

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 12088-12089 OF 2018

[Arising out of SLP (C) Nos. 10093-10094 of 2016]

Akhil Bhartvarshiya Marwari Agarwal
Jatiya Kosh & Ors

.. Appellants

Versus

Brijlal Tibrewal & Ors.

.. Respondents

WITH

CIVIL APPEAL NO. 12090/2018 @ SLP(C) No. 15056/2016
and Contempt Petition Nos. 25-26/2018**J U D G M E N T****M. R. Shah, J.**

1. Leave granted in all the Special Leave Petitions.
2. As all these appeals are interconnected between the same parties and with respect to the same properties, these are being disposed of by this common judgment.

3. Feeling aggrieved and dissatisfied with the impugned order dated 23.12.2014 in F. A. No. 466 of 2010 and the order dated 04.07.2015 in Civil Application No. 1698 of 2015 in F.A.No.466 of 2016 passed by the High Court of Judicature at Bombay (hereinafter referred to as the 'High Court'), the original Defendants have preferred the present appeals.

3.1 Feeling aggrieved and dissatisfied with the impugned final order dated 10.09.2015 passed by the High Court in Writ Petition No. 992 of 2015 the original Petitioners of the aforesaid Writ Petition have preferred the present appeals.

4. The facts leading to the present appeals in nutshell are as under:

That Appellant No. 1 Trust- Akhil Bhartvarshiya Marwari Agarwal Jatiya Kosh (hereinafter referred to as the 'Trust') was, registered under Bombay Public Trusts Act, 1950. According to the Trust, under a duly registered Conveyance dated 30.10.1974, the Trust acquired 9797 sq. meters of land with a charitable object of providing Housing to weaker sections of the Society. That the said area of 9797 sq. meters included the Plot bearing CTS No. 97/A-5/2 of Village Chinchavli, Malad (East), Mumbai admeasuring 2593.70 sq. meters. According to the Trust, the Mumbai Municipal Corporation sanctioned

the plan of the Trust in the year 1974-75 for construction of building A-1 to be constructed on sub-plot carved out of CTS No. 97/A-5/2 (the disputed property). That the building A-1 was to consume the area of 1009.70 meters equivalent to 1205 sq. yards. That, between 1975-78, the Trust constructed building A-1 comprising of 20 Flats each admeasuring built-up area of 588 sq. ft. and the purchasers took possession of the respective flat. Thereafter, about 26 years after they took possession, the Purchasers-Respondents herein the original Plaintiffs filed Suit No. 4111 of 2004, inter alia, for directing the Trust and others to execute the Conveyance of Plot No. A/1 claiming that they were entitled to the Plot area of around 1205 sq. yards (1009.70 sq.meters). That the original Plaintiffs prayed for the following reliefs in the Suit:

- a) That it is declared that the Defendant No. 1 is bound and liable:
 - i) To complete the said building A/1 in accordance with the building plans sanctioned by and in terms of the conditions of IOD and CC issued by the Defendant No. 2 in respect thereof.
 - ii) To obtained Occupation Certificate for the said building No. A/1.
 - iii) To provide supply of municipal water to the said building

A/1.

- iv) To obtain building Completion Certificate for the said building A/1.
 - v) To form co-operative housing society of the Plaintiffs.
 - vi) To convey the said building A/1 together with the plot of land J/1.
- b) That this Hon'ble Court may be pleased to pass permanent order directing:
- i) Defendant No. 1 to obtain occupation certificate and municipal water connection to the said building A/1.
 - ii) Defendant No. 1 to form co-operative housing society of the plaintiffs.
 - iii) Defendant No. 1 to convey the said building together with plot J/1 to the Co-operative Housing Society of the Plaintiffs.
 - iv) Defendant No. 1 not to carry out any construction upon the said plot J.
 - v) Defendant No. 2 to cancel the permission given to the Defendant No. 1 to carry out construction on the said plot "J".
 - vi) Defendant No. 2 not to give any further permission to

Defendant No. 1 to carry out any construction on the said plot "J".

vii) Defendant No. 2 to take necessary actions against Defendant No. 1 for carrying out construction of unauthorized hutments.

viii) Defendant No. 2 to take necessary actions against Defendant No. 1 for cutting of trees.

