Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11328 OF 2023

1. **Magnum Unit 'A' CHS Limited**,
having office at 2nd Cross Lane,
Lokhandwala, Andheri (West),
Mumbai – 400 053

2. **Magnum Unit 'B' CHS Limited**,
having office at 2nd Cross Lane,
Lokhandwala, Andheri (West),
Mumbai – 400 053

3. **Magnum Unit 'C' CHS Limited**,
having office at 2nd Cross Lane,
Lokhandwala, Andheri (West),
Mumbai – 400 053

… **Petitioners**

V/s.

1. **The State of Maharashtra**,
through the Office of Sub-Registrar
office, Andheri Taluka,
having its office at Ground Floor,
Family Court Building, Opp. MMRDA,
Building, Bandra Kurla Complex,
Bandra (East), Mumbai 400 051.

2. **District Deputy Registrar Cooperative Society, Mumbai City (3)**,
A Competent Authority u/s. 5A of the
Maharashtra Ownership of the Flats
Act, 1963, having its office at
MHADA Building, Ground Floor,
Room No.69, Bandra (East),
Mumbai 400 051.

3. **Magnum Tower CHS Limited**,
   through its Chairman/Secretary,
   having office at 2nd Cross Lane,
   Lokhandwala, Andheri (West),
   Mumbai – 400 053

4. **Lokhandwala Estate & Development Company Ltd.**, having its office at
   48, Indrayan Road, Santacruz West,
   Mumbai 400 054.

5. **Oshiwara Land Development Corporation Private Limited**,
   having office at 71/73, 2nd Floor,
   Boatwala Building, Bombay News Road,
   Mumbai 400 023.

6. **Shri Swami Samartha**,
   Plot No.357, Survey No.41 (Part),
   2nd Cross Lane, Lokhandwala Complex,
   Andheri (West), Mumbai 400 053.

... Respondents

Mr. Girish Godbole, Senior Advocate with Mr. Harsh Moorjani, & Mr. Aaqib Kazi i/by Mr. Rizwan Siddiquee for the petitioner.

Ms. Kavita N. Solunke, Additional G.P. with Mr. S.L. Babar, AGP for respondent Nos.1 & 2-State.

Mr. Sachin Mandlik i/by Mandlik Partners for respondent No.3.

CORAM : AMIT BORKAR, J.

RESERVED ON : JANUARY 28, 2026

PRONOUNCED ON : FEBRUARY 24, 2026

JUDGMENT:

1. The Petitioners contend that Plot No. 357, Survey No. 41 Part, C.T.S. No. 1/175 of Oshiwara Village, Taluka Andheri, Mumbai admeasuring 13,569 sq. mtrs. was developed under a composite Block Plan in distinct phases. It is their case that "Magnum Unit A" was the first development undertaken on the said property and comprises an area of 3,545.95 sq. mtrs., which has remained in its possession for over thirty-five years. Thereafter, "Magnum Unit B" was developed and constructed, admeasuring 4,389.82 sq. mtrs., and has similarly been in possession for more than thirty-five years. Upon completion of Units A and B, the Developer utilized the residual Floor Space Index available on the said plot for construction of "Magnum Tower," which occupies an area of 4,345.29 sq. mtrs.

2. It is further stated that Petitioner Nos. 1 and 2, representing the respective unit holders of Magnum Units A and B, are in settled and peaceful possession of the row houses together with the appurtenant garden areas for over thirty-five years, and that such possession predates the construction of Magnum Tower. According to the Petitioners, Respondent No. 3 has, at no point of time, occupied or possessed any land in excess of 4,345.29 sq. mtrs. Notwithstanding these factual circumstances, Respondent No. 2 has, by order dated 9 January 2023, granted unilateral deemed conveyance in favour of Respondent No. 3 in respect of land admeasuring 10,097.84 sq. mtrs. out of the total area of 13,569 sq. mtrs., which, according to the Petitioners, has resulted in serious prejudice to their proprietary and possessory rights. It is stated that

M/s. Oshiwara Land Development Corporation Pvt. Ltd. was the original owner of the aforesaid property situated at Plot No. 357, Survey No. 41 Part, C.T.S. No. 1/175 of Oshiwara Village, Taluka Andheri, Mumbai.

