SAIRAJ SANJAY KARANDE
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 448 OF 2025

Allarakha Ismail
Aged around 81 years, Indian inhabitant
having his address at Allarakha Ismail
Chawl, Shradhanand Road,
Vile Parle (E), Mumbai – 400 057.
Through his duty constituted Attorney
Abdul Raud Barudgar, Aged 51 years,
having address at – Vanmali Compound,
Opp. Vile Parle Station, Gokhale Road,
Vile Parle (E), Mumbai – 400 057. **...Appellant**

Versus

1. Vardhan Apartment CHS Ltd.,
   Through its Chairman/Secretary,
   Having its registered office at
   Final Plot No. 190, Nanda Patkar Road,
   Vile Parle (E), Mumbai – 400 057.

2. M/s. Vardhan Associates
   Having its office at -417,
   Commerce House, Meadown Street,
   Fort, Mumbai – 400 023.

3. Yashriddhi Builders Through its Partner
   Sanjay Sampatkumar Jain
   Aged 52 years, Occ – Builder
   "Office at 1, Saurabh Building, Andheri-Kurla Road, Chakala, Andheri East, Mumbai 400 093.

Respondent Nos. 4 to 7 deleted as per Court's order dated 30th July, 2025.

8. The Executive Engineer,

[Town Planning], Office at 5th Floor, Municipal Head Office, Extn. Building, Mahapalika Marg, Fort, Mumbai – 400 001.]

9. Deputy Chief Engineer, Building Proposal Department, [Western Suburbs], MCGM, New Majas Market, Poonam Nagar, J.V.L.R., Jogeshwari (E), Mumbai – 400 060.] **...Respondents.**

Mr. Bhushan U. Deshmukh for Appellant.
Mr. G. S. Godbole, Senior Advocate i/b Mr. Bhavin Bhatia for Respondent.

Coram : Sharmila U. Deshmukh, J.

Reserved on : 18th June, 2026.

Pronounced on : 13th July, 2026.

JUDGMENT :

1. Heard. **Admit.** With consent taken up for final hearing.

2. The captioned Appeal is at the instance of the original Plaintiff being aggrieved by the order dated 9th May, 2025 passed by Bombay City Civil Court, Borivali Division, Dindoshi (Branch) dismissing the Notice of Motion No. 2157 of 2024 and Notice of Motion No. 2156 of 2024 in L. C. Suit No. 1331 of 2024. For sake of clarity, the parties are referred to by their status before the Trial Court.

3. Notice of Motion Nos. 2156 of 2024 sought restraint order against the Defendants from creating any third-party rights in respect of flats constructed on the suit plot i.e. final Plot No. 190 allotted in

lieu of CTS No. 1582 (1 and 2), Survey No. 117, Hissa No. 24, and from parting with possession of the constructed flats. Notice of Motion No. 2157 of 2024 sought restraint order against the Defendant from carrying out construction work or development on the suit property and for parting with possession of the suit land or creating any third-party rights.

4. L. C. Suit No. 1331 of 2024 came to be filed challenging *interlaia* the deemed conveyance dated 23rd November, 2021 executed in favor of Defendant No. 1-Society, seeking negative declaration that the Defendant Nos. 1 to 7 have no right, title and interest in the suit property, for recovery of possession and injunction against Defendant Nos. 1 to 3 from carrying on any development on the suit property.

5. The Plaintiff came with a case that under an Agreement for Lease dated 16th December, 1964, the Plaintiff was granted lease of the suit land being old Plot No. 261 and 262, CTS No. 1582 [1 and 2] Survey No. 117, Hissa No. 24 admeasuring 506 sq. metres equivalent to 606 sq. yards situated at Vile Parle (East), Mumbai for a period of 99 years and was put in exclusive possession of the suit land. Vide registered Deed of Conveyance dated 30th September, 1985, the Plaintiff purchased the suit land from original owner for consideratino of Rs 20,000/ and the Plaintiff's name came to be recorded in Index-II after deleting the name of the original owner.