4.1 It was the case on behalf of the original Plaintiffs that the Plaintiffs have paid full purchase price for purchase of their respective flats in the said building A-1, constructed by the original Defendant No. 1, Trust. That, though the Trust handed over the possession of the flats to the respective flat owners and they are put in possession and occupation of the respective flats, the Trust have failed to obtain occupation certificate of the said building in terms of the IOD and CC issued by the Corporation. That it was the case on behalf of the original Plaintiffs that the original Defendant No. 1 Trust, as promoter under the provisions of Maharashtra Ownership Flats Act, 1963 (hereinafter referred to as the 'MOFA') were bound to enter into the agreement, as prescribed under the said Act with all such flat purchasers for sale of the flats. It was the case on behalf of the

original Plaintiffs that, under the provisions of the 'MOFA' and, otherwise also, it is the basic duty and responsibility of the Trust to provide all the essential supplies and services including supply of water, electricity and sanitary services to be enjoyed by the flat purchasers. It was also the case of the original Plaintiffs that the Trust was bound to form the Co-operative Society of the flat purchasers under the 'MOFA', however, though the Trust collected from each of the flat purchasers an amount of Rs. 351/- towards membership fee and share money of such Society, they did not form such a Co-operative Society. It was a specific case on behalf of the original Plaintiff that the building occupied by the plaintiffs are consisting of ground plus four storeys and the total built-up area is around 1205 sq. meters. It was the case on behalf of the original Plaintiffs that, under the provisions of law, the Plaintiffs and/or the Society to be formed by the flat purchasers are entitled to an area of land corresponding to the built-up area of building so constructed of such land utilizing the FSI permissible at the relevant time. It was the further case on behalf of the original Plaintiffs that despite the above, the Trust original Defendant No. 1, made an attempt to carry out some construction just adjacent to the said building A-1 of the plaintiffs

which was registered by the plaintiffs even by making complaint to the Defendant No.2, Corporation. However, as no action was taken by the Corporation for illegal and unauthorized construction on the plot adjacent to building A-1, the original Plaintiffs instituted the aforesaid Suit and prayed for the aforesaid reliefs.

4.2 The Suit was resisted to by the original Defendants. The original Defendant No. 1 Trust and original Defendants Nos. 3 to 17, filed the common written statement denying the averments and allegations in the Suit. It was the case on behalf of the original Defendant, so stated in the written statement that the original Defendant No. 1 and 3 to 17 are the owners of property bearing CTS Nos. 97/A-5/2, 97/A-5/4 and 97/A-5/3 total admeasuring 9797 sq. meters. That the property was purchased by the Trust with intention to develop the same for the benefit of middle-class citizens. The application was made to the Divisional Registrar to grant permission which was granted on 20.12.1975. That thereafter, Defendant No. 1 Trust appointed an Architect, for the purpose of submitting plans. The plans were submitted for construction of 14 buildings, each being ground plus four upper floors. It was further contended that the Trust could complete only one building, as further construction could not be done because of the declaration of the Suit Plaint as the surplus land under

Urban Land Ceiling Act. The appeal preferred by the Trust was partly allowed in 1993 and 1998 and only 4000 sq. meters area was declared as surplus land. It was submitted that, therefore, the Trust has to drop the idea of further development and it was, therefore, decided to construct structures for only charitable purposes like Schools, Colleges etc. It was further contended that the plot is effectively divided into three parts, first part is building occupied by the plaintiffs, second is the School building and the third being the plot reserved for garden. It was further contended that FSI in respect of the plot in which the plaintiffs' building is situated is not fully consumed and they are entitled to consume full FSI by putting up additional construction for charitable purposes and only thereafter they are ready and willing to convene the property. It was further contended that there is no agreement entered into with any of the flat purchasers and that only after approval of the draft, the agreement can be entered into. It was submitted that after compliance of all these formalities, the original Defendant No. 1 Trust, can consider the formation of the society. Therefore, it was requested to dismiss the Suit.

4.3 That the learned Trial Court framed the following issues:

- 1) Does the defendant no. 2 prove that the suit is maintainable

in absence of notice u/section 527 of MMC Act?

- 2) Does plaintiff prove that he is entitled for direction to defendant no. 1
 - I. To complete the building A-1 in accordance with the building plans sanctioned by and in terms of the condition from IOD and CC issued by the defendant no. 2 Corporation in respect thereof?
 - II. To obtain occupation certificate for the building no. A-1.
 - III. To provide supply of municipal water to the building no.-A.
 - IV. To obtain building completion certificate for building no. -A.
 - V. To form co-operative housing society of the front age.
 - VI. To convey building no. A-1 with the plot of land J-1 to the purchasers.
- 3) Does plaintiff prove that they are entitled for the reliefs as prayed?
- 4) What decree/order?

4.4 That on behalf of the plaintiffs as many as seven witnesses came to be examined who were all flat purchasers.

4.5 On behalf of Defendant. one Omprakash Didwanja DW-1 came to be examined. Both the parties produced the documentary evidences. That, on appreciation of evidence, the learned Trial Court decreed the Suit as under:

“Defendant No.1 shall execute and register the agreements in favour of flat purchasers as per Section 4 of ‘MOFA’ at the cost of plaintiffs within three months from the date of order.

Defendant No.1 shall complete the suit building in accordance with the building plans sanctioned as per IOD and CC issued by Defendant No. 2 and obtain Occupation Certificate within four months from the date of order. If defendant no. 1 failed to do so within stipulated time, plaintiffs shall get the work done through any other Builder of their choice and recover the cost from defendant no. 1 and thereafter BMC shall grant Occupation Certificate to the plaintiffs.

