



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

**WRIT PETITION NO. 478 OF 2020**

JITENDRA  
 SHANKAR  
 NIJASURE

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 JITENDRA SHANKAR  
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 Date: 2026.01.30  
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**Jay Anand Co-operative Housing Society ...Petitioner  
 Ltd.**

*Versus*

**State of Maharashtra & Ors. ....Respondents**

**WITH**

**WRIT PETITION NO. 2936 OF 2022**

**WITH**

**CONTEMPT PETITION (L) NO. 35195 OF 2022**

**WITH**

**INTERIM APPLICATION NO. 1953 OF 2021**

**IN**

**WRIT PETITION NO. 2936 OF 2022**

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Mr. Pravin Samdhani, Senior Counsel a/w Mr. Mayur Khandeparkar i/by Mehul Shah, Mr. Yatin Khochare and Mr. Abhishek Nikharge for the Petitioner.

Ms. Uma PalsuleDesai, AGP for the Respondent No. 1 in WP/478/20.

Ms. Gaurangi Patil, AGP for the Respondent No. 1 in WP/2936/22.

Dr. Virendra Tulzapurkar, Senior Counsel a/w Mr. Akshay Deshmukh, Mr. Sanket Kadam, Mr. Sumit Chaudhary for the Respondent Nos. 3 to 5 in WP/2936/22 and for the Respondent Nos. 4 to 6 in WP/478/20.



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**CORAM : R.I. CHAGLA J.**

**Reserved on : 19TH SEPTEMBER, 2025.**

**Pronounced on : 30TH JANUARY, 2026.**

**JUDGMENT:-**

1. The above Writ Petitions along with the Contempt Petition were heard together as they are between the same parties as well as concerning common issues.
  
2. The Writ Petition No.478 of 2020 impugns the Order dated 3rd November, 2018 passed by Respondent No.3 by which the Petitioner – Society has been bifurcated under Section 18(1) read with Section 17 of the Maharashtra Co-Operative Societies Act, 1960 (“MCS Act”). The Writ Petition No.2936 of 2022 impugns Order dated 5th November, 2020 passed by Respondent No.3 by which the Respondent No.3 has granted Deemed Conveyance in favour of Jay Anand Bungalow Co-Operative Housing Society Ltd. (Jay Anand Bungalow CHS’), by issuing certificate of Deemed Conveyance. The Contempt Petition (L) No.35195 of 2022 has been taken out in Writ Petition No.2936 of 2022 alleging that the Respondent therein who is the Petitioner – Society in the said Writ Petitions has violated the

Order dated 28th September, 2001 passed in Interim Application No.1953 of 2021 in Writ Petition No.2936 of 2022 whereby this Court ordered maintaining status quo with respect to the subject land covered by Deemed Conveyance executed pursuant to the said Order dated 5th November, 2020.

### **FACTS**

3. The relevant facts as taken from Writ Petition No.478 of 2020 are as under:-

(i) The Petitioner - Jay Anand Co-Operative Housing Society Ltd. is the owner of land admeasuring 1309.80 Sq. mtrs. bearing Plot No.105, final plot no.88, TPS (III), village Borivali, Mumbai 400 092 (“subject land”). The building of the Petitioner was constructed on the subject land consisting of wings ‘A’ and ‘B’ having 22 tenements. The ‘A’ wing comprises of ground plus two (part), open terrace and, in all 4 tenements (construction in 1954) and B Wing comprises of stilt plus 6 storeys having 18 tenements (constructed in 1985).

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(ii) The Petitioner was registered as a housing society on 14th September, 1988. The Petitioner has 22 members. A Wing has three members viz. Dwarkadhis Joshi, Shantaben Sidhapara (Patel) and Nanjibhai P. Sidhpura (Patel).

(iii) An Application for Deemed Conveyance was made by the Petitioner on 11th February, 2015 against the Developer. It is pertinent to note that the Application was also signed by Respondent No.4.

