

ITEM NO.11

COURT NO.13

SECTION IX

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (C) No.8837/2022

[Arising out of impugned final judgment and order dated 17-03-2022 in APL No. 8104/2020 passed by the High Court of Judicature at Bombay]

SHAHED KAMAL & ORS.

Petitioner(s)

VERSUS

PAGARANI UNIVERSAL INFRASTRUCTURE PRIVATE
LIMITED & ORS.

Respondent(s)

(IA No. 71731/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 47260/2023 - EXEMPTION FROM FILING O.T., IA No. 150668/2023 - EXEMPTION FROM FILING O.T., IA No. 73339/2023 - EXEMPTION FROM FILING O.T., IA No. 47257/2023 - INITIATING CONTEMPT PROCEEDINGS, IA No. 46191/2023 - INITIATING CONTEMPT PROCEEDINGS, IA No. 112991/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 9714/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES & IA No. 73338/2023 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

W.P. (C) No. 334/2023 (X)

Date : 29-04-2025 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) :

Dr. Menaka Guruswamy, Sr. Adv.
Mr. Ajay Panicker, Adv.
Mr. Sureshan P., AOR
Ms. Shaswati Parhi, Adv.
Mr. Shivam Yadav, Adv.
Ms. Arunima Das, Adv.
Mr. Utakarsh Pratap, Adv.
Mr. Utkarsh Pratap, Adv.
Ms. Bhumiya Yadav, Adv.
Ms. Lavanay Panicker, Adv.

For Respondent(s) :

Mr. Nitin Lonkar, Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya Aniruddha Pande, AOR

Mr. Paramjit Singh Patwalia, Sr. Adv.
 Mr. Prasenjit Keswani, Sr. Adv.
 Mr. Upmanyu Tewari, Adv.
 Mr. Nitin Sangra, Adv.
 Mrs. V. D. Khanna, AOR

Mr. Prasenjit Keswani, Sr. Adv.
 Ms. Pooja Dhar, AOR
 Ms. S. Ambica, Adv.

Mr. Tushar Mehta, Solicitor General
 Mr. Kanu Agrawal, AOR
 Ms. Srishti Agarwal, Adv.
 Mr. Digvijay Dam, Adv.
 Mr. Gaurav Vats, Adv.

UPON hearing the counsel the Court made the following
 O R D E R

1. This Special Leave Petition arises from the order passed by the High Court of Judicature at Bombay dated 17-3-2022 in Appeal (L) No.8104/2020 in Interim Application (L) No.3986/2020 with Notice of Motion No.1358/2019 in Suit No.610/2019 by which the High Court dismissed the appeal filed by the petitioners - herein and thereby affirmed the common order dated 25-11-2020 passed by the learned Single Judge dismissing the Notice of Motion No.1358/2019 and Interim Application (L) No.3986/2020 filed by the petitioners - herein in the Suit.

2. This litigation has something to do with a parcel of land being Plot No.288/2013 situated at Plot No.288/B, at Amrut Nagar, Bandivali Village, Jogeshwari (West), Mumbai admeasuring 6912.25 sq.mts. developed as "Universal Garden" `A Wing'.

3. This parcel of land was owned by one Mr. Nanji Arjun Rathod and later the interest came to be devolved on his legal heirs and one Mr. Bhupendra Nanji Rathod.

4. The learned counsel appearing for the petitioners has provided us with the list of dates and events.

5. As we intend to dispose of this petition without going into the merits or demerits of the impugned order, it is not necessary for us to reproduce the facts in detail. However, the following list of dates and events would suffice: -

