithi river widening, which needs to be acquired for subject work. It is contended that the

Appellants and Respondent No. 1 had approached the concerned department of Municipal Corporation, however, due to want of requisite documents, yet the ownership as to open space in plot No. 1 has not been decided. It is contended that Municipal Corporation will award compensation to person/s whose title / interest is upheld by the Court. It is further contended that the Appellants have not described the suit property and exact share or area in the open space and therefore suit is not maintainable as per provisions of Order VII Rule 3 of Civil Procedure Code,1908 ('CPC' for short).

12. The Trial Court considered the agreements for sale executed by Respondent No. 1. It is held that the Respondent No. 1 has accepted that by virtue of the agreements, the Appellants have become absolute owners of the respective godowns.

13. It is not disputed that pursuant to order of Division Bench of this Court dated 21.11.2019, Respondent No.1 has handed over possession of the acquired portion of the Suit property to Municipal Corporation and TDR has been granted to Respondent No. 1 as per possession receipt dated 02.06.2022. The Trial Court has held that mixed questions of various interconnected facts and law including tenability of suit, non-joinder of necessary party are involved and critical analysis of documents with the help of oral evidence is necessary. Trial Court held that Appellants have made out *prima facie* case for grant of injunction partly. The Trial Court held that the prayer of mandatory direction to Respondent No. 3/ Municipal Corporation to determine the amount of compensation is in the nature of monetary relief requiring expert and technical evidence and there is no question of irreparable loss and therefore that prayer is rejected. So far as the

prayer of restraining Respondent No. 3 from awarding compensation to Respondent No. 1 is concerned, the trial Court has partly allowed it, thereby restraining Respondent No. 3 from providing/awarding any compensation to Respondent No. 1 in respect of the suit property excluding land bearing plot No. 1 and godown 1B. Also, Respondent No. 1 is restrained from transferring title and interest in respect of the suit premises, excluding land bearing plot No. 1 and godown No. 1B.

14. In these circumstances, the present appeal from order is filed.

15. In the earlier round of litigation (Appeal From Order No. 254 of 2025), statement was made on behalf of Respondent No. 1 that third party rights will not be created in respect of Development Rights Certificate (DRC for short) dated 11.02.2025. Considering the same, on 01.09.2026, it was directed by this Court that during pendency of the present appeal, no further steps will be taken with reference to the said DRC and thereafter the appeal has been heard finally.

SUBMISSIONS

16. Learned Counsel Mr. Khandeparkar appearing for the Appellants submitted as under.

16.1 That pursuant to sale agreements in favour of all the Appellants, rights under MOFA are created. He invited the Court's attention to clause Nos. 1 to 4 of the agreements. He submitted that Respondent No. 1 has a statutory obligation under Section 10 of MOFA, read with Rule Nos. 8 and 9 of MOFA Rules, 1964 to form a Society/Company and convey the suit property to such society / company. He submitted that Respondent No. 1 is in default of this statutory obligation which is a continuing wrong. He submitted that the

society / company which is required to be formed is deemed owner of the land of the suit property.

16.2 He submitted that benefits due to change in law or arising out of acquisition, enures to the benefit of society/company and not to the developer/Respondent No. 1. He further submitted that execution of conveyance is mere formality.

16.3 He further submitted that Respondent No. 3/Municipal Corporation has breached its statement made on affidavit about awarding compensation to person whose right is upheld by the Court and on mere indemnity dated 28.06.2022, the Respondent No. 3 has awarded TDR in favour of Respondent No. 1 without having regard to the rights of the Appellants.

16.4 He submitted that rights created in favour of the proposed society/company cannot be traded by Respondent No. 1 to the detriment of Appellant's right under MOFA. He relied on various calculations showing total area of land, area affected by godown, area affected by land acquired and eligibility of TDR.

16.5 He also contended that the learned Trial Judge despite holding that Appellants' rights are required to be preserved and adjudicated and despite holding that it is necessary to protect Appellant's right, refused injunction in respect of land described in first schedule i.e. plot no. 1, without any reason.

16.6 He submitted that the fact that there is larger layout is irrelevant for the present dispute because the construction on plot no. 1 uses FSI of only said plot and not of the layout.