Defendant No.1 is also directed to make the necessary compliance for obtaining supply of municipal water to the suit building.

Defendant No. 2 shall supply the municipal water to the suit building on humanitarian ground till the full compliance is made by plaintiffs and defendant no. 1.

Defendant No. 1 is directed to form a co-operative Housing Society of the flat purchasers of the suit building within four month from the date of order:-

Defendant No. 1 is entitled to the balance FSI of the said plot of land which was available to them at the time of sanction of original plans, which Defendant No. 1 is entitled to consume the same till

conveyance is registered.

Defendant No. 1 shall convey the title and execute documents in favour of the society in respect of the suit building and land to the extent of suit building as shown in the plans within six months from the date of the order, failing which plaintiffs shall be entitled to apply before the Competent Authority u/section 5A for unilateral conveyance in their favour.

Decree be drawn accordingly.”

5. That feeling aggrieved and dissatisfied with the judgment and decree passed by the Trial Court decreeing the Suit No. 4111 of 2004, the original Defendants (except for Defendant No. 2 Corporation) preferred the First Appeal No. 466 of 2010 before the High Court. At this stage, it is required to be noted that during the pendency of the Suit, the Society of the flat purchasers was registered in the name of Agrasen Co-operative Housing Society Ltd. under the provisions of the Maharashtra Co-operative Societies Act, 1960. Thereafter, during the First Appeal preferred by the original Defendants, in the year 2014, the Society initiated proceedings before Divisional Registrar, Co-operative Societies for execution of Conveyance Deed. That, thereafter, the High Court dismissed the Appeal No. 466 of 2010 by judgment and order dated 04.12.2014. The High Court specifically held that a Deed of Conveyance of the land to the extent of the building to be

executed within nine months.

5.1 It appears that in the proceedings before the Divisional Registrar initiated by the Society, the Trust filed a reply before the Divisional Register on 10.12.2014 pointing out that the Respondents herein the original Plaintiffs were entitled to the Conveyance of land admeasuring 1009 sq. meters only and not 2593.70 sq. meters as claimed by original Plaintiffs. That, thereafter, the High Court, on an oral application of the Respondents herein by way of "Note for speaking to the Minutes" clarified that the words "2700 sq. feet" appearing in paragraph 8 of the judgment and order dated 04.12.2014 should be read as "2700 sq. meters". It appears that as the objection was raised by the Trust before the Divisional Registrar that the Respondents are entitled to Conveyance of land admeasuring 1009 sq. meters only and not 2593.70 sq. meters as alleged and prayed, and to get over the said objection of the Appellants before the Divisional Registrar, the Respondents-original Plaintiffs again made an oral application by way of "Note for speaking to the Minutes" alleging that though in the paragraphs 8 and 9 of the judgment and order dated 04.12.2014, it was mentioned that the Respondents were entitled to get the Deed of Conveyance executed in respect of the area equivalent to 2700 sq. meters, but in the operative part, it was mentioned that Conveyance

in respect of the land only to the extent of plot be executed and, therefore, the order deserves to be corrected by way of mentioning the area of 2700 sq. meters. That by the impugned order, the High Court virtually modified its earlier order dated 04.12.2014 and directed the execution of the deed of Conveyance of the land to the extent of building i.e. 2700 sq. meters. It appears that on the basis of the order dated 23.12.2014 passed by the High Court directing to execute the Conveyance of the land to the extent of the building i.e. 2700 sq. meters, vide order dated 13.01.2015, the Divisional Registrar passed an order granting deemed Conveyance of the area admeasuring 2593.70 sq. meters.

5.2 It appears that, thereafter, the Appellant herein, the Trust and other filed Civil Application No. 1698 of 2015 in F.A. No. 466 of 2010, praying for modification of the direction to execute the deed of Conveyance to the extent of 2700 sq. meters. Simultaneously, the Petitioner also filed Writ Petition No. 992 of 2015, challenging the order passed by the Divisional Registrar granting the deemed Conveyance.

5.3 That by impugned order the High Court has dismissed the Civil Application No. 1698 of 2015 in First Appeal No. 466 of 2010.

However, by dismissing the Civil Application, the High Court has further clarified that the appellants shall be entitled to consume the balance FSI of plot of the land. That by the impugned order, the High Court has also dismissed the Writ Petition No. 992 of 2015 and has confirmed the order of deemed Conveyance for the area admeasuring 2593.70 sq. meters.

6. Feeling aggrieved and dissatisfied with the impugned order passed by the High Court below “Note for speaking to the Minutes” in First Appeal No. 466 of 2010 as well as the order passed in Civil Application No. 1698 of 2015 in First Appeal No. 466 of 2010, the original Defendants-Appellants have preferred the present SLP (Civil) Nos. 10093-94 of 2016. Feeling aggrieved and dissatisfied with the order passed by the High Court in Writ Petition No.992/2015, the original Petitioners have preferred the SLP (C) Nos. 15056 of 2016.