3. On 16 September 1979, a Tripartite Agreement was executed between M/s. Lokhandwala Estate and Development Company Pvt. Ltd., described as the Developer, M/s. Oshiwara Land Development Corporation Pvt. Ltd., and Shri Swami Samarth Prasanna Co-operative Housing Society Ltd. Under the said agreement, the Developer acquired possession and development rights in respect of the subject land. On 5 January 1982, the Chief Promoter of Respondent No. 3 entered into a Package Deal Agreement with the Developer concerning development of the said plot. A Supplementary Package Deal Agreement dated 10 April 1984 was thereafter executed between the Chief Promoter of Respondent No. 3 and the Developer, inter alia delineating the rights of the row house and bungalow purchasers. During the period 1983 to 1984, the Developer completed construction of the bungalows comprising Magnum Unit A and Magnum Unit B. Subsequent to completion of Magnum Units A and B, the Developer utilized the balance FSI available on the plot for construction of "Magnum Tower." The Block Plan for the entire parcel admeasuring 13,569 sq. mtrs. received approval on 3 June 1986. On 3rd and 4th February 2014, Respondent No. 3 instituted a Civil Suit before the City Civil Court at Dindoshi seeking a permanent mandatory injunction restraining the present Petitioners from undertaking construction or demolition activities on a strip of land

admeasuring 360 x 25 sq. ft., contending that the said strip was intended for joint use and enjoyment. By Judgment and Order dated 3-4 February 2014, the City Civil Court dismissed the suit and decided the issue against Respondent No. 3.

4. Thereafter, on 24January 2017, Respondent No. 3 filed Application No. 39 of 2016 before the District Deputy Registrar seeking deemed conveyance of the entire land admeasuring 13,569 sq. mtrs. The said application came to be rejected by order dated 24 Janaury 2017. Subsequently, on 16 May 2022, Respondent No. 3 preferred Application No. 63 of 2022 before Respondent No. 2 seeking unilateral deemed conveyance of 10,097.84 sq. mtrs. out of the said plot. By the impugned order dated 9 January 2023, the District Deputy Registrar, Co-operative Societies, Mumbai City, granted unilateral deemed conveyance in favour of Respondent No. 3 in respect of land admeasuring 10,097.84 sq. mtrs. A certificate under Section 11 of the Maharashtra Ownership Flats Act, 1963 was accordingly issued in favour of Respondent No. 3 on the same date. Aggrieved thereby, the Petitioners have instituted the present Writ Petition challenging the legality and validity of the order dated 9 January 2023 and the consequential certificate issued thereunder.

5. Learned Senior Counsel Mr. Godbole appearing for Respondent No. 2 submitted that the impugned order dated 9 January 2023, in effect, amounts to the authority sitting in appeal over its own earlier decision and disregarding the jurisdictional bar arising from the principles of res judicata. He invited attention to the description of the subject property and the societies situated

thereon, namely Plot No. 357, Survey No. 41 Part, C.T.S. No. 1/175 of Oshiwara Village, Taluka Andheri, Mumbai admeasuring 13,569 sq. mtrs., comprising the Petitioner societies, Magnum Unit A, Magnum Unit B and Magnum Unit C, and Respondent No. 3, Magnum Tower Co-operative Housing Society Ltd.

6. It was submitted that paragraphs 14 and 15 of the impugned order record the earlier Application No. 39 of 2016, yet Respondent No. 2 erred in entertaining a subsequent application by Respondent No. 3 on the same cause of action and in respect of the same plot. The earlier application was rejected on merits by order dated 24 January 2017 on the ground that the conveyance sought would prejudice the rights of the other building owners, namely the Petitioners. According to the submission, even though the earlier application pertained to the entire plot, Respondent No. 3 had in substance claimed entitlement to approximately 10,000 sq. mtrs., which is substantially the area granted under the impugned order, and the said contention had been expressly rejected after due consideration.

7. It was further contended that no liberty was granted to Respondent No. 3 while rejecting the earlier application for deemed conveyance. Once a quasi judicial authority adjudicates upon an issue and the order attains finality without liberty to file a fresh application or pursue a superior remedy, the authority lacks power of review to adopt a contrary position. It was emphasized that the order dated 24 January 2017 has not been challenged to date and has therefore attained finality.

