

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 4159 OF 2022

1. Prem Villa Co-operative Housing Society Ltd.
The Co-operative Housing Society
Registered under the MCA Act, 1960
having Registration No.
BOM/WT/HSG/TC/8753/2002-2003
Dt. 15.03.2002
And having its registered address at
CTS No. 1400, 1 to 19, S. M. P. R. School
Marg, Mulund (West),
Mumbai – 400 080.

Through its Authorised Persons

- 1) Rajeshbhai Gandhi (Chairman),
- 2) Chimanbhai M. (Secretary),
- 3) Vipul Parikh (Treasurer) and
- 4) D. Lalitbhai (Committee Member) .Petitioners

Versus

1. Uma Deep Co-operative Housing Society
Limited
The Co-operative Housing Society
Registered under the MCA Act, 1960
having Registration No.
BOM/WT/HSG/TC/2760/86-87
Dt. 31.12.1987
And having its registered address at
CTS No. 1400, 1 to 19, S. M. P. R. School
Marg, Mulund (West),
Mumbai – 400 080.
2. The District Deputy Registrar,
Co-operative Societies-2,

Eastern Suburbs,
Mumbai
Having its Office Room No. 201,
2nd Konkan Bhavan, CBD Belapur,
Navi Mumbai – 400 614.

3. Vijay Co-operative Societies Ltd.
The Co-operative Housing Society
Registered under the Bombay Co-op.
Societies Act
having Registration No. B61/1927
And having its Registered Office
address at Vijay Society House,
Sewaram Lalwani Road, Mulund (West),
Mumbai – 400 080.
4. Mulchand Tokarshi Lodaya
Residing at Flat No. 24,
Uma Deep Chsl., 4th Floor,
Sewaram Lalwani Road,
Mulund (West),
Mumbai – 400 080.
5. Ashwin Premji Gada
having address at Shop No. 2,
Rohini, R.R.T.Road,
Mulund (West),
Mumbai – 400 080.
6. The Sub Registrar of Assurances,
Kurla 1, 2, 3, 4, 5
Mumbai
having his office at MTNL Building,
2nd Floor, Tagore Nagar No. 7 Hariyali,
Vikhroli (East),
Mumbai – 400 083.
7. The State of Maharashtra
Through the Ministry of Co-operative
Society, Mantralaya, Annexe 3rd floor,

Room No. 311, Madam Cama Road,
Hutatma Rajguru Square, Nariman Point,
Mumbai – 400 032.

.Respondents

Mr. H. G. Dharmadhikari a/w. Mr. D. A. Bhalerao, Ms. Namrata Pandit,
Ms. Pallavi Baghel & Ms. Sneha Keni, Advocates, for the Petitioner

Mr. Mayur Khandeparkar a/w. Mr. Pritesh A. Parmar & Mr. Kaivalya M.
Raul i/b. Mr. Neel Anil Gala, Advocates, for Respondent No.1

Ms. Uma Palsuledesai, AGP, for Respondent No.2 – State

CORAM : MADHAV J. JAMDAR, J.

DATED : 29.07.2024

ORAL JUDGMENT

1. By the present Writ Petition preferred under Article 226 of the Constitution of India, the Petitioner is challenging the legality and validity of the Common Corrigendum/Order dated 14.01.2020 by which Corrigendum is issued with respect to the following two Orders :

- i. Order dated 28.02.2014 passed in Deemed Conveyance Application No.49 of 2023 in favour of the Respondent No.1– Society.
- ii. Order dated 28.02.2014 passed in Deemed Conveyance Application No.98 of 2013 in favour of the Petitioner–Society.

2. Before setting out the rival contentions and consideration of the same, it is necessary to set out certain factual aspects.

- (i) The Respondent No.1–Uma Deep Co-operative Housing

Society Ltd. (“**Respondent No.1–Society**”) is a registered Society, formed on 31st December 1987. Respondent No.4–Mulchand Tokarshi Lodaya was the Promoter of the Respondent No. 1 - Society. Said Respondent No.1–Society applied on 03.02.2012 for the Deemed Conveyance under Section 11 of the the *Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963* (“**MOFA**”) by filing Deemed Conveyance Application No.49 of 2013.