16.7 He submitted that it is only plot no. 1 that is affected by the Mithi River widening and no other part of the larger layout (Plot Nos. 2, 3 and 4) are affected.

16.8 He further submitted that Plot No. 1 was given to

Respondent No. 1 as his share as per the Award passed by Arbitrator and Respondent No. 1 retired from the partnership and it is provided in retirement Deed that Respondent No. 1 shall not have any right over Plot Nos. 2, 3 and 4 and other partners shall not have any right over Plot No. 1. He submitted that therefore Plot No. 1 is distinct and separate.

16.9 He submitted that Respondent No. 1 himself in retirement deed has stated that no balance FSI is left in plot no. 1 which is also pleaded in plaint of SC Suit No. 1109 of 2018.

16.10 He submitted that Yamuna Development Corporation is not a necessary party because it is not a promoter/vendor and is only a confirming party in only one of the 4 sale agreements. He submitted that suit is for enforcement of statutory obligations against only promoter which is Respondent No. 1 and who is also shown as vendor in the agreement of sale in favour of Appellants.

16.11 He submitted that requirements of Order VII Rule 3 of CPC are met inasmuch as description of suit property is given in paragraph 1 of the plaint, where both the suit land and suit building forming suit property are sufficiently described. He submitted that portion of land taken over by Respondent No. 3 is described in paragraph 6(j) of the plaint. He submitted that Exhibit 'L' to plaint i.e. notices seeking possession of the affected godown areas gives area calculations, whereas, in affidavit in reply of Respondent No. 1 as well as possession receipt, total area acquired is also on record.

16.12 He submitted that the order passed by this Court dated 21.11.2019 in earlier writ petition, will not affect the Appellants because the said order does not adjudicate any dispute but only directs Respondent No. 3 corporation to implement notice under Section 56 of the MRTP Act and the said order expressly keeps open all contentions in

the context of compensation / TDR allotted to Respondent No. 1 which shall be resolved by appropriate proceedings. He further submitted that Appellants were not party to said writ petition in which said order dated 21.11.2019 was passed.

16.13 He then submitted that TDR is immovable property and therefore its value will fluctuate and therefore it cannot be said that compensation in monetary terms is adequate remedy.

16.14 He submitted that if the Society cannot be formed for want of minimum number of members, a company can always be formed.

16.15 He then submitted that the agreement stated to have been executed by Respondent No. 1 in favour of third party in respect of TDR cannot be considered because the same is dealt with by unregistered document, in contravention of applicable regulation of Development Control and Promotion Regulation, 2034 mandating written registered document for such transfer.

16.16 Finally, he also submitted that the Appellants have suppressed material fact which has now come to the knowledge of the Appellants have been granted deemed conveyance by Order dated 13.04.2026, the godown purchasers of Plot Nos. 2, 3 and 4 have already formed a common organization who has received the deemed conveyance in respect of Plot Nos. 2, 3 and 4. He submitted that said godown owners have not sought any relief in relation to Plot No. 1 and none of the Appellants are members of that organization (Nutan Commercial Premises Co-operative Society). He relied on the following Judgments in support of his case :

(1) Ravindra Mutenja & ors v/s. Bhavan Corporation & ors, 2003(5) Mh.L.J. 23.

(2) Noopur Developers v/s. Himanshu V. Ganatra & Ors. (2010) 7 Mh.L.J. 694.

(3) Madhuvihar CHSL v/s. Jayantilal Investments, 2011 (1) Mh.L.J. 641.

(4) Vidhi Builders Pvt. Ltd. v/s. Arenbee Media Consultants Ltd, 2012 SCC OnLine Bom 219.

(5) Lakeview Developers v/s. Eternia CHSL, 2015 SCC OnLine Bom 3824.

(6) Dosti Corporation v/s. Sea Flama CHSL, 2016 (5) Mh.L.J. 102.

(7) Rajeshwarsingh Bechansingh v/s. Chandraraj Co-operative Housing Society Limited & Ors, First Appeal No. 888 of 2018, decided on 12.11.2024.

(8) Rameshwar CHS v/s. Divisional Joint Registrar & Ors, WP No. 4704/2025, dated 09.05.2025.

(9) The Lokmanya Pan Bazar Association Ltd v/s. The State of Maharashtra & Ors, WP No. 8145/2014, dated 09.12.2025.