8. Learned Senior Counsel submitted that the finding in the impugned order that Section 11 of the Code of Civil Procedure does not apply to deemed conveyance proceedings constitutes a manifest error of law. The principles underlying res judicata apply equally to quasi judicial proceedings in order to prevent multiplicity of litigation and inconsistent findings. Reliance was placed on the decisions in M/s. Aakansha Construction Co. v. State of Maharashtra and Others, 2025 BHC 20530 and M/s. Faime Makers Private Ltd. v. District Deputy Registrar, (2025) 5 SCC 772.

9. It was submitted that Respondent No. 2 has, in effect, rewritten the contractual terms governing the parties by disregarding the exclusive garden rights conferred upon the Petitioner societies under the Package Deal Agreement and the Supplementary Agreement, which were acknowledged and accepted by Respondent No. 3. It was contended that the impugned order is ex facie illegal inasmuch as Section 11 of the Maharashtra Ownership Flats Act mandates that conveyance be granted strictly in accordance with the Agreement for Sale. Respondent No. 2 failed to consider Clause 6(b) of the Package Deal Agreement dated 5 January 1982 and Clause 4 of the Supplementary Agreement dated 10 April 1982, which expressly conferred exclusive possession and enjoyment of the front garden areas upon the row house owners, namely the Petitioner societies. These rights were also incorporated in the MOFA agreements and acknowledged by the flat purchasers under Clause 20 thereof. It was further submitted that Clause 12 of the Agreement dated 28 May 1987 reiterates the aforesaid terms and specifically provides

that the units of the Petitioner societies would enjoy exclusive garden amenities appurtenant thereto. In the civil suit instituted by Respondent No. 3, which came to be dismissed by order dated 03-4 February 2011 passed by the City Civil Court, Respondent No. 3 had itself founded its claim on the Agreement dated 25 August 1987, and is therefore estopped from adopting a contrary stand.

10. It was contended that despite significant discrepancies between the measurements furnished by the architects of the Petitioners and those relied upon by Respondent No. 3, Respondent No. 2 mechanically accepted the certificate produced by Respondent No. 3 without independent scrutiny. Under Clause B(3) of the Government Resolution dated 22 June 2018, where measurement disputes arise in a layout involving multiple societies, the authority is required to appoint an independent architect from its approved panel to submit a report. It was submitted that failure to adhere to the mandatory procedure prescribed under the Government Resolution vitiates the impugned order. Respondent No. 2 granted conveyance of 10,097.84 sq. mtrs. in favour of Respondent No. 3 without disclosing any rational methodology for quantification or accounting for the phased development of the layout, and solely on the basis of the architect's certificate furnished by Respondent No. 3. The approach adopted ignores the mandate of the 2018 Government Resolution that, where Transferable Development Rights are utilized, conveyance must be confined to the plinth area and appurtenant land.

11. It was further submitted that inclusion of garden areas and common access roads in the certificate issued to Respondent No. 3 exceeds the scope of the governing agreements and renders the order perverse. Reliance was placed on *Mazda Construction Co. v. Sultanabad Darshan Co-operative Housing Society Ltd.,* 2012 SCC OnLine Bom 1266, wherein it has been held that when common amenities such as gardens and access roads are seriously disputed or form the subject matter of pending litigation, the Competent Authority ought not to include them in a deemed conveyance. It was therefore prayed that the reliefs sought in prayers clauses (a) and (b) be granted.

12. Per contra, learned counsel Mr. Mandlik submitted that although quasi judicial authorities are generally bound by principles analogous to res judicata, the same are inapplicable in the present case. He submitted that the earlier application filed in 2016 pertained to the entire plot admeasuring 13,569 sq. mtrs., whereas the subsequent application filed in 2022 was confined to 10,097.84 sq. mtrs. This distinction, according to him, is acknowledged by the Petitioners in ground 9(w) of the writ petition. The issue previously determined was whether Respondent No. 3 was entitled to deemed conveyance of the entire plot. The entitlement to a specific portion measuring 10,097.84 sq. mtrs. was neither directly nor substantially in issue in the earlier proceedings. Consequently, the impugned order does not determine any matter which had been finally adjudicated earlier. It was further submitted that reliance placed by the Petitioners upon the Package Deal Agreements and subsequent agreements is