(ii) The Petitioner–Prem Villa Co-operative Housing Society Ltd. (“**Petitioner–Society**”) was formed on 15th March 2002. Respondent No.5–Ashwin Premji Gada was the Promoter of the Petitioner–Society. The Petitioner–Society on 19.12.2012 filed Deemed Conveyance Application No.98 of 2013 under Section 11 of the MOFA.

(iii) Both these Deemed Conveyance Applications were heard and allowed by a separate Orders dated 28.02.2014.

(iv) Accordingly, a Certificate of Deemed Conveyance was issued in favour of the Respondent No.1–Society (Page No.69), which reads as follows:

“मानीव अभिहस्तांकण नोंदणी प्रमाणपत्र

महाराष्ट्र मालकी हक्काच्या सदनिकाबाबत अधिनियम, १९६३ चे कलम ११ अन्वये मला प्राप्त अधिकारान्वये मानीव अभिहस्तांकण नोंदणी प्रमाणपत्र देण्यासाठी प्राधिकृत केले असल्याने मी विलास गावडे, जिल्हा उपनिबंधक, सहकारी संस्था(२), पुर्व उपनगरे, मुंबई तथा सक्षम प्राधिकारी याद्वारे उमा दीप को-ऑप.हौसिंग सोसा.लि.,मुलूंड या संस्थेने दिलेल्या अर्जांनुसार प्लॉट क्र.१९४(पार्ट), सर्व्हे क्र.१०००, पैकी बी व डी, सी. टी.एस.क्र. १४००-अ, १४००-बी, १४००/१ ते १९ सेवाराम लालवानी रोड, (क्षेत्रफळ १२३४ चौ.मी.), पैकी ५२९.५ चौ.मी. मुलूंड (प.), मुंबई-४०० ०८० सेवाराम लालवानी रोड, या मिळकतीचे मानीव अभिहस्तांकण अर्जदार उमा दीप को-ऑप.हौसिंग

सोसा.लि.,मुलूंड या संस्थेचे नावे करणारा अभिहस्तांकण करारनामा (Lease Deed) मिळकतीचे मालक / विकासक यांचे संमत्तीशिवाय एकतर्फी करार करून तो नोंदणीकृत करण्यासाठी उक्त अधिनियमाचे कलम ११ अन्वये पात्र आहे असे प्रमाणित करण्यात येत आहे.

सदरचे प्रमाणपत्र आज दि.२८/०२/२०१४ रोजी माझे सही शिक्क्यानिशी दिले असे ”

(Emphasis added)

(v) The Certificate of Deemed Conveyance issued in favour of the Petitioner–Society is on Page No.115, which reads as follows:

“मानीव अभिहस्तांकण नोंदणी प्रमाणपत्र

महाराष्ट्र मालकी हक्काच्या सदनिकाबाबत अधिनियम, १९६३ चे कलम ११ अन्वये मला प्राप्त अधिकारान्वये मानीव अभिहस्तांकण नोंदणी प्रमाणपत्र देण्यासाठी प्राधिकृत केले असल्याने मी विलास गावडे, जिल्हा उपनिबंधक, सहकारी संस्था(२), पुर्व उपनगरे, मुंबई तथा सक्षम प्राधिकारी याद्वारे प्रेम विला को-ऑप.हौसिंग सोसा. लि.,मुलूंड या संस्थेने दिलेल्या अर्जानुसार प्लॉट क्र.१९४(पार्ट), सर्व्हे क्र.१०००, पैकी बी व डी, सी.टी.एस.क्र. १४००-अ, १४००-बी, १४००/१ ते १९ सेवाराम लालवानी रोड, (क्षेत्रफळ १२३४ चौ.मी.), पैकी ६५९.५ चौ.मी. मुलूंड (प.), मुंबई-४०० ०८० सेवाराम लालवानी रोड, या मिळकतीचे मानीव अभिहस्तांकण अर्जदार प्रेम विला को-ऑप.हौसिंग सोसा.लि.,मुलूंड या संस्थेचे नावे करणारा अभिहस्तांकण करारनामा (Lease Deed) मिळकतीचे मालक / विकासक यांचे संमत्तीशिवाय एकतर्फी करार करून तो नोंदणीकृत करण्यासाठी उक्त अधिनियमाचे कलम ११ अन्वये पात्र आहे असे प्रमाणित करण्यात येत आहे.