6. The suit land was acquired by Defendant No. 8-Executive Engineer, Town Planning Department for road widening and in lieu thereof, the Defendant No. 8 allotted alternate land being Final Plot No. 190 in the name of the original owner. On 10th February, 1986, the Plaintiff addressed a letter to the Arbitrator of Defendant No. 8 informing him about the Plaintiff's ownership right under the registered deed of conveyance dated 30th September, 1985 and that after inspecting the site, it was found that a building is constructed on Final Plot No. 190 and requested to allot Final Plot No. 190 in the name of the Plaintiff. By letter of 24th February, 1986, the Arbitrator responded to the Plaintiff informing him to approach the concerned planning authority about the construction of the plot of land. Further correspondences were exchanged between the Plaintiff, the Arbitrator and the Planning Authority.

7. The Plaintiff claimed that Defendant No. 1-Society is encroacher of Final Plot no. 190 and the construction has been carried out illegally by Defendant No 2. To prove misrepresentation by the Defendant No 1 Society, it is pleaded the registration certification of Defendant No 1 shows CTS No 1602. It is contended that in the deemed conveyance proceedings, instead of the Plaintiff, the original owner who had deceased was impleaded. The deemed conveyance proceedings refers to CTS No 1582 (1 and 2) and in lieu of allotment of Final Plot No 190

seeks deemed conveyance. It is pleaded that by Mutation entry No. 2011 of 2022, the name of the Plaintiff has been recorded by city survey office in respect of subject property.

8. Upon becoming aware of the proposed re-development of Defendant No 1 Society, the grant of deemed conveyance was challenged vide Writ Petition No. 635 of 2023, where the High Court made *prima facie* observations in favour of Plaintiff's ownership and that the construction undertaken by Defendant No. 3 would be illegal. The Petition came to be dismissed vide order dated 11th August, 2023 on ground of delay as RCC construction was complete and disputed questions of fact arose with liberty to file substantive suit.

9. The Defendant No 1 and 3 opposed the interim application raising similar contentions. It was contended that there was delay of about 10 months in filing of suit after passing of order on 11th August, 2023 in Writ Petition No 635 of 2023. The construction of building is 100% complete and the original members have been dishoused since last six years. It was contended that the Final Plot no. 190 was allotted in or about the year 1979-80 in lieu of original plot nos. 261 and 262 of Town Planning scheme, Vile Parle No. V to late Bhagatsingh Solanki. The reply further sets out the proceedings before the Arbitrator leading to allotment of Final Plot no. 190. It is claimed that Bhagatsingh had expired on 1st January, 1997 and therefore, the Deed

of Conveyance of 30th September, 1985 on the basis of which the Plaintiff claims the ownership is forged and fabricated document.

10. In so far as chain of title is concerned, it is pleaded that Bhagatsingh Shankarbhai Solanki alias Kalasparshi was the owner of the suit land and died intestate on 1st January, 1979. Vide Agreement dated 27th November, 1980, the legal heirs of Bhagatsingh Solanki agreed to transfer and convey the property in favor of one Jawahar Doshi – representing one M/s. Radha Mangal Builders, which in turn, vide an Agreement for Sale dated 7th January,1981 agreed to transfer and convey the property in favor of one Babulal Khimchand Vardhan. The said Babulal vide Agreement dated 7th November, 1981 transferred the property in favor of M/s. Vardhan Associates. The building plans submitted by Vardhan Associates were duly sanctioned by Municipal Corporation of Greater Mumbai and commencement certificate was issued. The flat purchaser's Agreement was entered on 4th December, 1981 and thereafter, the Society came to be formed.

11. The erroneous CTS number reflected in the registration certificate is sought to be explained by attributing the error to one of its members Pravin Nandu who was representing the Society as Chief Promoter. It is pleaded that Pravin Nandu furnished PR card of CTS No 1602 instead of CTS No. 1582 inadvertently. Reliance is placed on a release deed executed by the said Pravin Nandu on 24th July, 2013 in

respect of one of the flats in Defendant No 1 Society, which deed erroneously mentions CTS No 1602 and PR card of CTS No 1602 was annexed to the release deed, which was submitted to the competent authority by Pravin Nandu while seeking registration. It is contended that subsequently the unilateral deemed conveyance was executed in favor of the Defendant No 1 Society and for purpose of re-development, the developer came to be appointed and Development Agreement was executed.