S. No.	DATE	PARTICULARS
1.		The Subject Land being Plot No.288/B, situated at Amrut Nagar, Bandivili Village, Jogeshwari West, Mumbai, Maharashtra, is admeasuring - 6912.25 Sq. Mtrs, developed as 'Universal Garden A-Wing' was owned by Nanji Rathod and after his demise by Bhupendra Nanji Rathod and his heirs.
2.	28.01.1993	As per the scheme, the Mumbai Metropolitan Region Development Authority [MMRDA] / R-8 acquired the Subject Land which would be released to the original owner on a 60 year lease for developing the same as per MMRDA guidelines.
3.	18.03.2005 Development Agreement	All 11 legal heirs of the Subject Land executed a Development 10,400 Sq. mtrs (1.5 FSI) for the building of a residential complex.
4.	15.07.2008 Lease Deed	MMRDA leased the Subject Land to the Original Owners. Imp Clauses: Schedule 1 - Total Built up area 10,400 sq mtrs [Later revised to 9,207 sq mtrs]; Article 3(p) - Not to sublet without MMRDA's permission.
5.	16.02.2010	Commencement Certificate was issued to R1 for development of 2 wings [A&B] and subsequently Wing B was cancelled by the MMRDA since FSI was not sufficient for both Wings A & B.
6.	2011-14 Sale Agreement	All 128 flats in the building called 'Universal Garden A- Wing' were sold as per the provisions of Maharashtra Ownership of Flats (Regulation of the Promotion of Construction Sale Management and Transfer) Act 1963. [MOFA]
7.	21.02.2014 Occupation	R8 issued final Occupation Certificate for the full building and the entire FSI.

	Certificate	Possession of the Flats along with their undivided share in the Subject Land was also handed over to the Petitioners on the same day.
8.	27.05.2015 Completion Certificate	Project Completion Certificate from the Developer's Architect was submitted to the MMRDA, certifying that 100% construction was complete as per the sanctioned plans.
9.	18.11.2015 MMRDA Notification	The Govt. of Maha. increased the FSI from 1.5 to 3. This Notification was issued after the Project was complete and Occupation certificate had been obtained.
10	21.03.2016	Petitioners submitted an application for the registration of their society under MOFA, 1963 before the Deputy Registrar of Cooperative Societies.
11	27.03.2016	R1 sought an affidavit from the Petitioners for amendment of existing plans in order to construct an additional Wing B and have the petitioners share all common amenities with the new Wing. The Petitioners objected to this amendment and sent a letter of objection dated 27.03.2016 to MMRDA
12.	27.01.2017 Declaration u/s 2 of MAO Act	Despite the Petitioners' objection, the Developer submitted a declaration u/s 2 MAO Act and constituted a condominium in the name of "UNIVERSAL GARDEN A-Wing Condominium". This Declaration withdrew 3733.19 Sq. Mtrs of the Subject Land from the Petitioners to construct Wing B. Note: This document remained suppressed for a large part of the litigation, until 2023.
13	05.07.2017	The Deputy Registrar Cooperative Societies rejects the Petitioners' application for registration of Society. An Appeal No. 193 of 2017 was filed against this order before the Divisional Joint Registrar of Cooperative Societies
14.	07.07.2017	MMRDA vide a Notification gave its lessees full freedom to sub-lease without obtaining prior permission from itself. This also amended Article 3(p) of the Lease Agreement with the developer.
15.	17.07.2017	A Supplemental Lease Deed was granted for additional FSI of 1358 Sq. Mtrs. by the MMRDA to Developer for the construction of Wing B.
16.	29.08.2018	Petitioners filed a Suit in Bombay High Court

	Suit	being Suit No.610 of 2019 under the provisions of MOFA and sought interim injunction against the construction.
17.	01.10.2018 Interim Order	An Interim Order was passed by the High Court observing that any further work carried out by the Developer shall be subject to further orders of the court.
18	08.09.2020	MMRDA issued the Construction Permission for Wing B by issuing Commencement Certificate up to 8th Floor.
19.	25.11.2020	A learned Single Judge dismissed the NM No. 1358/2019 along with IA No. 3986/2020 seeking Injunction against construction of Wing B.
20	2020 Appeal	Appeal (L) No.8104 of 2020 was filed by the Petitioners challenging Single Judge's Order dated 25-11-2020 before the Division Bench of Bombay High Court.
21	18.01.2021	The Division Bench issued an interim order directing that the construction shall be at the risk and peril of the Respondent developer.
22	24.11.2021	The Developer is alleged to have suppressed the prior registration of the Petitioners as a condominium u/s 2 of the MAO Act in its Written Statement before the Divisional Joint Registrar who was adjudicating the Petitioner's appeal for formation of a society under the MOFA Act.
23.	17.03.2022 Impugned Order	A Division Bench dismissed the Appeal against the Single Judge's Order by observing that MOFA does not apply to lands or buildings owned by or vested in MMRDA.
24.	17.05.2022 SLP	Aggrieved by the Impugned Order the Petitioners filed this SLP. This Court observed that the ongoing construction shall be at the risk and peril of the Respondent No. 1.
25	27.02.2023 IA NO.47257/2023	Petitioners filed this IA for initiating perjury proceedings against R1 for suppressing the registration of the declaration dt. 27.01.2017 and against R8 for suppressing the amendment of Article 3(p) of the Lease Deed vide circular dt. 07.07.2017.
26.	27.02.2023 IA NO.46191/2023	Petitioners filed this IA for initiating perjury proceedings IA against the R1&3 for falsely swearing Counter Affidavit dt.