सदरचे प्रमाणपत्र आज दि.२८/०२/२०१४ रोजी माझे सही शिक्क्यानिशी दिले असे”

(Emphasis added)

(vi) After issuance of the Order granting Deemed Conveyance dated 28.02.2014, the unilateral deed of assignment dated 18.06.2014 conveying 659.50 sq. mtrs. of land by Deed No.KRL-3/5193 of 2014 was executed in favour of the Petitioner – Society and the same has been registered on 20.06.2014.

(vii) On 12th March 2019, the Respondent No. 1 filed an Application after a period of about 5 years seeking rectification in the Order dated 28.02.2014. In the said rectification, the Respondent No. 1

– Society sought the joint ownership of the entire area of the subject land.

(viii) By the impugned Order dated 14.01.2020, the Competent Authority had issued the Corrigendum/Rectification issuing Corrigendum to the Deemed Conveyance Certificates issued in favour of the Petitioner – Society and the Respondent No.1 – Society by issuing the Deemed Conveyance jointly in favour of both these Societies. The relevant portion of said Corrigendum/Rectification Order is on Page No.87, which reads as follows:

“Corrigendum/Rectification Order

*In exercise of powers conferred upon me under section 5A of Maharashtra Ownership of Flats Act, 1963, I, Dr. Prashant Sonawane, District Deputy Registrar, Co-operative Societies (2), Eastern Suburbs, Mumbai and Competent Authority under section 5A of Maharashtra Ownership of Flats Act, 1963 I pass **this common corrigendum in order dated 28/02/2014 in Deemed Conveyance application no.49/2013 of society no.1 and order dated 28/02/2014 in Deemed Conveyance application no.98/2013 of society no.2 and hereby grant the joint Assignment of Lease to 1) Uma Deep Co.op. Hou. Soc. Ltd., Sevaram Lalwani Road, Mulund (W), Mumbai-400 080, and 2) Prem Villa Co. Op. Hou. Soc. Ltd. SMPR School Marg, Mulund (W), Mumbai 400 080 the description of plot of land should be read as “CTS No.1400A, 1400/1 to 19, Sevaram Lalwani Road, Mulund (W), Mumbai-400 080 for area admeasuring 1189 sq.m.” jointly in favour of both societies.”***

(Emphasis added)

The said Order dated 14.01.2020 is challenged by filing the present Writ Petition.

3. Mr. Dharmadhikari along with Mr. Bhalerao, learned Counsel for the Petitioner raised the following contentions :

(i) It is submitted that as per Orders dated 28.02.2014 passed under Section 11(4) r/w Section 5A of the MOFA, the Deemed Conveyance has been granted in favour of the Petitioner-Society for an area admeasuring 659.50 sq. mtrs. and in favour of the Respondent No.1-Society for an area admeasuring 529.50 sq. mtrs. Thereafter, immediately the Deemed Conveyance/Deed of Assignment was executed on 19.06.2014 in favour of the Petitioner – Society and the same was registered on 20th June 2014. It is submitted that after the lapse of 5 years from the date of Order of the Competent Authority issued in favour of the Petitioner-Society as well as Respondent No.1-Society, the Respondent No.1-Society filed an Application for Rectification of said Order dated 28.02.2014 on or about 12.03.2019 and the same is barred by limitation.

(ii) It is also submitted that in any case the Application was filed after a period of 5 years and the Competent Authority failed to take into consideration that the Order granting Deemed Conveyance has already been acted upon.

(iii) The Corrigendum can be essentially issued to correct a typographical or arithmetical error. Such error arising due to accidental slip or omission can be rectified in exercise of incidental or ancillary

powers, which are inherent in every judicial or quasi-judicial authority. It is submitted that power to rectify such error cannot be equated with power of review, which is not an inherent power but is the creature of the statute. Reliance is placed in support of the said submissions on the following decisions of this Court as well as of the Supreme Court:

(i) *Kashish Park Reality Pvt. Ltd. v. State of Maharashtra* ¹

(ii) *Naresh Kumar v. State (NCT of Delhi)* ²

(iii) *Bhupendrasingh v. Competent Authority* ³

(iv) It is submitted that the Competent Authority entertained the Application and reviewed the Order substantially, without any authority of law under the MOFA. It is submitted that the power of review is the statutory power and under the MOFA there is no provision by which a review can be entertained by the Competent Authority. Thus, it is submitted that there is no power for exercising power of review. It is submitted that the impugned Order of Corrigendum is not covered by the “procedural review”.