12. Vide order dated 23rd August, 2024, the Trial Court rejected the ad-interim relief in view of observations of High Court in Writ Petition No 635 of 2023 and opined that the same question is before the Trial Court. It noted that the Plaintiff has sought final relief at interim stage and held against the Plaintiff on the aspect of balance of convenience. As against the rejection of ad-interim order, Appeal from Order was preferred and this Court vide order dated 5th February, 2025 held that the Trial Court has not examined the documents relied upon by the Plaintiff and set aside the order of rejection of ad-interim relief and directed the Trial Court to decide the application finally.

13. By the impugned order, the Trial Court examined the documents pertaining to the process and procedure of allotment of Final Plot No. 190 to Bhagatsingh Solanki. It noted the minutes of hearing before the Arbitrator and that Final Plot no 190 was allotted on 26th April, 1976

and development permission was granted resulting in plans being sanctioned, the building being constructed and the occupation certificate being issued on 22nd September, 1988.

14. After examining the material on record, the Trial Court opined that Defendant Nos 4 to 7 are legal heirs of the original owner Bhagatsingh Solanki and Final Plot No 190 devolved upon them. It noted that Plaintiff has not raised any grievance against Defendant Nos 4 to 7, and that no relief is sought against the interim application in respect of the deemed conveyance order. It noted that in the Plaintiff's registered conveyance, there is no mention of Final Plot No. 190 and the transaction is in respect of CTS No 1582 (1,2,3) and hence, the contention that he has acquired the suit property along with the Final Plot No. 190cannot be accepted and dismissed the Notice of Motion No. 2157 of 2024 on 9th May, 2025.Similar findings were recorded in the order of same date in respect of Notice of Motion No. 2156 of 2024.

15. Mr. Deshmukh, learned counsel appearing for Appellant would point out the registered deed of conveyance dated 30th September, 1985 and Index II to contend that ownership rights were acquired by the Plaintiff in respect of CTS No 1582 (1 and 2). Drawing attention of the Court to the redistribution and valuation statement, the points out that Final Plot No 190 was allotted to Bharatkumar Shankerbai

Kalasparshi as a owner and the area of CTS No. 1582 (1 and 2) mentioned as 506.18 sq. metres tallies with the area in the conveyance deed. He would further point out that as per the redistribution and valuation statement, the Final Plot No. 190 came to allotted in liue of original plot no. 261 and 262 to Bharatkumar Shankerbhai Kalasparshi. He would point out the communications addressed by the Plaintiff to the Arbitrator raising a grievance about the Final Plot no. 190 being allotted to his predecessor-in-title, and that the site verification shows that the building has already been constructed on the said plot. He would further point out that in respect of Survey No. 117, 7/12 extract shows the name of Bhagatsingh Shankerbhai Solanki as the owner. He submits that as the Final Plot No 190 was allotted in lieu of CTS NO 1582 which was purchased by Plaintiff under the conveyance of 1985, the Plaintiff is the owner of Final Plot No 190 and the Defendant No 1 is an encroacher.

16. He would further point out that by misrepresenting the Defendant No 1's plot as CTS No 1602, the registration certificate was obtained by Defendant No 1. He points out that in the deemed conveyance proceedings, the pleading is about CTS No. 1582. He would further point out that in the proceedings seeking unilateral deemed conveyance, the Plaintiff was not impleaded.

17. He would further point out that the *prima facie* observations of

the Division Bench of this Court in the order of 30th March, 2023 in favour of the Plaintiff. He would submit that the Petition came to be dismissed on ground of delay, however, with liberty to file substantive suit. He would further submit that against the refusal of the ad-interim relief, this Court in the Appeal from Order has noted the extract of Index-II and registered deed of conveyance to *prima facie* observer about the Plaintiff's right in the suit land and that further actions undertaken by the Defendants in respect of the suit property will be subject to final outcome of the suit. He submits that the Hon'ble Apex Court did not interfere with the order of High Court and requested the Trial Court to expedite the hearing of the Notice of Motions, which came to be disposed of by the impugned order.