		12.08.2022, when R3 was not in India at the time of attestation
27.	27.02.2023 IA No.73338/2023	Petitioners filed this IA stating that the Developer had suppressed the Section 2 MAO Act Declaration.

6. At this stage, we must record the objections on behalf of the developer, as raised by Mr. P.S. Patwalia, the learned counsel so far as Sl.No.12 dated 27-1-2017 is concerned.

7. According to the petitioners, as far as the documents referred to at Sl.No.12 of the list of dates and events are concerned, the same were suppressed. We are not getting into this controversy at this stage. It will be for the Trial Court to look into and also its effect but we do record the strong objection at the end of Mr. Patwalia.

8. In the suit instituted by the petitioners, the following has been prayed for:-

"a) That it be declared that by selling all the flats in the Plaintiffs' building known as Universal Garden-1 constructed on Plot No. 288/B, bearing Survey No.36, HissaNo.7 and Corresponding C.T.S. No.288/B, admeasuring 6912.252 Meters, laying and being at Village Bandivali, Taluka Andheri, Amrut Nagar, Jogeshwari (West), Mumbai-400102 using the entire FSI then available as sanctioned in Building Plan dated 24-12-2008 and Occupation Plan dated 21-02-2014, to all the flat purchasers including Plaintiffs, all the entitlement, right, title and interest in the said Building and Plot including the future FSI after the date of possession and after expiry of the period for formation of society, stood vested in the said flat purchasers including Plaintiffs jointly and defendant no.1 has no right to avail any FSI balance FSI including future FSI and put up any additional construction on the suit plot.

b) This Hon'ble Court be pleased to quash and set aside the supplementary lease Deed dated 17th July 2017, (Exhibit-W hereto) granting additional FSI and construction permission to the Defendant no.1 on the suit plot, subject to such terms and conditions as this Hon'ble Court may deem fit and proper.

c) This Hon'ble Court be pleased to hold and declare that Defendant No. 1 has no right and authority to amend the existing lay out as approved in the original lay out plan dated 24-12-2008 and put up additional construction on the suit Plot No. 288/B, bearing Survey No.36, HissaNo.7 and Corresponding C.T.S. No.288/B, admeasuring 6912.252 Meters, laying and being at Village Bandivali, Taluka Andheri, Amrut Nagar, Jogeshwari (West), Mumbai-400102, without the specific and informed consent of each of the Plaintiffs hereto.

d) This Hon'ble Court be pleased to permanently restraint Defendant No. 1 to 7 and all other persons claiming through them from putting up additional buildings on the suit Plot No. 288/B, bearing Survey No.36, HissaNo.7 and Corresponding C.T.S. No.288/B, admeasuring 6912.252 Meters, laying and being at Village Bandivali, Taluka Andheri, Amrut Nagar, Jogeshwari (West), Mumbai-400102 and from creating any encumbrances on the said property by way of gift, sale, mortgage, lien, lease, tenancy, license, or by transfer of FSI of the suit plot, or in any other manner whatsoever nature on the said Plot and/or any structure constructed thereon.

e) This Hon'ble court be pleased to hold and declare that the proposed construction by amending the original building plan dated 24-12-2008 and Occupation Plan dated 21-02-2014 without the consent of the Plaintiffs, is illegal and this Hon'ble court may be further pleased to quash and set aside all the amended Plans approved by the Defendant no.8 after 21-02-2014 and further order and direct the 1st defendant to demolish all the constructions carried out pursuant to the said amended plans as approved by the 8th defendant hereto.