4. On the other hand, Mr. Khandeparkar, learned Counsel for Respondent No.1 raised the following submissions :

(i) By Order dated 28.02.2014 passed by the Competent Authority, Respondent No.1-Society was granted 529.50 sq. mtrs. area and remaining area 659.50 sq.mtrs. was granted to the Petitioner—

1 2020 SCC OnLine Bom 11644

2 (2019) 9 SCC 416

3 2019 SCC OnLine Bom 6092

Society i.e. Prem Villa Co-operative Housing Society Ltd. It is submitted that both these areas do not form part of any of the MOFA Agreements i.e. MOFA Agreement executed with the flat purchasers who are the members of the Petitioner – Society and MOFA Agreement executed with the flat purchasers who are the members of the Respondent No. 1 – Society. It is submitted that said Order was passed on the basis of incorrect calculation of TDR and FSI utilization by each building.

(ii) It is submitted that the Application dated 12.03.2019 filed by the Respondent No.1-Society is seeking procedural review of the said Order dated 28th February 2014 and accordingly, the Corrigendum was issued by the Competent Authority by the Order dated 14.01.2020.

(iii) It is submitted that no interference in the impugned Order under Article 226 of the Constitution of India is warranted, as erroneous Order dated 28.02.2014 was passed due to a misapprehension of calculation/division of area contrary to the MOFA Agreements and the same has been corrected by the impugned Order of Corrigendum.

(iv) It is submitted that by the Corrigendum Order, the procedural error was rectified and assignment was granted jointly in favour of both the societies removing the discrepancy of the area. The reliance is also placed in this behalf on certain title documents and also arguments are advanced with respect to the discrepancy in area in the

MOFA Agreements and in the Order granting Deemed Conveyance dated 28.02.2014.

(v) It is submitted by Mr. Khandeparkar, learned Counsel for Respondent No.1 that power of a procedural review is either inherent or implied in a court or a tribunal to set aside a palpably erroneous order passed under a misapprehension by it. It is submitted that in a procedural review, a Court or quasi-judicial authority having jurisdiction to adjudicate, proceeds to do so, but in doing so, ascertains whether it has committed a procedural illegality, which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. It is submitted that, in the present case, 2014 Order by which the bifurcation of area is determined, insofar as the Petitioner and Respondent No.1-Society, the same is incorrect and beyond the scope and powers of the Registrar. It is submitted that there was no mention of the areas 659.50 sq. mtrs. and 529.50 sq. mtrs. in any of the title documents and the MOFA Agreements of the Petitioner or Respondent No.1. It is submitted that the Competent Authority has unilaterally and beyond its powers ordered the proportional division on the basis of utilization of TDR and FSI by both the societies. It is submitted that therefore by the Corrigendum Order, what is done is by exercising power of a procedural review, palpable error under a misapprehension was set aside. To substantiate the said submission,

reliance is placed by Mr. Khandeparkar, learned Counsel on the following decisions of the Supreme Court as well as of this Court:

- (i) *Srei Infrastructure Finance Ltd. v. Tuff Drilling (P) Ltd.* ⁴
- (ii) *Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal* ⁵
- (iii) *Kapra Mazdoor Ekta Union v. Birla Cotton Spg. and Wvg. Mills Ltd.* ⁶
- (iv) *Kalpataru Power Transmission Ltd. v. Maharashtra State Electricity Transmission Co. Ltd.* ⁷
- (v) *Jaywant Ramchandra Keni v. The Competent Authority District Deputy Registrar Co-operative Societies* ⁸
- (vi) *A.M. Allison v. B.L. Sen* ⁹
- (vii) *Chandra Singh v. State of Rajasthan* ¹⁰