18. He submits that the Trial Court has erred factually in holding that the order of deemed conveyance has not been challenged whereas the prayer clause in the plaint would specifically indicate a challenge to the deemed conveyance. He has taken this Court in detail through the order of the Trial Court and would submit that the proceedings before the Arbitrator are prior to deed of conveyance executed in favor of the Plaintiff.

19. Mr. Godbole, learned Senior Advocate appearing for the Respondents would submit that even accepting the conveyance of 1985, the Plaintiff has no concern with CTS No. 1583 and would point

out that the redistribution and the valuation certificate to contend allotment of Final Plot No 190 in lieu of CTS NO 1582 and 1583. He points out to minutes of meeting before the Arbitrator of 1st September, 1980 recording the presence of legal heir of Bhagatsingh Shankerbhai Solanki informing the Arbitrator that Bhagatsingh Solanki has recently expired. He submits that expiry of the original owner in the year 1980, raises a doubt about authenticity of the deed of conveyance of the year 1985.

20. He would further point out the findings of the Trial Court in respect of the proceedings before the Arbitrator and would submit that the proceedings note that communication was received from the Executive Engineer on 11th July, 1981 addressed to the Arbitrator informing them about the proposal for development of the plot received by them from Jawahar Doshi, pursuant to which the building came to be developed. He would further point out the communication of 11th July, 1981 addressed to the Arbitrator by Executive Engineer requesting the Arbitrator to inform betterment charges which were duly paid by the said Jawahar Doshi claiming through the original owner. He submits that in 1988, the occupation certificate came to be granted. He submits that the Plaintiff has himself addressed communication to the Arbitrator pointing out that in respect of Final Plot no. 190, the site inspection shows that the building has been

constructed and despite thereof, fails to take any steps. He submits that as the building was already constructed in the year 1988, the balance of convenience is in favor of the Society.

21. Mr. Godbole has drawn attention of this Court to the reliefs in the plaint and would contend that there is no prayer seeking declaration of title and the challenge is limited to the deed of conveyance executed in favour of Defendant No 1 Society.

22. He would further point out the various permissions obtained by the Society and would submit that the building has been duly constructed after obtaining all necessary permissions and cannot be said to be encroacher.

23. Rival contentions now fall for determination.

24. There is no dispute about the ownership of Bhagatsingh in respect of CTS No. 1582 (1 and 2) and CTS No 1583. It is also not disputed that the said property was acquired for the purpose of road widening in which the Final Plot No. 190 was allotted to Bhagatsingh Solanki. The Plaintiff describes the suit land as Old Plot No 261 and 262, CTS No. 1582 (1 and 2), Survey No 117, Hisssa No 24 admeasuring 506 square meters and Final Plot No 190 situated at Vile Parle (East), Mumbai.

25. The rights in Final Plot No. 190 is traced by the Plaintiff through the ownership rights in CTS No. 1582(1 and 2) premised on the Deed

of Conveyance dated 30th September, 1985 claiming sale of plot bearing CTS No. 1582(1 and 2) to the Plaintiff.

26. The Redistribution and Valuation Statement relied upon by both the parties, gives details of the original plots, the total area, the name of the owner, the final plot, the contribution and compensation etc. The statement discloses the details of original plot being CTS No. 1582 (1 and 2) admeasuring 506.18 square meters and CTS No. 1583 admeasuring 321.07 square meters, plot no 261 and 262. The name of owner is shown as Bharatkumar Shankarbhai Kalaparshi and the Final Plot is shown as Final Plot No 190 admeasuring 431.70 square meters. *Prima facie* the redistribution and valuation statement discloses the allotment of Final Plot No 190 in lieu of CTS No 1582 (1 and 2) and CTS No 1583 in favour of Bharatkumar Kalaparshi. The Plaintiff's conveyance of 1985 makes no mention of CTS No. 1583, and no rights are claimed in CTS No.1583. As Final Plot No.190 included the component of CTS No 1583, on the basis of ownership claim of CTS No 1582 (1 and 2), the Plaintiff cannot claim ownership in respect of Final Plot No 190.