f) This Hon'ble Court be pleased permanently restraint Defendant No. 1 to 7 their agents, servants and all persons claiming through the defendant no.1 from obstructing use and enjoyment of the suit plot, the ingress and egress of the Plaintiffs and their family members to the said suit plot and from creating any obstructions and hindrances for the usage on the said plot;

g) This Hon'ble Court be pleased to order and decree the Defendant no.1 developer and all its directors including Defendant no.2 to 7 hereto, to account for all the monies collected from the Plaintiffs towards share money, society formation charges, legal charges, development charges, charges for health club and garden, electricity & water meter deposits, advance property taxes & maintenance charges, etc as mentioned in the Statement annexed at Exhibit-QQ hereto, and after furnishing the audited accounts with every supporting documents, they be ordered and decreed to refund all the monies for which no supporting proof of expenditure is furnished along with interest at the rate of 18% p.a., from the date of collection of such amounts, till date of refund or realization, to the respective Plaintiffs as detailed in the Particulars of Claim at Exhibit-QQ hereto;

h) In the event the Defendant no.1 to 7 failing to provide audited accounts with supporting proof of expenditure of each items of amounts collected by them, as mentioned in the Statement annexed at Exhibit-QQ hereto, they be ordered and decreed to pay a total sum of Rs.3,51,61,644.70 consisting of Rs.1,95,88,660/- towards principal and Rs. Rs.1,55,72,984.70 towards till date of this suit, along with further interest thereon @ 18% on annual rest on total amount of Rs.3,51,61,644.70 from the date of this suit till date of payment or realisation thereof to the respective Plaintiffs as detailed in the Particulars of Claim at Exhibit-QQ hereto,

i) This Hon'ble Court be pleased to order and decree the Defendant no.1 developer and all its directors including Defendant no.2 to 7 hereto, to pay compensation to the Plaintiffs for non-formation of the co-operative society for their building since 2014, for non- obtaining of Building Completion certificate and for obstructing the formation of the said society by the Plaintiffs themselves, at the rate of Rs.10,000/- per annum to each of the Plaintiff no.1 to 101 for every year from 2014 till date of the formation of the Society and obtaining of Building Completion Certificate along with interest at the rate of 18% p.a., from the date of this suit till date of payment or realization thereof, as per Particular of Claim given in Exhibit-RR hereto;

j) This Hon'ble Court be pleased to order and decree the Defendant no.1 developer and all its directors including Defendant no.2 to 7 hereto, to reimburse to the Plaintiffs collectively a total sum of Re 36.53.583/- as per Particulars of Claim at Exhibit-SS9 hereto for the amounts incurred by the Plaintiffs for completing the incomplete and inferior work done by the Defendant no.1, along with interest at the rate of 18% p.a.. from the date of spending of the said amount till date of payment or realization thereof.

k) This Hon'ble Court be pleased to order and decree the Defendant no.1 developer and all its directors including Defendant no.2 to 7 hereto, to the Plaintiffs collectively a total sum of Rs.25,19,088/. (Rupees Twenty Five Lakh Nineteen Thousand Eighty Eight Only) as per Particulars of Claim at Exhibit-TT6 hereto for the amounts to be incurred by the Plaintiffs for completing various incomplete and inferior work done by the Defendant no.1, along with interest at the rate of 18% p.a., from the date of this Suit till date of payment or realization thereof.

l) That this Hon'ble Court be pleased to lift the corporate veil of the defendant no.1 company and be further pleased to hold and declare that the Defendant No.2 to 7 are personally liable satisfying all the debts of the defendant no.1 company.

m) Pending the hearing and final disposal of the suit, Defendant No. 1 to 7 and all other persons claiming through them be restrained by an order of injunction from putting up

additional buildings/ construction on the suit Plot No. 288/B, bearing Survey No.36, HissaNo.7 and Corresponding C.T.S. No.288/B, admeasuring 6912.25 Meters, laying and being at Village Bandivali, Taluka Andheri, Amrut Nagar, Jogeshwari (West), Mumbai-400102 and from creating any encumbrances on the said property by way of gift, sale, mortgage, lien, lease, tenancy, license, or by transfer of FSI of the suit plot, or in any other manner whatsoever nature on the said Plot and/or any structure constructed thereon.

n) Pending the hearing and final disposal of the suit, Defendant No. 1 to 7 their agents, servants and all persons claiming through the defendant no.1 be restrained by an order of injunction from obstructing use and enjoyment of the suit plot, the ingress and egress of the Plaintiffs and their family members to the said suit plot and from creating any obstructions and hindrances for the usage on the said plot;

o) Pending the hearing and final disposal of the suit, the Defendant no.8 be ordered and directed to submit their No objection to the Competent Authority of Mumbai Municipal Corporation for granting erection of borewell permission to the Plaintiffs in their building.

p) Ad-interim and interim relief in terms of prayer clause (m), (n) & (o) above;

q) Cost of this Suit be provided for;

r) For such other and further reliefs as this Hon'ble Court may deem necessary in the facts and circumstances of the case."