5. Before considering the rival contentions, it is necessary to set out difference between the procedural review and statutory review. In *Grindlays Bank Ltd.* (Supra), distinction between the procedural review and statutory review is considered and it has been held as follows:

“The expression 'review' is used in two distinct senses, namely (1) a procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and (2) a review on merits when the error sought to be corrected is one of law and is apparent on the face of the record. It is in the latter sense that the Court in Narshi Thakershi's case held that no review lies on merits unless a status specifically provides for it. Obviously when a review is sought due

4 (2018) 11 SCC 470

5 1980 Supp SCC 420

6 (2005) 13 SCC 777

7 2020 SCC OnLine Bom 120

8 Writ Petition (L) No.8893 of 2023

9 1956 SCC OnLine SC 112

10 (2003) 6 SCC 545

to a procedural defect, the inadvertent error committed by the Tribunal must be corrected ex debito justitiae to prevent the abuse of its process, and such power inheres in every court or Tribunal.”

6. In *Kapra Mazdoor Ekta Union* (Supra), in Paragraph No.19, the parameters of the procedural review are explained. The said Paragraph No.19 reads as under:

“19. Applying these principles it is apparent that where a court or quasi-judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the court or quasi-judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits (sic ascertains whether it has committed) a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the court or quasi-judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the court or the quasi-judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch as the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be reheard in accordance with law without going into the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error

of procedure or mistake which went to the root of the matter and invalidated the entire proceeding.”

7. A learned Single Judge in the decision of ***Kashish Park Reality Pvt. Ltd.*** (Supra) after considering the various decisions on the aspect of difference between the procedural review and statutory review, discussed the same in Paragraph Nos.10 to 12 as well as in Paragraph No.15. Said case of ***Kashish Park Reality Pvt. Ltd.*** (Supra) is also arising out of the Deemed Conveyance Application. The said paragraphs 10, 11, 12 & 15 are relevant and the same are reproduced herein below:

“10. The principal challenge in the Petitions is to the legality of Corrigenda, all dated 06-8-2020, issued by respondent No. 2-Competent Authority. Before advertng to the facts, it would be apposite to understand the meaning of the word ‘Corrigendum’. The word ‘Corrigendum’ is stated to have been derived from a Latin word corriggere which means “to correct”. In Oxford Advance Learners Dictionary (7th Edition) the word ‘Corrigendum’ is explained as “something to be corrected, specially a mistake in a printed book”. In The Concise English Dictionary the meaning of ‘Corrigendum’ is stated to be “an error needing correction, specially in a book. The meaning of the word ‘Corrigendum’ as explained in Black’s Law Dictionary (8th Edition) and B. Ramnath Ayars’s Advanced Law Lexicon is “an error in a printed work discovered after the work has gone to press.”

11. In Parvati Devi w/o Sri. Braj Shyam v. State of U.P., 1972 Cri LJ 1644, the Allahabad High Court after considering the dictionary meaning of the word ‘Corrigendum’ and referring to the decision of the Apex Court in Piara Singh v. State of Punjab, (1969) 1 SCC 379 : AIR 1969 SC 961 and the decision of the Rajasthan High Court in Kandoi Kabliwala v. Assistant Commercial Taxes Officer, Pali, 75 STC 316 has held that a Corrigendum can be issued only to correct a typographical/arithmetical error or omission therein. It cannot have the effect of law. It can neither take away the vested right of a person nor can it have the effect of nullifying the rights of persons conferred by the law.

12. It is thus clear that Corrigendum is essentially issued to correct a typographical or arithmetical error. Such error arising due

to accidental slip or omission can be rectified in exercise of incidental or ancillary powers which are inherent in every Judicial and Quasi-Judicial Authority. It is however to be noted that power to rectify such error cannot be equated with power of review, which is not an inherent power but is the creature of the statute. The power of review is not absolute. As it has been held by the Hon'ble Supreme Court in Lily Thomas v. Union of India, (2000) 6 SCC 224 : AIR 2000 SC 1650, the power of review can be exercised for correction of mistake and not to substitute a view. Such powers can be exercised only within the limits of the statute dealing with the exercise of power. The review cannot be treated as an Appeal in disguise.