27. The process of allotment of Final Plot No 190 took place pursuant to proceedings before the Arbitrator, which process is detailed in the minutes of meeting on record. Mr. Deshmukh has not disputed the factual contents of the minutes of meeting recorded by the Arbitrator. The minutes of meeting shows discussion between

Bharatkumar and Arbitrator rejecting allotment of some other plot, raising grievance about area of alternate plot being allotment and about allotment of Final Plot No 190, etc.

28. The impugned order of Trial Court sets out the minutes of hearing before the Arbitrator detailing the process and procedure of allotment of Final Plot No 190 under the Town Planning Scheme. The relevant events noted by the Trial Court has been set out by this Court in tabular form for ease of reference:

Dates	Events
13th October, 1972	Bhagatsingh submitted P.R. card of CTS No. 1582, 1582 (1, 2) and 1583 to the Arbitrator.
29th March, 1973	Sagar Solanki, son of Bhagatsingh Solanki represented Bhagatsingh and submitted his no objection for acquisition and requested for alternate plot allotment
30th March, 1973	NOC for acquisition was signed and submitted by Bhagatsingh Solanki to Arbitrator.
6th December, 1974	Occupiers of various structures of original Plot No. 261 showed their desire to have alternate accommodation at Vile Parle only.
26th April, 1976	The Arbitrator's communication to Bhagatsingh Solanki informing Bhagatsingh that it had decided to allot to Bhagatsingh final plot no. 190 of area admeasuring 346.37 sq. metres subject to confirmation from land record department in lieu of original plot nos. 261 and 262.
26th November, 1974	Communication by Arbitrator to various structure occupiers of Plot No 261 to vacate their structures for the scheme.
6th December, 1974	The occupiers expressed their desire to have alternate accommodation at Vile Parle only and submitted written confirmation.

9th February, 1979	The communication from the Arbitrator to Sagar Solanki informing that possession of final plot number 190 will be handed over after final scheme is sanctioned.
1st September, 1980	The minutes of the hearing before the Arbitrator records the statement of Sagar Solanki that Bhagatsingh Solanki had already expired.
11th July, 1981	The communication from the Executive Engineer, Town Planning to the Arbitrator informing about development proposal of plot received by them from Jawahar Doshi and inquiring about betterment charges.
22nd September, 1981	The communication by Arbitrator to Executive Engineer, Town Planning informing its no objection for the development proposal and communicating the contribution to be paid.
1982	IOD was issued by the Planning Authority in the name of Jawahar Doshi as constituted attorney of Sagar Solanki. On 20th March, 1982, the Executive Engineer communicates to the Arbitrator submitting the approved plans. On 1st June, 1982, Form 5 of Arbitrator was issued for contribution to be paid for development.
22nd September, 1988	Occupation certificate of Defendant No 1 Society was issued by Municipal Corporation for Greater Mumbai.

29. The above sequence of events would disclose that way back from the year 1972, the process of acquisition of CTS No. 1582 (1 and 2) and CTS No 1583 had commenced in which Bhagatsingh Solanki participated and consented to the acquisition and requested for alternate plot allotment. The conveyance deed of 1985 records that under lease agreement dated 16th December, 1964, the Plaintiff was granted lease for period of 99 years and was put in exclusive

possession of CTS No 1582 (1,2,3). The redistribution and valuation statement links CTS No 1582(1 and 2) with Plot No 261. The minutes of meeting before the Arbitrator records that on 26th November, 1974, the Arbitrator had issued communications to various structures of Plot No 261 to vacate their structures. If the recitals of conveyance of 1985 are assumed to be correct, the Plaintiff being in possession of Plot No 261 since December, 1964 as lessee would have received communication from the Arbitrator and would be aware of the town planning scheme and the proposed acquisition.