9. This Suit earlier was filed in the High Court of Bombay on its side of original jurisdiction. We are informed that the said Suit has now been transferred to the Bombay City Civil Court. The Suit has been re-numbered as 3533/2024.

10. We are informed that the developer (defendant Nos.1 to 7) before us has filed its written statement. However, the defendant No.8 i.e. Mumbai Metropolitan Region Development Authority [for short, 'MMRDA'] has not yet filed its written statement.

11. We are also informed that the City Civil Court has yet to frame issues in the matter.

12. Pending the Suit, the petitioners - herein as plaintiffs sought the following reliefs in the Notice of Motion:-

"a) Pending the hearing and final disposal of the suit, Defendant No.1 to 7 and all other persons claiming through them be restrained by an order of injunction from putting up additional buildings/construction on the Suit Plot No.288/B, nearing Survey No. 36, Hissa No.7 and Corresponding C.T.S. No. 288/B admeasuring 6912.25 Meters, laying and being at Village Bandivali, Taluka Andheri, Amrut Nagar, Jogeshwari (West), Mumbai and from creating any encumbrances on the suit property by way of gift, sale, mortgage, lien, lease, tenancy, license, or by transfer of FSI of the suit plot, or in any other manner whatsoever nature on the said Plot and/or any structure constructed thereon;

b) Pending the hearing and final disposal of the suit, Defendant Nos. 1 to 7 their agents, servants and all persons claiming through the defendant no.1 be restrained by an order of injunction from obstructing use and enjoyment of the suit plot, the ingress and egress of the Plaintiffs and their family members to the suit plot and from creating any obstructions and hindrances from the usage of the said plot;

(c) Pending the hearing and final disposal of the suit, Defendant Nos. 1 to 7 their agents, servants and all persons claiming through the defendant no.1 be restrained by an order of injunction from putting up any further building plans to the Defendant No. 8 and the defendant no.8 be restrained from issuing any further permissions to the Defendant no.1 to 7;

d) Pending the hearing and final disposal of the suit, the Defendant No.8/ MMRDA be ordered and directed to submit their No objection to the Competent Authority of Mumbai Municipal Corporation for granting erection of borewell permission to the Plaintiffs in their building as per Clause no.16 in the IOD issued for construction of Plaintiff's building;

e) Pending the hearing and final disposal of the present suit, this Hon'ble Court be pleased to appoint the Court Receiver, High Court, Bombay as Receiver of the building wing-B under construction on the suit plot with all the powers except the power of sale;

f) for ad-interim and interim reliefs in terms of prayer (a) to (d) above;

g) That costs of this Notice of Motion be provided for;

h) That such other and further reliefs as the nature and circumstance of the case may require be granted".

13. It appears that the petitioners had also filed an Interim Application during the pendency of the Notice of Motion seeking the following reliefs:-

"a) pending the hearing and final disposal of the suit, Defendant No.1 to 7 and all other persons claiming through them be restrained by an order of injunction from putting up additional buildings/construction on the Suit land as described in the Plaint and from creating any encumbrances on the suit land and also in the additional building / flats being constructed on the said suit land by way of gift, sale, mortgage, lien, lease, tenancy, license, or by transfer of FSI of the suit land, or in any other manner whatsoever nature;

b) pending the hearing and final disposal of the present suit, Defendant No.8 / MMRDA be ordered and directed not to grant any further construction permission to the defendant no.1 and be pleased to stay the operation of the permissions already granted by the Defendant No. 8 to the Defendant No.1 for construction of proposed residential building Wing-B on the suit plot;

c) Pending the hearing and final disposal of the present suit, this Hon'ble Court be pleased to appoint the Court Receiver, High Court, Bombay as Receiver of the building wing-B under construction on the suit plot with all the powers except the power of sale;

d) for ad-interim reliefs in terms of prayer clause (a), (b) and (c) above;

e) for costs of this Application be provided for;

f) for such further and other reliefs as the nature and circumstance of the case may require."