15. It is thus well settled that a judicial or quasi-judicial authority, which derives its powers from statutory provisions under which it is empowered to act, cannot exercise power not vested in it by the statute. The extent of power to be exercised by judicial or quasi-judicial Authority is circumscribed by the language of the statute and such Authority has no power of review unless expressly conferred by the statute. However, this general rule will not apply in case of fraud or procedural error, which goes to the root of the matter and vitiates/invalidates the proceedings itself. Such palpable errors can be rectified in exercise of the power of the procedural review, which is inherent and plenary in every case as distinct from the power of a substantive review, which can be exercised only when specifically conferred by the statute.”

(Emphasis added)

8. Thus, after analysis of the above decision, the following principles can be culled out regarding difference between the procedural review and substantiate review.

(i) The expression 'review' is used in two distinct senses, namely (1) a procedural review and (2) a review on merits i.e. substantive review.

(ii) A procedural review is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it.

(iii) A review on merits when the error sought to be corrected is one of law or facts and is apparent on the face of the record.

(iv) A court or quasi-judicial authority can review its judgment or order on merits only if the court or the quasi-judicial authority is vested with power of review by express provision or by necessary implication. A judicial or quasi-judicial authority, which derives its powers from statutory provisions under which it is empowered to act, cannot exercise power not vested in it by the statute. The extent of power to be exercised by judicial or quasi-judicial Authority is circumscribed by the language of the statute and such Authority has no power of review unless expressly conferred by the statute.

(v) However, this general rule will not apply in case of fraud or procedural error, which goes to the root of the matter and vitiates/invalidates the proceedings itself. Such palpable errors can be rectified in exercise of the power of the procedural review, which is inherent and plenary in every case as distinct from the power of a substantive review, which can be exercised only when specifically conferred by the statute.

(vi) Thus, only palpable errors can be rectified in exercise of the power of the procedural review, which is inherent and plenary in every case as distinct from the power of a substantive review, which can be exercised only when specifically conferred by the statute.

9. It is necessary to examine the present case on the touchstone of the principles laid down by various Courts with respect to the procedural review and the power of statutory review.

10. As far as the Order dated 28.02.2014 granting Deemed Conveyance in favour of the Respondent No.1-Society of an area admeasuring 529.50 sq. mtrs. as well as granting Deemed Conveyance in favour of the Petitioner – Society of an area admeasuring 659.50 Sq. mtrs., it is significant to note that the detailed reasons are given by the Competent Authority which reads as under :

“सदर मिळकतीचे एकूण क्षेत्रफळ १२३४ चौ.मीटर इतके असून ४५ चौ.मीटर इतका सेट बॅक एरिया बृहन्मुंबई महानगरपालीकेकडे हस्तांतरित केलेला आहे सबब उर्वरीत ११८९ चौ.मीटर इतके क्षेत्रफळ शिल्लक असून त्यावर उमादीप को.ऑप.हौसिंग सोसायटी लि. व प्रेमव्हिला को.ऑप.हौसिंग सोसायटी लि. या दोन संस्था असून उमादीप को-ऑप.हौसिंग सोसायटी लि. या संस्थेचे बांधकाम १०५५ चौ.मीटर इतका एफ.एस.आय. वापरून व प्रेमव्हिला को-ऑप. हौसिंग सोसायटी लि. या संस्थेचे बांधकाम १८१.४७ चौ.मीटर इतका एफ.एस.आय. व ११३४.११ चौ.मीटर इतका टी.डी.आर. असे एकूण १३१५.५८ चौ.मीटर वापरून करण्यात आलेले आहे सबब सदर मिळकतीवर दोन्ही संस्थांचे मिळून एकूण २३७०.५८ चौ.मीटर इतके बांधकाम करण्यात आलेले आहे असे दिसते व सदर मिळकतीत सद्यस्थितीत एफ.एस.आय. व टी.डी.आर. शिल्लक नसल्याचे दिसते व सदरच्या प्लॉटचे अद्यापपर्यंत उपविभाजन झालेले नाही सबब अशा परीस्थितीत दोन्ही संस्थांना क्षेत्रफळ विभागणी ही त्यांचे एफ.एस.आय. व टी.डी.आर. वरिलप्रमाणे देणे योग्य होईल सबब उमादीप को-ऑप.हौसिंग सोसायटीचे बांधकाम वापरून १०५५ चौ. मीटर एफ.एस.आय. वापरून झालेले असल्याने ५२९.५ चौ.मीटर इतक्या क्षेत्रफळाचे उमादीप को-ऑप. हौसिंग सोसायटी लि.यांचे नावे व उर्वरीत ६५९.५ चौ.मीटर इतक्या क्षेत्रफळाचे लगतच्या प्रेमव्हिला को-ऑप.हौसिंग सोसायटी लि. याचे नाव हस्तांतरण करून देता येईल व ४५ चौ.मीटर सेटबॅकचे भविष्यात जे फायदे मिळतील ते उमादीप को-ऑप.हौसिंग सोसायटी यास मिळतील.”