7. Shri C.A. Sundaram, learned Senior Advocate and Shri Shyam Divan, learned Senior Advocate have appeared on behalf of the respective Appellants in respective Appeals and Shri Neeraj Kishan Kaul, learned Senior Advocate, Shri P.S. Patwalia, learned Senior Advocate and Shri R.P. Bhatt, learned Senior Advocate have appeared on behalf of the contesting Respondents-original Plaintiffs. Shri Pallav

Shishodia, learned senior counsel has also appeared on behalf of the Respondent, Municipal Corporation.

8. Shri C. A. Sundaram, learned Senior Advocate appearing on behalf of the Appellants-original Private Defendants has vehemently submitted that the impugned orders are not sustainable at law.

8.1 It is vehemently submitted by learned counsel that the impugned order dated 23.12.2014 passed in F.A. No. 466 of 2010 on the “Note for speaking to the Minutes” is wholly unsustainable under the law and is wholly without jurisdiction.

8.2 It is vehemently submitted by learned counsel that the impugned order below “Note for speaking to the Minutes”, is, as such, can be said to be wholly without jurisdiction inasmuch as such order could not have been passed on the “Note for speaking to the Minutes”. It is vehemently submitted by the learned counsel that an application for “Note for speaking to the Minutes” is required to be entertained only for the limited purposes of correcting the typographical error or an error through oversight, which may have crept in while transcribing the original order. It is submitted that as such, the impugned order on the “Note for speaking to the Minutes” is virtually modifying and/or reviewing the earlier order passed in First Appeal and,

therefore, such an order could not have been passed by the High Court on an application for “Note for speaking to the Minutes”. It is submitted that while passing the impugned order, the High Court has given further directions and, thereby, has virtually modified the original order. It is submitted that such a course was not open to the High Court while deciding the said “Note for speaking to the Minutes”. It is submitted that, therefore, the impugned order on “Note for speaking to the Minutes” is not sustainable at law. In support of his above submissions, the learned Senior Advocate has heavily relied upon the decision of Gujarat High Court in the case of ***Kotak Mahindra Bank Ltd. Vs. Official Liquidator of M/s. Gujrat BD Luggage Ltd. 2012 SCC Online Gujrat 4339*** as well as the decision of the Division Bench of the Bombay High Court in the case of the ***Artson Engineering Ltd. Vs. Indian Oil Corporation Ltd. 2015 SCC Online Bombay 39.***

8.3 It is further submitted by learned counsel that such an order passed on “Note for speaking to the Minutes” is virtually modifying its earlier judgment and order in First Appeal. It is submitted that as such, while at the time of deciding and disposing of the First Appeal, a specific submission was made on behalf of the parties with respect to

the area for which the Deed of Conveyance to be executed and the submission on behalf of the respective parties were noted and thereafter the High Court dismissed the appeal without any specific reference whether the Deed of Conveyance to be executed for the total area of 2700 sq. meters. It is submitted that, therefore, even if an independent review application would have been preferred in that case also such an order could not have been passed, which is passed as such on the "Note for speaking to the Minutes", which is not sustainable as submitted hereinabove.

8.4 It is further submitted by learned counsel that even otherwise the impugned order could not have been passed by the High Court and that too in the appeal preferred by the appellants more particularly when the High Court dismissed the appeal preferred by Appellants-original Private Defendants and confirmed the judgment and decree passed the learned Trial Court. It is vehemently submitted that by the impugned order, as such the High Court has granted the relief which as such was not specifically granted by the learned Trial Court while decreeing the Suit preferred by the original Plaintiffs. It is submitted that when against the judgment and decree passed by the learned Trial Court, only the original Private Defendants preferred the appeal and there was neither any cross objection preferred by the original

Plaintiffs nor any appeal preferred by the original Plaintiffs, the High Court could not have passed such order (apart from the fact passing the order on “Note for speaking to the Minutes”), when the High Court dismissed the appeal. It is submitted that at the most the High Court can/could have dismissed the appeal confirming the judgment and decree passed by the learned Trial Court. It is submitted, that by dismissing the appeal preferred by the Appellants-original Private Defendants and when neither there was any cross objection nor any appeal preferred by the original Plaintiffs, the High Court could not have passed any order beyond the judgment and decree passed by the learned Trial Court. It is submitted that by passing the impugned order as such the High Court has granted the relief and issued directions which is beyond the judgment and decree passed by the learned Trial Court. It is submitted that, therefore, thereafter when the appellants preferred the application to recall the order passed on “Note for speaking to the Minutes”, the High Court ought to have recalled such order. It is submitted that, however, the High Court has mechanically rejected the review application. It is submitted that, therefore, the impugned orders passed on “Note for speaking to the Minutes”, and the order passed in review application deserves to be quashed and set aside.