14. The learned Single Judge of the High Court heard the Notice of Motion and Interim Application and vide Order dated 25-11-2020 dismissed both.

15. The operative part of the order passed by the learned Single Judge reads thus:

"(i) Notice of Motion and Interim Application are both dismissed.

(ii) Plaintiffs shall be at liberty to apply to MMRDA for permission to install a bore-well, if otherwise permissible in law. If such an application is made, MMRDA shall decide

the application within a period of two months and pass a reasoned order."

16. While dismissing the Notice of Motion and the Interim Application, the learned Single Judge clarified that it shall be open for the plaintiffs to seek permission from the MMRDA to install bore-well if otherwise permissible in law.

17. The plaintiffs, i.e, the petitioners before us, being dissatisfied with the order passed by the learned Single Judge dismissing the Notice of Motion and Interim Application went in appeal before the Division Bench of the High Court.

18. The Division Bench of the High Court thought fit to affirm the order passed by the learned Single Judge and accordingly dismissed the appeal. The Division Bench while dismissing the appeal observed as under:-

"36.6 For the reasons aforesaid we hold that the since the applicability of MOFA has been excluded by the MMRDA Act, the Developer and flat purchasers contract to incorporate the provisions of MOFA and even if done the same cannot bind the parties inter se.

37. We must note here that the Appellants have also made various submissions and relied on various judgments to contend that the Developer is constructing the said Additional Building without obtaining the informed consent of the flat purchasers. Since we have already held that the applicability of MOFA as a whole has been excluded by Section 31 read with Schedule II, Clause II of the MMRDA Act, we hold that there was no requirement for the Developer to obtain the consent of the flat purchasers before commencing the construction of Additional Building. What was necessary for the Developer was to obtain the permission from the MMRDA, which is the owner of the Suit Plot as well as the Planning Authority and the same has been done. Additional premium for exploiting the further FSI has been paid. The Developer has also developed the reservation on the Suit Plot and handed over the same to MMRDA as required as a condition for developing the Suit Plot.

38. We therefore find no infirmity in the Impugned Order except to the extent of the observation specified in para 34.20 hereinabove.

39. *The Appeal is accordingly dismissed with no order as to costs."*

19. In such circumstances, referred to above, the petitioners are here before this Court with the present petition.

20. We heard Dr. Menaka Guruswamy, the learned Senior counsel appearing for the petitioners, Mr. Tushar Mehta, the learned Solicitor General assisted by Mr. Kanu Agarwal, the learned counsel appearing for the MMRDA and Mr. P.S. Patwalia and Mr. Prasenjit Keswani, the learned Senior Advocates appearing for the Developer.

21. The status of the litigation as on date is that the suit is pending for adjudication.

22. It appears that the High Court *prima facie* held that the MMRDA Act expressly excludes the applicability of Maharashtra Ownership of Flats (Regulation of the Promotion of Construction Sale Management and Transfer) Act 1963 (MOFA) entirely to the lands belonging to or vested in MMRDA. The High Court has taken the view that MMRDA has the right to consider and permit whether any sub-lease, if any, is to be granted and on what terms, and the provisions of MOFA would not apply to MMRDA.

23. The High Court considered the interplay between the two statutes-MOFA Act of 1963 and the MMRDA Act, 1974 respectively. The petitioners herein claimed conveyance of the property. According to the petitioners the flats were handed over in 2014, but the developer failed in its duty to form the society or convey the plot in favour of the flat purchasers as required under Section 11 of MOFA.

24. The High Court appointed Mr. Rohan Cama, the learned Senior counsel as *amicus curiae* to assist on law. Mr. Cama argued that the definition of 'land' includes 'benefits to arise out of the land' which includes 'FSI potential of land'. The learned *amicus curiae* also argued that MOFA can be applicable in a limited manner to the flats with which MMRDA has no right over and provisions of MOFA such as refund to buyers for delayed construction or builder's obligation to form cooperative housing society ought to apply.