(10) Riddhi Gardens Building CHS v/s. District Deputy Registrar,Co-operative Societies & Ors, (2024) 1 High Court Cases (Bom) 339.

(11) Neelkanth Heights CHS & Ors v/s. Abhinav Real Estate Pvt. Ltd & Ors,(2025) 2 High Court Cases (Bom) 21.

(12) Nusli Neville Wadia v/s. Ijimima – Imitation Jewellery Market Co-operative Society & Ors, WP No. 14690/2022, dated 24.02.2026.

(13) Rashesh Cooperative Housing Society Limited v/s. State of Maharashtra & Ors, WP No. 10961 of 2025 dated 28.04.2026.

(14) Ariisto Realtors Pvt. Ltd. v/s. District Deputy Registrar & Ors, WP No. 12863 of 2025, dated 17.07.2026.

(15) A.H. Wadia Trust & Ors. v/s. Municipal Corporation of

Greater Mumbai & Ors. WP No. 1470 of 2012, dated 24.04.2019.

(16) Nahalchand Laloochand Private Limited v/s. Panchali Co-operative Housing Society Ltd, (2010) 9 SCC 536.

(17) Chheda Housing Development Corporation v/s. Bibijan Shaikh Farid and Ors. 2007 (3) Mh.L.J.402.

(18) Haresh Vijaysinh Bhatia & Ors. v/s. District Deputy Registrar & Ors. 2025 SCC OnLine Bom 1981.

17. On the other hand, Mr. Soni, learned Counsel for the Respondent No.1 submitted as under.

17.1 That the suit itself is not maintainable as the same is hit by provision of Order VII Rule 3 of CPC and the suit property is not properly described.

17.2 He submitted that the godowns of the Appellants and Respondent No. 1 are admittedly situated on plot no. 1 which forms part of larger plot including plot nos. 2, 3 and 4 and there is admittedly no sub-division between these plots.

17.3 He submitted that plot nos. 2, 3 and 4 are owned by Yamuna Development Corporation who had submitted a composite plan for all the 4 plots which was sanctioned. He submitted that suit is also bad for non-joinder of necessary party i.e. said Yamuna Development Corporation. He submitted that there is a recital in the sale agreement executed in favour of the Appellants that Yamuna Development Corporation would form a society and admit the Appellants as members.

17.4 He submitted that Appellants cannot claim any right in the open piece of land without having any title to the plot in question.

17.5 He submitted that the relief in the suit, is contingent upon registration of the Co-operative Society of the godown holders and for execution of conveyance in favour of society as and when formed. He submitted that therefore, no relief can be sought beforehand in respect of the open land.

17.6 He further submitted that since the development of the suit property is pursuant to composite plan sanctioned in respect of entire layout involving plot nos. 1 to 4, co-operative societies of few members without participation of Yamuna Development Corporation can never happen and therefore consequential relief cannot be granted at interim stage.

17.7 He submitted that as per applicable DC Rules, it is only the owner or lessee of the plot who is eligible for award of TDR and since the Appellants, as of now, are neither owners nor lessees of the open land in Plot No. 1, they cannot claim any TDR or pray regarding TDR.

17.8 He submitted that in the possession receipt, the Municipal Corporation has kept aside compensation for built-up area against the 4 godowns of the Appellants.

17.9 He submitted that possession of the land was surrendered by Respondent No. 1 pursuant to order of this Court dated 21.11.2019 and handover of possession and consequential grant of TDR in favour of Respondent No. 1 stands concluded, at least at *prima facie* stage.

17.10 He submitted that Appellants have not challenged the order dated 21.11.2019 passed by this Court.

18. Mr. Soni also pointed out certain portions of the affidavit in reply filed by Respondent No. 3/Municipal Corporation contending that Appellants have not proved their title as joint owners of open space in plot No. 1. He also stressed upon the stand of the Respondent No. 3/

Municipal Corporation that Appellants have not been able to produce document of title as regards open land.

18.1 He also submitted that Appellants have not applied for deemed conveyance as provided under Section 11 of MOFA because they are aware that their title document only refers to the construction shed / godown and not the open land.

18.2 He submitted that during hearing given by the Respondent No. 3/Municipal Corporation, the Appellants were called upon to submit relevant documents as regards their title to open land, but they could not do so.