English translation of above as provided by the Petitioner is on Page Nos.72 H to 72 I, which reads as follows:

“After having gone through the same it appears that the total area of the property is 1234 square metre and the area of 45 square metres which is a road setback area has been transferred to the

Brihanmumbai Municipal Corporation and the remaining area of 1189 square metres on which the building of Umadeep Co-operative Housing Society Limited and Prem Villa Co-operative Housing Society are standing and after using 1055 square metres FSI floor space index the building of Umadeep Co-operative Housing Society has been carried out and similarly after using 181.47 square metres of FSI floor space index the building of Prem Villa Cooperative Housing Society has been constructed and as such and the TDR for 1134.11 square metre has been used aggregating to 1315.58 square metres have been used and accordingly the area of both these society is 2370.58 square metre which construction has been carried out which is appearing from the record. It appears that in the present situation there is no FSI as well as TDR remaining balance and this plot has not been subdivided till date and in this situation it will be appropriate that both the societies should be given the divided FSI and TDR area as per the use and therefore for the construction of Umadeep Cooperative Housing Society the FSI 1055 square metre have been used and for the construction of Umadeep Co-operative Housing Society Limited the FSI has been used is 529 square metre and the remaining area is 659.5 square metre should be transferred in the name of Prem Villa Cooperative Housing Society Limited which is adjacent society and the benefits of 45 square metre set back in future which will be received by Umadeep Cooperative Housing Society Limited.”

(Emphasis added)

Thus, it is clear that while granting an area of 659.50 sq. mtrs. to the Petitioner-Society and an area of 529.50 sq. mtrs. to the Respondent No.1-Society alongwith rights in benefits of 45 Sq. mtrs. of set back area, the Competent Authority has given detailed reasons while passing the Order dated 28.02.2014. Thus, by no stretch of imagination, the impugned Order passed, although titled as Corrigendum, can fall in the category of a procedural review. The power of procedural review cannot be used to substitute a view. Thus, what is done by the Competent

Authority is that by reappreciating the material on record under the guise of the Corrigendum, a new Order has been passed substituting the earlier reasoning and the Order. This cannot be permitted to be done under the guise of the procedural review.

11. In any case, it is required to be noted that the Competent Authority passed the Order on 28.02.2014 and the Application for Rectification was filed by the Respondent No.1-Society on 12.03.2023 i.e. after a period of more than 5 years. It is an admitted position that, in the meanwhile, the Deemed Conveyance was executed and registered on 20.06.2014 in favour of the Petitioner-Society in consonance with the earlier Order dated 28.02.2014 passed by the Competent Authority.

12. Thus, while passing the impugned Order of the Common Corrigendum dated 14.01.2020, the Competent Authority has exceeded the jurisdiction and order passed is without jurisdiction and without any power of statutory review. The said Order, by no stretch of imagination, can fall under the category of procedural review. The Competent Authority has no jurisdiction to exercise the power of review, which is in the nature of substantive review. The said power cannot be exercised when there are no specific provisions conferred by the statute.

13. Mr. Khandeparkar, learned Counsel for Respondent No.1 heavily relied on the decision of a learned Single Judge in ***Kalpataru Power Transmission Ltd.*** (supra), and more particularly on Paragraph No.35 of

the same, which reads as under:

“35. The question now arises for consideration of this Court is whether the review petitioners have applied for procedural review or seeks review of the judgment and order passed by this Court on merit. A perusal of the judgment referred to aforesaid clearly indicates that the Court has inherent or implied powers to set aside a palpably wrong order passed under a misapprehension by it and if found erroneous and vitiated by an error of procedure or mistake which went to the root of the matter and invalidate the entire proceedings. I shall now proceed to decide whether review petitioner has demonstrated any such error of procedure or mistake which went to the root of the matter and whether in the facts of this case, Court shall exercise powers of procedural review under plenary jurisdiction or not.”