30. Prior to the execution of conveyance of 1985, on 24th February, 1977, the Arbitrator had communicated about allotment of Final Plot No 190 to Bhagatsingh. On 1st September, 1980, the Arbitrator has been informed by Sagar Solanki that Bhagatsingh Solanki has expired. In the year 1981, the proposal for development of Final Plot No 190 was submitted and on 22nd September, 1981, the Arbitrator communicated its no objection to the construction proposal and also informed the development charges to be paid.

31. Against the above background, if the conveyance deed of 1985 is perused, the subject land described is CTS No 1582 (Part 1, 2 and 3) admeasuring about 606 sq. yards and there is no mention of Final Plot No 190. The indenture of 1985 is absolutely silent about the acquisition proceedings or the allotment of the Final Plot No 190 and

recitals indicates that there is sale transaction of CTS No 1582 (1, 2 and 3). The said plot was already subject of the town planning scheme and in lieu of acquisition of the said plot along with CTS No 1583, Final Plot No 190 was allotted. There is no justification for absence of recital of the acquisition proceedings and allotment of Final Plot No 190 in the Deed of Conveyance. It is also important to note that the minutes of the meeting before the Arbitrator records that Bhagatsingh Solanki had expired in the year 1980.

32. *Prima facie,* the material on record creates a doubt about the genuineness of the conveyance deed dated 30th September, 1985, which is the foundation of Plaintiff's ownership rights. The minutes of meeting before Arbitrator records the statement about the death of Bhagatsingh in the year 1980 and in the Appeal memo, there is no ground taken assailing the record of Arbitrator recording the death of Bhagatsingh Solanki in the hearing of 1st September, 1980.

33. The acquisition proceedings resulted in allotment of Final Plot No 190 and the fact that, the Plaintiff immediately communicated with the Arbitrator on 10th February, 1986 would indicate knowledge about acquisition proceedings. The Plaintiff claims that the Final Plot No 190 was allotted to Plaintiff's pre-decessor in title whereas it should have been allotted to him, which claim is *prima facie* unsustainable for two reasons firstly that at the time of acquisition proceedings during the

period 1970 to 1980, Plaintiff had not yet acquired any right in CTS No 1582 (1 and 2) as the conveyance was executed subsequently in 1985 and therefore the allotment was rightly done in name of the original owner and secondly that Final Plot No 190 was allotted in lieu of surrender of CTS No 1583 also, which land was not subject matter of the conveyance of the year 1985.

34. The Plaintiff himself has come with a case that in the year 1986, after executing the registered conveyance, he inspected the site which showed that the building had already been constructed on Final Plot no. 190. Despite existence of the building on Final Plot No 190, till the year 2024, the Plaintiff did not bother to institute any proceedings to assert ownership rights in the suit land and merely correspondences were exchanged with the Arbitrator and Planning Authority, which also ended in the year 2000.

35. In the present Suit, there is no declaration of title sought by the Plaintiff and no relief is sought against the legal heirs of Bhagat singh Solanki. The substantive challenge is to the order of deemed conveyance in favor of the Defendant No. 1-Society and no interim relief is sought to stay the implementation of the order of deemed conveyance. The Trial Court has noted that no interim relief is sought in respect of the deemed conveyance, which is misinterpreted by Mr. Deshmukh by terming the finding as factually erroneous. Till the

deemed conveyance in favour of the Defendant No 1 Society is not set aside, the Defendant No 1 Society cannot be restrained from exercising ownership rights in the suit property. The initial construction of the Defendant No 1 Society was pursuant to validly obtained planning permissions and cannot be termed as illegal and unauthorised and consequently, the re-development process cannot be challenged at interim stage.

36. The Defendant No. 1-Society has already secured registration of the Society as also deemed conveyance in their favor and had commenced redevelopment. It is this redevelopment which is sought to be stalled by the Plaintiff. The Plaintiff is aware that a declaration of title under a conveyance deed of 1985 would be barred by limitation and has therefore, chosen the circuitous route of challenging the deemed conveyance which has been executed in favor of Defendant No. 1 in the year 2021 in order to bring its suit within limitation.