(iv) A letter was addressed by the Respondent Nos.4 – 6 for sub division of the land on 1st April, 2015. It is pertinent to note that the Respondent Nos.4 – 6 admit to being members of the Petitioner – Society and state that all FSI on the subject land was consumed in construction of the building of the Petitioner – Society.

(v) A letter was addressed by the Petitioner on 17th April, 2015 in response to the said letter of the Respondent Nos.4 – 6 dated 1st April, 2015 informing that the Petitioner would take a legal opinion on the issue. It is pertinent to note that the Respondent

No.4 was one of the signatories to the said letter.

(vi) A legal notice was addressed on behalf of Respondent Nos.4 – 6 to the Secretary of the Petitioner – Society on 28th August, 2025 calling upon it to convene a General Body Meeting and give consent for bifurcation of the society. It is pertinent to note that at that time the Secretary of the Petitioner – Society was Respondent No.4.

(vii) An order of Deemed Conveyance dated 27th May, 2016 was passed by the Respondent No.3 in favour of the Petitioner.

(viii) The Respondent No.4 made a proposal for bifurcation of the Petitioner – Society (Bifurcation Proposal) on 27th December, 2016.

(ix) The Respondent No.3 issued a letter dated 9th February, 2017 scheduling hearing on 16th February, 2017 to all members of Jay Anand Bungalow CHS (then proposed) by Respondent Nos.4 – 6. It is pertinent to note that the notice was not received by the Petitioner Society.

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(x) A hearing was held by Respondent No.3 on 16th February, 2017 when only Respondent No.4 was present.

(xi) A bifurcation proposal was forwarded by Respondent No.3 to the Maharashtra District Housing Federation Limited for remarks on 9th March, 2017. It is pertinent to note that there was no draft scheme prepared prior to submission of bifurcation proposal.

(xii) The Respondent No.3 submitted a letter to Respondent No.1 on 9th March, 2017 to obtain special permission under Section 157 of the MCS Act.

(xiii) Respondent No.1 sent the case of the Jay Anand Bungalow CHS (then proposed) for bifurcation of the Petitioner - Society to the Commissioner of Co-operative Societies and Registrar of Co-operative Societies, Pune for his opinion on 30th March, 2017.

(xiv) The Conveyance Deed dated 31st March, 2017 was registered in favour of the Petitioner under Sr. No.BRL3/2941/

2014 on 6th May 2017.

(xv) A letter was addressed by the Commissioner of Cooperative Societies and Registrar of Cooperative Societies, Pune to Respondent No.3 on 30th May, 2017 to inspect the property and report.

(xvi) A site inspection report dated 6th July, 2017 stated that there are three families that hold five flats in Jay Anand Bungalow CHS (then proposed) and they are not from same family. It is the Petitioner's case that this was an incorrect statement as there were only four units held by the members of two families.

(xvii) A letter of Respondent No.3 was addressed to the Commissioner of Cooperative Societies and Registrar of Cooperative Societies, Pune on 7th July, 2017 sending inspection report.

(xviii) The Commissioner of Cooperative Societies submitted his opinion pursuant to letter dated 30th March, 2017, on 2nd August, 2017.

(xix) The Ministry of Cooperation and Industry, Government of Maharashtra under Section 7 of MCS Act granted exemption on 8th December, 2017 for formation of new society to Respondent No.4. It is pertinent to note that exemption was granted without hearing / notice to the Petitioner society.

(xx) The first notice received from Respondent No.3 on 1st February, 2018 mentioning about complaint filed for bifurcation.

(xxi) A reply was filed by the Petitioner on 9th February, 2018 in response to the said notice.

(xxii) A draft order was prepared by Respondent No.3 on 22nd March, 2018 proposing bifurcation.

(xxiii) The Petitioner filed Appeal No.114 of 2018 challenging the draft order before the Divisional Joint Registrar, Cooperative Societies. The Appeal was disposed of on the ground that it was merely a draft Order.