25. It appears that the MMRDA's counsel countered the learned *amicus curiae* saying that Section 31 of the MMRDA Act was clear and excludes MOFA completely from any of the properties of the authority. 'MOFA is not the sole repository of flat purchasers' rights. It was argued on behalf of the developer and the MMRDA respectively that the rights of the flat purchasers can still be enforced through other laws and no vacuum could be said to have been created by the complete exclusion of MOFA by the MMRDA Act. The High Court seems to have taken the view that a proposed society may, with the permission of MMRDA, form a society under the Maharashtra Cooperative Societies Act. MMRDA says it was done for another society, without any claim to lease of land under MOFA.

26. The High Court accepted the MMDRA's and Developer's submission that 'in any event, no class of citizens (in this case the petitioners) have a vested right in the continued application of statutory protection if the legislature deems it unfit to apply that statute in a given situation. The court observed that there is no challenge to the vires on the ground of MMDRA Act and therefore, the question before the Court was not whether such flat purchasers

are at a disadvantage as compared to others to whom MOFA is available without there being any intelligible differentia'.

27. The High Court finally held that from a plain meaning of the language contained in Section 31 read with Schedule II, Clause II, the application of MOFA to the MMRDA Act has been excluded as a whole i.e. not only against MMRDA but also against any land or building belonging to or vesting in MMRDA and not even to FSI arising from such land.

28. There are many complex legal issues arising in this litigation which the Trial Court will have to decide in accordance with law.

29. The learned Senior counsel appearing for the petitioners vehemently submitted that although the construction of Wing 'B' has been completed and 40% of the flats have been sold by the developer, yet even at this point of time, the Developer should be restrained from transferring the flats further.

30. In other words, the submission is that the Developer should not create any further third party rights in the Wing 'B'.

31. At this stage, Mr. P.S. Patwalia submitted that out of 185 residential units in Wing 'B', his client has already sold off 116 flats.

32. We are of the view that at this point of time, no relief can be granted to the petitioners, more particularly, when the learned Single Judge as well as the Division Bench of the High Court have declined to grant any relief.

33. We do not undermine the fine legal issues involved in this litigation. These issues will have to be looked into threadbare and will have to be answered accordingly.

34. We propose to dispose of this petition with the following directions:-

i) we give one last opportunity to the MMRDA to file its written statement. If at all they intend to file any written statement, they should do so within a period of six weeks from today. If no written statement is filed by the MMRDA, the Trial Court shall close the stage of filing of the written statement;

ii) As afore-noted, the Suit came to be transferred from the High Court to the Bombay City Civil Court. It has been re-numbered also as Civil Suit No.3533/2024. However, we are informed by Mr. Patwalia that his client has moved an application before the Bombay City Civil Court saying that the suit be sent back to the High Court on its original jurisdiction as the pecuniary jurisdiction exceeds Rs.10 Crore. The City Civil Court is yet to look into such application and pass an appropriate order. However, this may result in further delay. Therefore, we on our own, direct that the Civil Suit No.3533/2024 pending in the Bombay City Civil Court be sent back to the Bombay High Court on its original jurisdiction. This is being done with the consent of the parties.

35. Let this exercise be completed within a period of two weeks from today.

36. In the peculiar facts and circumstances of the case and having regard to the larger issues of law involved, we direct the Bombay High Court on its original jurisdiction who is ultimately going to try the suit to proceed at the earliest with the framing of issues and see to it that the suit is disposed of with final judgment within a period of six months from the date the issues are framed.

37. We expect both the sides to cooperate in the effective and fast disposal of the suit. None of the parties shall adopt and delay the disposal of the suit. At this stage, the learned Senior counsel appearing for the petitioners pointed out that her clients need to amend the plaint. Whatever it be, if the plaintiffs intend to amend the plaint, they may do so at the earliest in accordance with law.

38. It is needless to clarify that any third-party rights already created so far as the Wing 'B' is concerned and the one that may be created in future would be subject to the final outcome of the suit that the High Court may decide.

39. We clarify that we have only examined the matter from the point of view of interim relief prayed for by the plaintiffs is concerned.

40. We have not gone into any other larger issues. The same shall be decided by the High Court in accordance with law.

41. The suit shall be decided on its own merits without being influenced in any manner by any of the observations made in the interlocutory orders passed by the High Court including our order.

42. The Special Leave Petition is disposed of in the above terms.

43. Connected Writ Petition also stands disposed of.

44. Pending applications, if any, shall also stand disposed of.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)