37. In order to succeed in its Interim Application, it is necessary for the Plaintiff to demonstrate *prima facie* right, title and interest in the subject property i.e. Final Plot No 190. The Redistribution and Valuation Statement indicates that Final Plot No 190 was allotted in lieu of CTS No 1582 (1 and 2) and CTS No 1583. The Plaintiff does not claim any right in CTS No 1583 and consequently cannot claim exclusive right in Final Plot No 190 on the basis of Conveyance Deed of 1985. The

Conveyance Deed of 1985 is *prima facie* doubtful for the reason that the minutes of meeting before the Arbitrator in the town planning scheme process records the statement of son of Bhagatsingh Solanki that Bhagansingh has expired in the year 1980. The Deed of Conveyance has been executed by Bhagat Singh Shakarbhai Solanki and before the Arbitrator, notification of 23rd April, 1953 is produced to show that name of Bhagasingh Solanki was changed to Bharatkumar Shankerbhai Kalasparshi. The Final Plot No 190 was allotted in the name of Bharatkumar Shankerbhai Kalasparshi. There is no reason why the conveyance of 1985 would be executed in the name of Bhagat Singh Sahankerbhai Solanki when the name was changed on 23rd April, 1953. Further the conveyance makes no mention of the acquisition process and the alternate allotment of Final Plot No 190 and instead the acquired CTS No 1582 (1 and 2) is subject matter of the sale transaction.

38. Under the provisions of Chapter V of the MRTP Act, 1966, once the final scheme is sanctioned under Section 86(3) of the MRTP Act, the scheme shall have the effect as if it were enacted under the Act itself. In view thereof, the scheme which is sanctioned assumes a statutory force and, as the name of Bharatsingh was recorded in respect of Final Plot No. 190, necessary modification will have to be sought by the Plaintiff in the entries in the town planning scheme

before any *prima facie* case can be said to be made out.

39. Mr. Deshmukh would assail the order of deemed conveyance executed in favor of Defendant No. 1 as illegal for the reason that :

> (a) the registration certificate of Defendant No. 1-Society mentions CTS No. 1602;
>
> (b) despite having knowledge about the Plaintiff being the owner of the property, the Plaintiff was not impleaded in the deemed conveyance proceedings.
>
> (c) proceedings of deemed conveyance refers to CTS No 1582 (1 and 2)

40. The redistribution and valuation statement indicates that Final Plot No 190 has been allotted in lieu of CTS No 1582 (1 and 2) and CTS No 1583. The incorrect mentioning of CTS No 1602 does not deviate from the fact that it is the Plaintiff's own case that Defendant No 1 Society is constructed on Final Plot No 190. Till the order of deemed conveyance is set aside, the rights of Defendant No 1 Society cannot be disturbed. The Defendant No.1 society was developed through the rights which flowed from the legal heirs of Bhagat Singh, in whose name Final Plot No.190 was allotted. The Defendant No.1 has therefore not impleaded the Plaintiff in deemed conveyance proceedings.

41. The delay in instituting proceedings despite acquiring knowledge in the year 1986 about construction of Defendant No 1's

structure on Final Plot No 190 would militate against the grant of any interim relief in favor of the the Plaintiff. The Defendant No. 1-Society is in existence on the said plot since the year 1981 and the re-developed building is awaiting occupation certificate. The balance of convenience is therefore, in favor of the Defendants. At this stage, Plaintiff has failed to make out *prima facie* case and the balance of convenience is in favor of the Defendants and in event, the restraint order is passed, irreperable loss would be caused to the Defendants.

42. In view of the discussion above, the Trial Court has rightly exercised the discretion, which does not warrant interference. Resultantly. the Appeal from Order stands dismissed.

43. In view of above, nothing survives for consideration in pending Applications, if any, and the same stand disposed of. Needless to clarify that the observations made herein are *prima facie* findings which will not bind the Trial Court, while adjudicating the suit on its own merits after trial.

[Sharmila U. Deshmukh, J.]