8.5 It is further submitted by the learned counsel that even otherwise the High Court has committed grave error in passing the impugned order on “Note for speaking to the Minutes” directing the Appellants/original Defendants to execute the Deed of Conveyance of the land to the extent of building i.e. 2700 sq. meters. It is submitted that while passing the impugned order and directing the appellants the original Defendant No. 1 to execute the Deed of Conveyance of the land to the extent of the building i.e. 2700 sq. meters, the High Court has not at all considered the fact that as such the built up area of the building (A-1), even as per the original Plaintiff was admeasuring 1009 sq. meters (1205 sq. yards).

8.6 It is further submitted that as such the built-up area of the building A-1 was admeasuring 1009 sq. meters even as per the Plan approved and the Suit was filed only to execute the Deed of Conveyance to the extent of area of the building. It is submitted that, therefore, also the High Court has committed grave error in directing to execute the Deed of Conveyance to the extent of building i.e. 2700 sq. meters.

8.7 It is submitted by learned counsel that even otherwise it is not appreciable how the High Court has arrived at the figure of 2700 sq.

meters. It is submitted that even that was not the case on behalf of the plaintiffs.

8.8 It is further submitted by the learned counsel that even the averments made in the Plaint, the Plaintiffs so stated in paragraph 18, that the total built-up area of building of A-1 is around 1205 sq. yards (wrongly stated as 1205 sq. meters). It is submitted that in paragraph 18 the Plaintiffs specifically stated and it was the specific case that original Plaintiffs and/or the Society to be formed by the flat purchasers are entitled to an area of land corresponding to the built-up area of the building so constructed on such land utilizing the FSI permissible at the relevant time. It is submitted that it was specifically stated in paragraph 18 in the Plaint that the Plaintiffs are entitled to a minimum plot area of around 1205 sq. yards (wrongly stated as 1205 sq. meters) or thereabout. It is submitted that, therefore, the impugned orders passed by the High Court directing to execute the Deed of Conveyance to the extent of 2700 sq. meters is beyond even the case on behalf of the Plaintiffs so pleaded in the Plaint.

8.9 Taking us to the reply filed on behalf of the Municipal Corporation, it is vehemently submitted by learned counsel that even

according to the Corporation as per approved layout plan, CTS No. 97/A-5/2 on which building A-1 on the total area of 1009 sq.meters was constructed was total measuring 2593.70 sq. meters. It is submitted, therefore, in any case, how the High Court has arrived at the figure of 2700 sq. meters is not at all appreciable. It is submitted that when the entire plot bearing CTS No. 97/A-5/2, as per the approved layout plan was of 2593.70 sq. meters on which building A-1 was constructed admeasuring 1009 sq. meters, there is no question of executing the Deed of Conveyance more than that more particularly 2700 sq. meters as directed by the High Court while passing the impugned order on “Note for speaking to the Minutes”.

8.10 It is further submitted by the learned counsel that even while passing the decree and allowing the Suit, the learned Trial Court specifically directed the original Defendant No. 1 to convey the title and execute documents in favour of the Society in respect of the Suit building and the land to the extent of Suit building as shown in the Plans i.e. 1009 sq. meters. It is submitted, therefore, while dismissing the appeal preferred by the Appellants, the High Court could not have passed any order beyond the decree passed by the learned Trial Court, more particularly, when the original Plaintiffs neither filed any cross objection nor preferred any appeal.

8.11 It is further submitted by learned counsel that even the original Private Defendants used the FSI corresponding to the built-up area of the building A-1 i.e. 1009 sq. meters. It is further submitted that what was sold/sought to be conveyed to the original Plaintiffs/Occupiers was the building A-1 admeasuring 1009 sq. meters only. It is submitted, therefore, that they could not have sought any relief beyond the area admeasuring 1009 sq. meters. It is submitted, therefore, as such they rightly averred in the Plaint that they are entitled to the Deed of Conveyance to the extent of the land of the building i.e. 1009 sq. meters. It is submitted, therefore, even the learned Trial Court also while passing the Decree directed to execute the Deed of Conveyance accordingly.

8.12 The learned counsel appearing on behalf of the Appellants have taken us to the layout plans and had submitted that on the plot bearing CTS No. 97/A-5/2 other three buildings were also to be constructed over and above building A-1, however, during the pendency of litigation under the Urban Land Ceiling Act, further construction was not made. It is submitted that, therefore, at the most original Plaintiff shall be entitled for execution of the Deed of Conveyance to the extent of 1009 sq. meters only, that is the land on

which building A-1 was constructed which was sold to the original Plaintiffs and its Members.

8.13 Making the above submission made by Shri C.A. Sundaram, learned Senior Advocate appearing on behalf of the Appellant has requested to allow present Appeals and quash and set aside the impugned orders passed by the High Court.