18.3 He submitted part of reliefs prayed in notices of motion would not survive because TDR certificate is already issued in favour of Respondent No. 1 on 11.02.2025 by taking declaration-cum-indemnity bond from Respondent No. 1.

18.4 He also submitted that Respondent No. 1 has already traded the said TDR in favour of one Hiranya Jaysingh Ashar by agreement dated 27.03.2025 which was disclosed to this Court in earlier appeal. He submitted that third party rights are already created in respect of the TDR.

18.5 He finally submitted that there is no *prima facie* case in favour of the Appellants and if interim relief is granted, irreparable loss and harm will be caused to Respondent No. 1. He also submitted that the relief prayed by the Appellants is amenable to monetary compensation and therefore the appeal be dismissed. He relied on the following judgments in support of this case.

(i) Municipal Corporation of Delhi v/s. Rishi Raj Jain and Anr. AIR 2006 Supreme Court 3268.

(ii) Godawaribai Purushottam Bawaskar v/s. Sitaram Bhagwan Paithane and Ors. 2020(3) Mh. L.J.102.

19. I have considered the rival submissions and perused the record.

20. First of all, it is most important to note the contractual obligations and recitals of the sale documents which govern rights of the parties which are similar for Appellants. For convenience, clauses shown by learned Counsel for the parties from agreement with Appellant No.1 are being referred.

20.1 It is not disputed that the sale agreements in favour of the Appellants are having similar clauses. In all the agreements, Respondent No. 1 is shown as vendor and the Appellants are shown as the purchasers.

20.2. Clause 1 describes the godowns purchased along with area and consideration.

20.3. Under clause 2, it is agreed that purchaser along with purchasers of other godown of the land more particularly described in first schedule, 'shall jointly have exclusive rights to use the open space abutting to the building'. Vendor has undertaken to take necessary steps for formation of common co-operative society for all the unit purchases on the said land.

20.4. Clause 3 makes specific reference to Section 10 of the MOFA Act and it is provided that the purchasers shall join in forming and registering co-operative Society or limited Company so as to enable the vendor and/or Yamuna Development Corporation to register the organization of purchasers of different godowns.

20.5. Clause 4 provides that the vendor shall cause to be transferred to the society or company as the case may be, the right, title and interest of the original owner in the land described in 1st, 2nd, 3rd and 4th schedule.

20.6 Clause 5 provides for the purchaser to be liable to bear proportionate share in the outgoings until conveyance is executed.

21. Therefore, it is clear that all the godown purchasers on the land described in first schedule agreed to have joint exclusive right to use open space, abutting the godowns. Schedule I clearly mentions plot no. 1 admeasuring 3344.80 sq. meter with boundaries i.e. public road on the North, property belonging to Bharat Tiles factory on the South, Nalla on the East and plot no. 2 on the West. This sufficiently describes plot no. 1 along with its location where the godowns of the Appellants are situated and sold. Therefore, paragraph No. 1 of the plaint with the foundational document of the Appellants *prima facie* indicates sufficiently described land as well as godowns with clarity about location and therefore, the objection that suit suffers from non-compliance with Order VII Rule 3 of CPC does not have merit.

22. It is not disputed that in none of the agreements in favour of the Appellants, Yamuna Development Corporation is shown as vendor and it is only Respondent No. 1 who has signed the sale agreements as vendor. In that view of the matter, *prima facie* Respondent No. 1 is bound as a vendor under Section 10 of MOFA Act and not Yamuna Development Corporation.

23. True that, Yamana Development Corporation is shown as confirming party in one of the 4 agreements. But that would not make it vendor.

24. The Respondent No. 1 claims right, title and interest in Plot No. 1 pursuant to an Arbitration Award passed on 10.12.1986

whereunder the Respondent No. 1 retired from the partnership of Yamuna Development Corporation w.e.f. 31.12.1986 and Plot No. 1 described in 1st Schedule was given to the share of Respondent No. 1 and remaining portion of land described in 2nd, 3rd and 4th schedule was given to the remaining partners of Yamuna Development Corporation.