However, a perusal of the said decision particularly, paragraph 34 of the same clearly shows that a learned Single Judge has relied on the decision in ***Grindlays Bank Ltd.*** (Supra). By relying on the said paragraph 35, it cannot be held that the Competent Authority can review the Order on merits without the power of the statutory review under the MOFA. Thus, the said decision in the case of ***Kalpataru Power Transmission Ltd.*** (Supra) is not applicable to the present case.

14. Mr. Khandeparkar, learned Counsel also relied on the Judgment of a learned Single Judge in the case of ***Jaywant Ramesh Keni*** (supra) However, the said decision is rendered in the particular facts and circumstances of that case, as set out in paragraph 7, the relevant portion of the same reads as under :

“7.In the present case exercise of power to issue corrigendum far from being arbitrary exercise of power, actually subserves the objective behind the Government Resolution dated 22 June 2018. It is also required to be borne in my mind that the Petitioner is divested of title and possession of the entire plot of

land in respect of which the layout is sanctioned. The development in the layout is complete wherein 7 buildings are constructed and 7 Cooperative Housing Societies are formed. There is no dispute interse between the 7 Co-operative Societies. In fact it appears that the other Co-operative Societies have also filed applications claiming proportionate share in the internal road and recreational ground. In that view of the matter it is difficult to comprehend as to how the rights of the Petitioner are affected if all 7 Societies share the internal road and recreational ground in proportionate to the areas of their respective plots. I am therefore of the view that the action of the Competent Authority in issuing the corrigendum, far from being arbitrary, actually brings the original order dated 2 July 2014 in tune with the GR dated 22 June 2018.”

Thus, it is clear that the said decision is rendered in the peculiar facts and circumstances of that case and will have no application to the present case.

15. Mr. Khandeparkar, learned Counsel also relied on the decision in the case of ***A.M. Allison*** (supra) and ***Chandra Singh*** (supra). The said decisions are concerning the reliefs sought under Article 226 of the Constitution of India. However, in the present case, the impugned Order is passed without jurisdiction, as under the guise of the procedural review, the Competent Authority without any statutory provision has reviewed the order on merits. Thus, the said decisions have no application to the present case.

16. Mr. Khandeparkar, learned Counsel has also relied on the decision of the Supreme Court in the case of ***Srei Infrastructure Finance Ltd. v. Tuff Drilling (P) Ltd.*** (Supra). In that case, it has been held that the Arbitral Tribunal after termination of proceedings under Section 25(e)

of the *Arbitration and Conciliation Act, 1996* on sufficient cause being shown can recall the Order or recommence the proceedings. Reliance is placed on O. IX, R. 9 of the *Code of Civil Procedure, 1908* and it has been held that principles underlying the same can be invoked by the Arbitrator. Thus, the said decision has no relevance for deciding this case.

17. For the above reasons, the impugned Order dated 14.01.2020 of the Common Corrigendum and Certificate issued by the Competent Authority is quashed and set aside. Resultantly, the Order dated 28.02.2014 passed in Deemed Conveyance Application No.49 of 2023 and in the Deemed Conveyance Application No.98 of 2013 passed by the Competent Authority, are restored.

18. It is also required to be noted that as per the settled legal position, the Order granting Deemed Conveyance does not conclude the issue of title, and the person claiming title can file a Suit in the appropriate Court for establishing the title. Thus, the Respondent No. 1 can file Suit in the appropriate Court seeking appropriate reliefs to establish their title. All contentions in that behalf are expressly kept open.

19. It is clarified that, consequently, the impugned deed dated 04.12.2020 executed and registered pursuant to the impugned Order dated 14.01.2020 cannot be acted upon and stands cancelled, as the

Order dated 14.01.2020 is quashed and set aside.

20. Accordingly, the Writ Petition is allowed in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]