9. Shri Shyam Divan, learned Senior Advocate appearing on behalf of the Appellants in Civil Appeals arising out of the SLP(Civil) No. 15056 of 2016 has reiterated what was submitted by Shri Sundaram, learned Senior Advocate appearing on behalf of the Appellants in Civil Appeals arising out of SLP (Civil) Nos.10093-94 of 2016. He has further submitted that as such the order passed by the Divisional Registrar directing of deemed Conveyance of the land to the extent of 2593.70 sq. meters is as such based upon and relying upon the order passed by the High Court below the “Note for speaking to the Minutes” (the impugned order before this Court). It is submitted that, therefore, once the impugned order passed by the High Court passed below the “Note for speaking to the Minutes” is set aside, as prayed for by the Appellants, the order passed by the Divisional Registrar confirmed by the High Court would automatically go. It is submitted that even

otherwise, even on merits also the order passed by the Divisional Registrar of deemed Conveyance of the land to the extent of 2593.70 sq. meters is not sustainable and is actually illegal. It is submitted that, therefore, the High Court ought to have allowed the writ petition preferred by the appellants.

9.1 Making above submission it is requested to allow the present appeals and quash and set aside the order passed by the High Court dismissing the Writ Petition confirming the order of deemed Conveyance of the land to the extent of 2593.70 sq. meters passed by the Divisional Registrar.

10. All these appeals are vehemently opposed by Shri Neeraj Kishan Kaul, learned Senior Advocate, Shri P.S. Patwalia, learned Senior Advocate and Shri R.P. Bhatt, learned Senior Advocate appearing on behalf of the original Plaintiffs.

10.1 Learned counsel appearing on behalf of the original Plaintiffs have vehemently submitted that, in the facts and circumstances of the case, no error has been committed by the High Court in passing the impugned order on "Note for speaking to the Minutes". It is vehemently submitted by learned counsel appearing on behalf the original Plaintiffs that when it was pointed out to the High Court that

while disposing of the appeal, though there was specific observation in paragraphs 8 and 9 that the Deed of Conveyance is to be executed for 2700 sq. meters, while passing the operative portion of the order there was no specific reference to the area of the land and, therefore, when the same was pointed out by submitting “Note for speaking to the Minutes”, the same is rightly corrected by the High Court by passing the impugned order. It is submitted that the impugned order on the “Note for speaking to the Minutes”, as such can neither be said to be either wholly without jurisdiction as contended on behalf of the Appellants nor it can be said to be an order reviewing/modifying earlier order passed in First Appeal.

10.2 It is vehemently submitted by learned counsel for the original Plaintiffs that even in the prayer clause in the Suit, in paragraph 37(vi), it was prayed to direct the original Defendant No. 1 to convey the said building A-1 together with the plot of land J-1. It is submitted that the building A-1 might have been constructed on the land admeasuring 1009 sq. meters, however, the entire plot was admeasuring 2593.70 sq. meters. It is submitted that, therefore, the Suit was for 2593.70 sq. meters of land. It is submitted that even the Defendants’ witness-DW-1- Omprakash Didwanja in his cross-examination specifically admitted that the Suit building has been

constructed on the plot of land admeasuring 2573.31 sq. meters. It is submitted that, therefore, the High Court has not committed any error in directing the Appellant-original Defendant No. 1, to execute the deed of Conveyance of the land to the extent of the plot area. However, the learned counsel appearing on behalf of the original Plaintiffs are not in a position to satisfy how the High Court has arrived at the figure of 2700 sq. meters of the land for which the Defendant No. 1 is directed to execute the Deed of Conveyance. It is submitted that, in any case, the original Defendant No. 1 is required to execute the Deed of Conveyance of the land total admeasuring 2593.70 sq. meters which is the area of the plot.

10.3 It is further submitted by learned counsel that, as such, the original Defendants constructed the building A-1 only and it is an admitted position that, thereafter, no construction has been made on the remaining land of the plot. It is submitted that even the original Defendant No. 1 used the FSI of the total area of the plot. It is submitted that, therefore, the original Defendant No. 1 has to execute the Deed of Conveyance of the land to the extent of at least 2593.31 sq. meters. It is submitted that even the Divisional Registrar also, not only on the basis of the order passed by the High Court impugned in the present appeals, even on considering the materials on record,

passed an order of deemed Conveyance of the land to the extent of 2593.31 sq. meters.

10.4 Making above submissions and relying upon the layout plans sanctioned by the Corporation, it is requested to dismiss the present appeals. The learned Senior Advocate appearing on behalf of the original Plaintiffs has submitted that even by the impugned orders the High Court has passed in favour of the Appellants herein to the extent allowing the additional FSI.