25. Perusal of 2nd, 3rd and 4th schedule indicates clear mention of plot nos. 2, 3 and 4 separate and distinct from plot no. 1 mentioned in 1st schedule. This fact coupled with a deemed conveyance order dated 13.04.2026 produced on record by the Appellants showing that deemed conveyance has been executed in favour of Nutan Commercial Premises Co-operative Housing Society *prima facie* indicates that Respondent No. 1 was concerned only with the suit property plot no. 1. It is important to note that suit property is plot no. 1 forming part of city survey No.7603 and measuring 3344.80 sq. meters only. This portion is not stated in the order of deemed conveyance and area of CTS No. 7603/1 stated in deemed conveyance order is 5816.35 sq. meter, which is *prima facie* different.

26. It is also important to note that in the retirement deed executed by Respondent No.1, under clause 10, it is agreed by Respondent No.1 that it shall have no share, right, title, interest or demand in land described in 6th schedule thereunder which is plot nos. 2, 3 and 4. Under clause 11 of the said retirement deed, the remaining partners of Yamuna Development Corporation agreed that they shall have no share, right, title, interest or demand in the property described in 5th schedule which is present subject matter Plot No. 1. *Prima facie* it indicates clear division of Plot No. 1 vis-a-vis remaining Plot Nos. 2, 3 and 4 as understood between Respondent No. 1 and remaining partners

of Yamuna Development Corporation. Under Clause Nos. 3 and 4 of the said Retirement Deed, the Respondent No. 1 has apparently agreed that Plot No. 1 (5th Schedule thereunder) does not have any balance FSI. Similar pleading is also made by Respondent No. 1 in its plaint paragraph No. 29 in SC Suit No. 1109 of 2018 produced on record.

27. For the said reasons, it cannot be said that Yamuna Development Corporation is a necessary party, leading to the suit being bad for non-joinder of the said party. However, since said Yamuna Development Corporation is shown as confirming party in one of the documents of the Appellants, having other reference in the sale agreements, it can be called as proper party. Therefore, it is required to be impleaded in the suit, for avoiding multiplicity of proceedings.

28. The argument that there is no sub-division of plots in the larger plot on which Yamuna Development Corporation has given composite plan, will have to be considered on merits at the time of final hearing of the suit. The recital that Yamuna Development Corporation would form a society and admit the Appellants as member will also have to be tested because Yamuna Development Corporation is not the vendor, but Respondent No. 1 is vendor for all 4 Appellants. The argument that the reliefs prayed in the suit are contingent upon the registration of the co-operative society is an argument directly running contrary to the obligation of Respondent No. 1 under MOFA.

29. The promoter/ vendor has a duty to form society and convey the property under the provisions of MOFA Act and Rules.

30. At this stage it is apposite to consider the judgments relied

upon by the Appellants.

30.1. In **Noopur Developers (Supra)**, learned single Judge of this Court has held that promoter has a duty to register society and convey the title and no unfettered right is given to the promoter to postpone registration of society.

30.2. In **Lakeview Developers Vs. Eternia CHS (Supra)**, Division Bench of this Court has held in paragraph 55 that developer can not claim that he can continuously exploit building potential for eternity without conveying land in favour of the society.

30.3. In **Dosti Corporation Vs. Sea Flama CHS (Supra)**, this Court has held that right to get conveyance deed executed is a statutory vested right.

30.4. In **Neelkanth Heights Co-operative Housing Society (Supra)**, learned single judge of this Court was considering similar arguments as advanced in the present case. While considering the objection of the developer that land in question forms part of the larger layout, involves additional buildings and consumption of extract of FSI including TDR, it is held that MOFA does not prevent a promoter from undertaking development in phases; however, such planning cannot be made a reason to indefinitely delay the conveyance in favour of society.

30.5. In **Nusli Neville Wadia (Supra)**, learned Single Judge of this Court has held that the expression 'his right, title, interest' used in Section 11 of MOFA is not confined to the superstructure and the section expressly refers to both land and building recognizing that ownership of the units cannot be meaningfully separated from the land upon which the building stands. It is also held that promoter cannot transfer less than what he owes, nor can he retain any part of his interest once the stage of conveyance arises.

30.6. In **Ariisto Realtors Private Limited (Supra)**, learned Single Judge

of this Court has held while considering the provisions of MOFA that with sale of each unit, the title of the land owner and promoter gets diluted in the land and once all the units are sold the title of the owner and promoter in the land is divested and only a formal acts of conveyance needs to be executed.