misconceived. These agreements, though executed between certain Chief Promoters and the developer, remain unregistered and cannot override registered MOFA agreements executed with flat purchasers. It was pointed out that one such registered agreement records entitlement of Respondent No. 3 to a plot area of 13,282.20 sq. mtrs. It was also contended that the unregistered agreements were subject to modifications and that the areas mentioned therein do not correspond with the total land area of 13,569 sq. mtrs. reflected in the Property Register Card. The impugned order, according to him, addresses these aspects in detail in paragraphs 14(i) to (o) and 15 thereof.

13. Learned counsel further submitted that the entitlement of Respondent No. 3 is founded upon legitimate documents and in conformity with the Government Resolution dated 22 June 2018. Reliance was placed on the sanctioned layout plan and the architect's certificate. Respondent No. 3 comprises 126 flats and 17 garages, aggregating to 143 units. After utilization of permissible FSI of 1.0062, the built-up area of its building is stated to be 10,160.75 sq. mtrs. In contrast, the built-up areas of the bungalows belonging to the Petitioner societies aggregate to 3,492.79 sq. mtrs. On the basis of proportional FSI consumption, Respondent No. 3 is stated to be entitled to 10,097.84 sq. mtrs. It was further submitted that the Petitioners have not effectively rebutted this quantification by producing any sanctioned plans or credible architect's certificate. The reliance placed by the Petitioners on the area statement of N.B. Andurlekar and Associates, allegedly based on a total station survey, is stated to be

unsupported by sanctioned layout plans and contrary to the Government Resolution. Similar criticism was directed against the certificate of Phatarpekar and Associates.

14. It was finally submitted that denial of Respondent No. 3's claim to 10,097.84 sq. mtrs. would result in disproportionate allocation of land to its society. Even assuming that the Petitioners assert rights under unregistered agreements, such claims relating to common areas or amenities must be pursued before the Civil Court. The District Deputy Registrar exercises limited jurisdiction in deemed conveyance proceedings and cannot adjudicate complex title disputes. It was contended that writ jurisdiction is also not the appropriate forum to determine such issues, and that an aggrieved party must seek substantive relief before the competent Civil Court.

I. Introductory Background and Governing Principles of Finality and Res Judicata:

15. I have considered the papers, the impugned order dated 9 January 2023, the earlier order dated 24 January 2017, and the rival submissions advanced by learned counsel for the parties.

16. When a statutory authority acts in a quasi judicial capacity, it hears both sides, examines pleadings and documents, records reasons and decides rights. Once such an authority decides a dispute on merits and closes the matter without granting liberty to file a fresh application, that decision does not remain open-ended. It achieves finality between the same parties in respect of the same dispute. Finality serves an important purpose. If parties are

allowed to repeatedly approach the same authority on the same dispute, litigation would never end. Every rejection could be followed by a slightly modified application. That would burden the system and unsettle rights that have already been adjudicated.

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

It cannot invite the same authority to revisit and reverse its own concluded findings in a second round.

II. Tests for Identifying Directly and Substantially in Issue vs Collateral Issues (Sajjadanashin Sayed Principles):

18. The principles explained in *Sajjadanashin Sayed v. Musa Dadabhai Ummer,* (2000) 3 SCC 350 provide a guidance for courts to decide whether an earlier finding binds the parties in later proceedings. The judgment repeatedly stresses that not every finding recorded in an earlier case becomes final for all future disputes. Only those findings which formed the real foundation of the earlier decision will operate as res judicata. Everything else may remain open. When the Supreme Court speaks about matters "collaterally or incidentally in issue," it refers to issues that arise during the discussion but are not the real point that the court had to decide. Courts often examine many facts and legal arguments. Some of them are central. Some are merely supporting or explanatory. The law draws a clear distinction between the two.

19. The expression used in Section 11 CPC is "directly and substantially in issue." This language shows that the law is concerned with substance, not form. If a matter was central to the earlier decision and the judgment could not have been delivered without deciding it, that finding binds the parties later. But if the matter was only an auxiliary step, or part of the background reasoning, it does not automatically create a bar in future proceedings.