11. Heard the learned counsel appearing on behalf of the respective parties at length. We have also gone through the impugned order passed by the High Court passed below the “Note for speaking to the Minutes”. While passing the impugned order, the High Court has directed the Appellants herein to execute the Deed of Conveyance of the land to the extent of the building i.e. 2700 sq. meters in favour of the original Plaintiffs and/or the Society. It is also required to be noted that while passing the impugned order in Civil Application No.1698 of 2015 in First Appeal No.466 of 2010, in which it was requested by the Appellants herein to modify the order dated 23.12.2014 passed below the “Note for speaking to the Minutes”, the High Court has even further clarified that the Appellants herein are

entitled to consume balance FSI of plot of land. Therefore, in short, the orders passed by the High Court passed below “Note for speaking to the Minutes” in First Appeal No.466 of 2010 and the order passed in Civil Application No.1698 of 2015 in First Appeal No.466 of 2010 are impugned in the present appeals. Therefore, the short question posed for the consideration of this Court is whether such an order/orders could have been passed by the High Court below the “Note for speaking to the Minutes”?

12. Having heard the learned counsel for the respective parties and considering the impugned order passed by the High Court passed below the “Note for speaking to the Minutes”, we are of the opinion that while passing such order below the “Note for speaking to the Minutes”, the High Court has travelled beyond its jurisdiction in regard to the scope of deciding a “Note for speaking to the Minutes”. A “Note for speaking to Minutes” is required to be entertained only for the limited purpose of correcting a typographical error or an error through oversight, which may have crept in while transcribing the original order. Once, the judgment/order is pronounced and if any party to the same wants any rectification of any typographical error and any clerical mistake regarding the date or number, such a party may apply to the concerned Court for correcting such an error in the

judgment/order. However, a “Note for speaking to the Minutes” cannot be considered at par with a review application or in a given case, with an application for clarification/modification of an order. A “Note for speaking to the Minutes” can never be considered to be an application of such a nature. While passing the impugned order below the “Note for speaking to the Minutes”, the High Court has virtually modified its original order passed in First Appeal. While passing the impugned order, the High Court has given further directions as if the High Court is passing the order on an application for clarification/modification. Therefore, such a course was not open to the High Court while deciding a “Note for speaking to the Minutes”. Since, the High Court has travelled beyond its jurisdiction in regard to the scope of deciding a “Note for speaking to the Minutes”, we have no option but to set aside the impugned order passed below the “Note for speaking to the Minutes”.

12.1 Even otherwise, the impugned orders are not sustainable at law. It is required to be noted that it was the Appeal before the High Court, preferred by the Appellants herein—original Defendants, challenging the judgment and decree passed by the learned Trial Court, by which the learned Trial Court specifically passed a decree directing the only Defendant No.1 to convey the title and execute document in favour of

the Society in respect of Suit Building and land to the extent of Suit Building. The Suit Building, from the material on record, it is emerging that the area of the building was 1009.70 sq. meters. Against that judgment and decree, original Private Defendants-Appellants were before the High Court. The Trial Court never passed any decree directing the Appellants to execute the Deed of Conveyance to the extent of 2700 sq. meters of land. Therefore, while dismissing the appeal, even otherwise, the High Court could not have passed any further order beyond the judgment and decree passed by the Trial Court and that too in absence of any cross objection and/or cross appeal preferred by the original Plaintiffs. In an Appeal preferred by the original Defendants, as observed above, at the most, the High Court can dismiss the Appeal and confirm the judgment and decree. However, the Appellants-original Defendants cannot be put in a worse condition than beyond the judgment and decree passed by learned Trial Court which was appealed before the First Appellant Court and that too in the absence of any cross-appeal or cross objection by the original Plaintiffs. Therefore also, the impugned orders passed by the High Court which, as such, will go beyond the judgment and decree passed by the learned Trial Court are not sustainable, more particularly, in absence of any cross-appeal and/or order the cross

objection by the original Plaintiffs. Once the High Court has dismissed the Appeal preferred by the Appellants-original Defendants, in that case, in an appeal preferred by the original Defendant, the High Court could not have passed any further order beyond the judgment and decree passed by the learned Trial Court appealed. Thus, by passing the impugned order, it can be said that the High Court has passed order beyond the scope and ambit of the Appeal before it and has exceeded in its jurisdiction not vested in it.

12.2 Even otherwise, it is not appreciable how the High Court has arrived at the figure of 2700 sq. meters. It appears from the material on record that it was never the case on behalf of the original Plaintiffs that the original Defendant No.1 shall execute the Deed of Conveyance of the land to the extent of 2700 sq. meters. Even considering the map sanctioned by the Corporation and even considering the reply filed by the Corporation before this Court, it appears that the total plot area of CTS No. 97/A-5/2 on which the building A-1 was constructed, was 2593.70 sq. meters, out of which there was a construction of building A-1 on the land admeasuring 1009.70 sq. meters. Therefore also, the impugned order passed by the High Court directing the Appellants herein-original Defendant No.1 to execute the Deed of Conveyance in respect of the land to the extent of 2700 sq. meters is

not sustainable.

12.3 Even otherwise, it is required to be noted that in the Plaint/ Suit before the Trial Court it was specifically averred by the Plaintiffs that:

- i) Building occupies by the Plaintiffs are consisting of ground plus four storeys and the total built-up area is 1205 sq. meters;
- ii) That under the provisions of law, the Plaintiffs and/or the Society to be formed by the flat purchasers are entitled to an area of land corresponding to the built-up area of the building so constructed on such land utilizing the FSI permissible at the relevant time;
- iii) The Plaintiffs are entitled to a minimum plot area of around 1205 sq. yards.