30.7 All the aforesaid judgments relied upon by the Appellants directly support their case, so far as claim in compensation is concerned.

31. Perusal of the earlier order dated 21.11.2019 passed by this Court clearly shows that, it was passed in a petition filed by Respondent No. 1 against the Respondent No. 3/Municipality Corporation and the present Appellants were not party thereto. In any case, the said order clearly provides that in the event of any dispute pertaining to compensation / TDR payable to Respondent No. 1 shall be resolved by filing proceedings before appropriate forum. Though the said order refers to dispute between parties (meaning thereby present Respondent Nos. 1 and 3 only), it is obvious that since the Appellants were not party to said petition, the dispute between Appellants and Respondent No. 1 is also kept open to be resolved by proceedings before appropriate forum, including the present suit.

32. The nature of TDR as a property also requires consideration in the peculiar form of dispute, as raised in the present appeal from order. In Chheda Housing Development Corporation (Supra), the Division Bench of this Court has held that FSI/TDR being a benefit arising from the land, must be held to be immovable property. TDR is something that can be traded in the real-estate market which can be sold and purchased on a 'square-foot basis' and it is therefore as valuable as land. Therefore, obviously its value fluctuates and undergoes

appreciation/depreciation depending on the market forces governing real-estate prices in a given area. Therefore, if TDR which is already granted in favour of Respondent No. 1 developer (as a compensation of acquisition of open land around godowns in plot no. 1) is allowed to be traded by Respondent No. 1 during pendency of the suit, it will fetch a certain amount 'at that point of time' in the hands of Respondent No. 1 which then can be subjected only to 'per cent interest' or 'bank interest' and will not necessarily follow the graph that real-estate may follow during pendency of the suit. This is particularly so, because TDR is a valuable commodity in city like Mumbai, which is traded regularly. Therefore, there is no merit in the submission that the claim of the Appellants is amenable to monetary compensation and injunction is not necessary. Injunction is necessary to make sure that members of society/company (which ought to have been formed long ago) are not deprived of valuable appreciation that TDR in the hands of Respondent No. 1 may achieve, especially when Respondent No. 1 developer has not complied with its duty under MOFA of forming society/company and conveying the property, for enforcement of which, main prayer is made in the suit.

33. Clear recital in clause 2 of the agreements executed by Respondent No. 1 creates a valuable vested right in favour of the Appellants to use open space abutting the godowns. This right is arising from open space in Plot No. 1. Therefore, it could not have been excluded by the Trial Court. The learned Judge of the Trial Court has clearly held that Appellants/Plaintiffs have made out *prima facie* case for grant of injunction. However, there are no cogent reasons given for excluding Plot No. 1 and godown No. 1B. Therefore, interference is required in the impugned order.

34. In the aforesaid facts and circumstances and for reasons indicated above, the appeal from order succeeds and is allowed by passing following order :

A) Clause Nos. 2 & 3 of the common impugned order dated 21.08.2026 passed in Notice of Motion Nos. 1155/2022, 3177/2025 & 247/2024 in Suit No. 638/2022 are modified and substituted as follows :

> "(2) Defendant No. 3 or its officers are restrained from transferring any further compensation either in terms of money or TDR in favour of Defendant No.1 in respect of suit property i.e. plot no. 1 with godown nos. 1A, 1B, 2, 3 & 4 standing thereon, Near Kranti Nagar Bridge, Bail Bazar, Kurla West, Mumbai, forming part of City Survey No. 7603 (and bearing CTS Nos. 7597, 7598,7599, 7600, 7601 & 7602) admeasuring 3344.80 sq. mtr situated at Village Kole Kalyan, Kurla West, 'L' ward, Mumbai.
>
> (3) Defendant No. 1 is restrained from selling, alienating and/or creating third party interest in respect of DRC No. RES/0067/2025 dated 11.02.2025, during pendency of the suit."

B) Appellants are directed to add Yamuna Development Corporation and Hiranya Jaysingh Ashar as party Defendant No. 4 & 5 in the suit.

35. In view of disposal of Appeal from Order, pending Interim Application is also disposed of.

36. All concerned to act on duly authenticated or digitally signed QR verifiable copy of this order.

(M.M. SATHAYE, J.)