20. The Supreme Court points out that courts across different jurisdictions have struggled with this distinction. The difficulty lies in identifying what exactly was decided and what was merely discussed. Therefore, certain tests have evolved. The most important test is this. Ask whether the earlier decision could stand without that particular finding. If the answer is no, then the issue was directly and substantially in issue. If the answer is yes, then the finding is likely collateral.

21. Another test explained in the judgment is whether the finding forms the immediate foundation of the decision or merely supports the reasoning. A mere step in reasoning is not enough. The law requires something more solid. The finding must be fundamental to the final outcome.

III. Application of Res Judicata Principles to Section 11 MOFA Proceedings and Scope of Competent Authority:

22. Applying these principles to proceedings under Section 11 of the MOFA Act becomes important because such proceedings are limited in scope. The competent authority is not deciding every possible dispute relating to title, ownership or contractual interpretation. It examines whether statutory conditions for deemed conveyance are satisfied. Therefore, only those issues necessary for granting or refusing deemed conveyance are directly and substantially in issue.

23. In the present factual background, the earlier Section 11 proceeding required the authority to decide whether Respondent No. 3 was entitled to deemed conveyance over the land claimed,

considering objections raised by other societies. That question went to the root of the application. The authority could not have rejected or granted conveyance without deciding entitlement. Therefore, that issue was directly and substantially in issue.

24. On the other hand, discussions regarding exact measurement method, allotment of garden spaces, or comments on certain clauses may have arisen during the hearing. Unless the earlier order clearly shows that its final conclusion depended entirely upon those findings, they remain incidental or collateral. The Supreme Court cautions that even if an issue is framed or discussed in detail, it does not automatically become decisive. One must see whether the adjudication of that issue was material and essential for the decision.

25. The illustrations given by the Supreme Court make this distinction clearer. In the Privy Council cases referred to, certain findings were recorded in earlier proceedings but were later held not to operate as res judicata because those findings were not necessary for deciding the earlier case. They were only incidental observations made while deciding another principal issue. The same principle applies here. If a finding was not the foundation of the earlier Section 11 decision, it cannot bar later adjudication.

26. The Supreme Court also explains that even where a finding appears specific, courts must examine the relief claimed and the nature of the proceeding. For example, in cases where possession alone was in issue, a casual observation on title did not become final. But where possession depended entirely on title, then the

title finding became binding. The key question always remains necessity. Was the finding essential to grant or refuse the relief sought?

27. In Section 11 MOFA proceedings, the principal issues generally concern statutory entitlement to conveyance. Complex questions of ownership, inter se rights between multiple societies, or detailed title disputes may arise in argument, but they are often beyond the limited scope of the authority. Findings on such questions, if made only as background reasoning, may not attain finality as res judicata. Those matters are better suited for civil courts where full evidence can be led.

28. Therefore, while applying *Sajjadanashin Sayed* to the present facts, the Court must carefully separate the core decision from peripheral observations. The earlier adjudication on entitlement to deemed conveyance forms the substantive foundation and is directly and substantially in issue. However, issues which were secondary, explanatory or not essential for the final conclusion remain collateral.

29. This separation prevents two extremes. It avoids reopening matters that have already been finally decided. At the same time, it ensures that parties are not unfairly barred from litigating issues which were never truly adjudicated. The judgment in *Sajjadanashin Sayed* thus provides a structured and principled approach. It guides courts to look beyond labels and examine the real role played by each finding in the earlier decision. Only then can the doctrine of res judicata be applied correctly and fairly in

proceedings under Section 11 of the MOFA Act.

30. *In Faime Makers (P) Ltd. v. Coop. Societies,* (2025) 5 SCC 772 the Supreme Court has made it clear that res judicata is not confined to civil courts alone. It binds quasi judicial authorities as well. When a statutory authority hears parties, examines documents and gives a reasoned decision on facts and law, that decision has binding force. It remains binding even if it is wrong, unless it is set aside in appeal, revision or writ proceedings. The Deputy Registrar, while deciding an application under Section 11 of MOFA, acts as a quasi judicial authority. He issues notice, hears parties, considers rival claims and passes a reasoned order. That order is not an administrative opinion. It is an adjudication. Therefore, the rule stated in *Ujjam Bai v. State of U.P.,* 1962 SCC OnLine SC 8 and reaffirmed in *Abdul Kuddus v. Union of India,* (2019) 6 SCC 604 squarely applies.