It cannot be disputed that the building A-1 was constructed on the land admeasuring 1205 sq. yards-1009.70 sq. meters and that was the total built-up area of building A-1 which was occupied by the Plaintiffs.

The Plaintiffs, therefore, cannot go beyond the averments and pleadings in the Plaint. Therefore, the Plaintiffs could not have even asked for the execution of the Deed of Conveyance in respect of the land beyond the built-up area of building A-1, more particularly, when the Allottees/original Plaintiffs can claim the

rights with respect the building A-1 only.

12.4 The learned counsel appearing on behalf of the original Plaintiffs have heavily relied upon the cross-examination of DW-1 Omprakash Didwanja and have submitted that the Defendants' witness specifically admitted that the Suit building has been constructed on the plot of the land admeasuring 2573.31 sq. meters and, therefore, the Plaintiffs were entitled to the Deed of Conveyance with respect to the entire plot of land 2573.31 sq. meters. The same has no substance. There is a difference and distinction between the built-up area of building and the plot area. As observed above, the Plaintiff specifically averred and pleaded in paragraphs 18 that they are entitled to an area of land corresponding to the built-up area of the building so constructed on such land. Therefore also, the High Court is not justified in directing Defendant No.1 to execute the Deed of Conveyance with respect to the land admeasuring to the extent of 2700 sq.meters.

12.5 In view of the above and for the reasons stated above, the impugned orders passed by the High Court dated 23.12.14 passed below "Note for speaking to the Minutes", in First Appeal No.466/2010 and the order dated 04.07.15 passed in Civil Application No.1698/2015 in First Appeal No.466/2010 deserve to be quashed

and set aside and the Civil Appeals arising out of the said orders are required to be allowed.

13. So far as the Appeals arising out of the impugned judgment and order passed by the High Court dated 10.09.2015 in WP© No.992/2015 is concerned, it appears that the Divisional Registrar of the Co-operative Societies has passed an order of deemed Conveyance of the area admeasuring 2593.70 sq. meters, which was the subject matter in the Writ Petition before the High Court and the High Court by impugned judgment and order has dismissed the Writ Petition confirming the order passed by the Divisional Registrar granting deemed Conveyance of the area admeasuring 2593.70 sq.meters.

13.1 Having heard the learned counsel for the respective parties and considering the order passed by the Divisional Registrar of deemed Conveyance of the area admeasuring 2593.70 sq.meters, it appears that the Divisional Registrar considered the orders passed by the High Court below "Note for speaking to the Minutes" in the First Appeal as well as solely relying upon the property card. However, as observed hereinabove, while deciding the Appeals arising out of the order passed by the High Court below "Note for speaking to the Minutes", the original Plaintiff-Society shall not be entitled to the Deed of

Conveyance to the extent of area admeasuring 2700 sq.meters and/or even 2593.70 sq.meters and they shall be entitled to the Deed of Conveyance of the area admeasuring 1009.70 sq.meters which was the built up area of building A-1 and, therefore, for the reasons stated hereinabove, the impugned judgment and order passed by the High Court dated 10.09.2015 in Writ Petition © No.992/2015 confirming the order passed by the Divisional Registrar Co-operative Societies of deemed Conveyance of the area admeasuring 2593.70 sq.meters also deserves to be quashed and set aside and the Appeals arising out of the impugned orders passed by the High Court in W.P. No. 992 of 2015 deserves to be allowed.

14. In view of the above and for the reasons stated above, all these appeals succeed and are hereby allowed. The impugned orders dated 23.12.2014 passed by the High Court of Bombay passed below “Note for speaking to the Minutes” in First Appeal No.466/2010 as well as the impugned order dated 04.07.2015 passed by the High Court of Bombay in Civil Application No.1698 of 2015 in First Appeal No.466/2010 are hereby quashed and set aside.

15. The impugned judgment and order passed by the High Court of Bombay dated 10.04.2015 in Writ Petition © No.992/2015 confirming

the order passed by the Divisional Registrar of the Co-operative Societies of deemed Conveyance of the area admeasuring 2593.70 sq.meters is also hereby quashed and set aside and consequently the order passed by the Divisional Registrar of Deemed Conveyance of the area admeasuring 2593.70 sq.meters is hereby quashed and set aside and it is directed and the same is modified to the extent of granting deemed Conveyance of the area admeasuring 1009.70 sq.meters only. The Appeals stand disposed of accordingly.

16. In the facts and circumstances of the cases, there will be no order as to costs. In view of the disposal of the Appeals, the Contempt Petitions as well as the interlocutory application pending, if any, shall also stand disposed of.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

.....J.
(M. R. SHAH)

New Delhi,
December 14, 2018