31. The Supreme Court in *Faime Makers* has reiterated two important points. First, findings of a quasi judicial body cannot be reopened in a collateral manner or in a second round between the same parties. Second, even if the earlier decision contains an error of fact or law, it still binds unless it is set aside by a higher forum. A coordinate or successor authority cannot simply take a different view on the same issue.

32. In proceedings under Section 11 of the Maharashtra Ownership of Flats Act, the Competent Authority does not sit as a civil court to decide title in the larger sense. It examines whether the promoter has failed to execute a conveyance and whether the

society or flat purchasers are entitled to have a unilateral conveyance executed. The scope is limited. The authority must see the agreement, the sanctioned plans, the layout, the nature of the property described and the rights flowing from the statute.

33. The distinction drawn in *Sajjadanashin Sayed* turns on one central test. Was the issue necessary for the earlier decision. Was it the foundation of that decision. If yes, it is directly and substantially in issue. If it was only part of the reasoning or a step taken to reach another conclusion, it is collateral or incidental.

34. Issues directly and substantially in issue under Section 11 of MOFA:

(i) Whether the applicant is a co-operative housing society or association of flat purchasers entitled under the Act.

(ii) Whether the promoter has executed the agreement for sale in accordance with Section 4 and whether the statutory period for conveyance has expired.

(iii) Whether the promoter has failed or refused to execute the conveyance.

35. Issues collateral or incidental in Section 11 MOFA proceedings

(i) Complicated questions of title between the promoter and third parties, such as rival claims of ownership based on prior conveyances, inheritance disputes, or partition claims.

(ii) Validity of prior development agreements between landowners and promoters.

(iii) Questions regarding internal disputes within the society, such as validity of elections or membership disputes.

(iv) Findings on zoning violations, FSI calculations, or planning breaches, unless they are essential to identify what portion of land must be conveyed.

(v) Issues relating to monetary claims, damages, or accounts between promoter and purchasers.

IV. Situations Where Res Judicata May Not Apply and Exceptions to Finality:

36. If the earlier application came to be rejected on account of non production of requisite documents, procedural defects, non compliance with statutory requirements, or on any ground which did not result in a final adjudication of the society's substantive entitlement, such decision may not operate as res judicata. In such circumstances, the issue of entitlement cannot be said to have been finally and conclusively determined. Consequently, the rejection would not extinguish the statutory right of the society, particularly where the defects are subsequently cured, and the application is presented afresh on a proper and complete foundation.

37. If, in the earlier proceedings, the authority made certain observations regarding the title of the promoter, the validity of the development agreement, or the extent of land ownership, but ultimately rejected the application on a procedural ground, such observations would be regarded as collateral or incidental in nature. In that event, those observations would not operate as a bar in subsequent proceedings. Finality would attach only to the

issue which constituted the true foundation of the rejection, and not to ancillary findings recorded in the course of the reasoning.

38. However, where the cause of action undergoes a material change, the bar of res judicata would not operate. By way of illustration, such change may arise on account of the subsequent formation of a duly registered co-operative housing society, the subsequent expiry of the statutory period prescribed for execution of conveyance. In such circumstances, a fresh cause of action may be said to arise, and the principle of res judicata would not apply, as the factual foundation of the later proceedings is distinct from that which formed the basis of the earlier adjudication.

V. Comparative Analysis of the 2017 and 2023 Proceedings and Findings on Merits:

39. On a careful reading of the earlier order dated 25 January 2017, it becomes clear that the competent authority had already examined the core question which arises again in the present proceedings. The authority did not dismiss the earlier application on a technical ground. It considered the claim on merits. In that earlier round, the authority specifically examined the entitlement asserted by Respondent No. 3 in respect of an area measuring about 10,160.81 square metres. The discussion in the order shows that the authority analysed what portions of land could form part of the conveyance and what portions could not.

40. The principal reason for rejection in the earlier order was that the area claimed by Respondent No. 3 included recreation grounds, internal roads and other common facilities. These areas

were not treated as automatically available for unilateral conveyance. The authority recorded that inclusion of such common areas would affect the rights of other occupants and societies on the layout. Therefore, the rejection was based on a clear finding that the claim, as presented, could not be accepted because of inclusion of common areas.

41. This aspect becomes important when one compares the earlier application with the present one. The present application seeks conveyance of 10,097.84 square metres. The difference between the two figures is marginal. When the descriptions and components of the area are compared, it is evident that the common areas which formed the basis of rejection earlier continue to be substantially included even now. In substance, therefore, the claim remains the same. The change is only in numerical adjustment. The foundation of the dispute has not altered.

VI. Final Determination: Binding Effect of Earlier Adjudication and Invalidity of Later Order:

42. In such circumstances, the law does not permit reopening of the same controversy before the same authority. Once a quasi judicial authority has considered entitlement on merits and rejected the claim, the proper course for the aggrieved party is to challenge that order before a higher forum. If a party believes that the earlier decision is wrong in law or fact, the remedy lies in appeal, revision or writ proceedings. The law does not allow a party to bypass that route by filing a fresh application with a slightly modified figure and seeking a different outcome from the

same authority.

43. Allowing such a course would undermine the principle of finality. Litigation would become endless. Every unsuccessful applicant could simply alter the measurements or reframe the relief and compel the authority to decide the same issue again. That is precisely what the doctrine of res judicata prevents.

44. The Supreme Court has recognised only a narrow exception to this rule. If the earlier decision suffers from a jurisdictional defect, meaning the authority lacked legal power to decide the matter, then the earlier order may not bind. No such case has been made out here. The 2017 order was passed by the competent authority acting within the scope of Section 11 of the MOFA Act. The parties were heard. Reasons were recorded. Therefore, the order cannot be ignored or treated as non-existent.

45. Applying the principles laid down in *Faime Makers, Ujjam Bai* and *Abdul Kuddus*, the position becomes clear. A quasi judicial determination, once made on merits and not challenged, attains finality. The authority itself cannot later take a contrary view on the same issue merely because a fresh application is filed in a modified form. The earlier decision binds until it is set aside by a superior forum.

46. When the later order dated 9 January 2023 is examined in this background, it becomes apparent that it revisits and alters what had already been settled in 2017. The subject matter of both applications is substantially identical. The reasons for rejection in the earlier round, particularly the inclusion of common areas and

facilities, remain equally relevant in the present claim. There is no new foundational fact, no change in legal position, and no jurisdictional error in the earlier order which could justify reopening.

47. Therefore, the conclusion follows naturally. The issues decided in the earlier order continue to govern the field. The later order, to the extent it grants relief contrary to the earlier adjudication, cannot stand in law. The principle of res judicata applies squarely in the facts and circumstances of the present case.

48. In view of the foregoing discussion and for the reasons recorded hereinabove, the following order is passed:

(i) The Writ Petition is allowed.

(ii) The impugned order dated 9 January 2023 passed by the District Deputy Registrar, Co-operative Societies, Mumbai City, granting unilateral deemed conveyance in favour of Respondent No. 3, together with the consequential certificate issued under Section 11 of the Maharashtra Ownership of Flats Act, 1963, is hereby quashed and set aside.

(iii) Respondent No. 3 is at liberty to pursue appropriate remedies before the competent Civil Court, if so advised, for seeking appropriate reliefs.

(iv) If such civil proceedings are instituted, the Civil Court shall endeavour to decide the same as expeditiously as possible and preferably within a period of one year from the date of filing of the suit, uninfluenced by any observations

made in this judgment except on the issue of applicability of res judicata to the proceedings before the Competent Authority.

(v) Rule is made absolute in the aforesaid terms.

(vi) No order as to costs.

49. Pending interlocutory application(s), if any, stands disposed of.

50. At this stage, learned Advocate for respondent No.3 seeks stay of the judgment. Considering the reasons assigned in this judgment, the effect and operation of the judgment and order is stayed for a period of eight weeks from today.

(AMIT BORKAR, J.)