(xxiv) The Respondent No.3 passed an Order dated 3rd

November, 2018 (“impugned order”) for bifurcation of the Petitioner – Society. The said Order was passed under Section 18(1) read with Section 17 of the MCS Act for bifurcation of Petitioner – Society. It is the contention of the Petitioner that the said Order was passed contrary to these provisions. It is pertinent to note that the Petitioner has filed an Appeal under Section 152 of the MCS Act which is pending adjudication. The Petitioner’s contention is that the exemption Order dated 8th December, 2017 is the basis of the said impugned Order dated 3rd November, 2018.

(xxv) Writ Petition No.478 of 2020 filed by the Petitioner – Society impugning the Order dated 3rd November, 2018 granting bifurcation of the Petitioner – Society.

(xxvi) Jay Anand Bungalow CHS made an application No.261 of 2019 before the Respondent No.3 under the provisions of Section 11(3) of the Maharashtra Ownership Flats Act, 1963 (“MOFA”) for issuance of certificate of Unilateral Deemed Conveyance in respect of part of the property belonging to the Petitioner Society.

(xvii) Order granting certificate of Unilateral Deemed Conveyance was passed by Respondent No.3 on 5th November, 2020.

(xxviii) Writ Petition No.2936 of 2022 filed by the Petitioner – Society challenging the Order of Deemed Conveyance dated 5th November, 2020.

(xxix) This Court in Interim Application No.1953 of 2021 in Writ Petition No.2936 of 2022 vide Order dated 28th September, 2021 directed the parties to maintain status quo in respect of area covered under the Deemed Conveyance executed pursuant to order dated 5th November, 2020 for land admeasuring 330.30 sq. mtrs.

(xxx) The Development Agreement was executed between the Petitioner Society and Respondent No.9 (in Contempt Petition (L) No.35195 of 2022) on 29th September, 2022. Under the Development Agreement there were two scenarios provided for in Clause 6(a) viz. Scenario (i) & (ii). As on date, Scenario II is applicable and the entitlement of the Developer is only restricted

to the extent of 979.50 Sq. mtrs. pursuant to Order dated 28th September, 2021 passed by this Court.

(xxxii) Contempt Notice was issued by Jay Anand Bunglow CHS Ltd. alleging violation of the said Order dated 28th September, 2021 to Respondent Nos.1 to 18 (in Contempt Petition (L) No.35195 of 2022). Thereafter, Contempt Petition (L) No.35195 of 2022 was filed by the Jay Anand Bungalow CHS.

#### SUBMISSIONS IN WRIT PETITION NO.478 OF 2020

4. Mr. Pravin Samdhani, the learned Senior Counsel appearing for the Petitioner has submitted that Ministry of Cooperation and Industry, Government of Maharashtra has erroneously granted exemption for formation of new society to Jay Anand Bungalow CHS (then Proposed) under Section 7 of the MCS Act. He has submitted that Sections 6 and 7 of the MCS Act fall under Chapter II which covers registration of a society. It would have no application in cases where the society is already registered. He has submitted that legislature has made an independent provision under Section 157 for exemptions in respect of an existing society.

5. Mr. Samdhani has submitted that Section 157 of the MCS Act is in contrast applied to an existing society in the interest of members of 'such society'. A different mechanism with respect to existing society is contemplated for hearing of the existing society.

6. Mr. Samdhani has submitted that Section 18 of the MCS Act read in the context of and in conjunction with Section 17 of the MCS Act leaves no manner of doubt that a bifurcation can only be a general body resolution of 3/4th of the members, unless, in exceptional cases it is in 'public interest' or 'in the interest of members' (plural / majority) and not minuscule minority. He has in this context placed reliance upon the judgment of the Supreme Court in *Janata Dal v. H.S. Chowdhary & Ors.*<sup>1</sup> at paragraphs 51 to 53.

7. Mr. Samdhani has submitted that the present case does not fall within the defined criteria of 'public interest' or in the 'interest of members' as it is not in larger interest of members apart from majority of the society having opposed bifurcation. He has in this context placed reliance upon judgment of this Court in *Bombay Catholic CHS Ltd. v. VB. Mathankar & Ors*<sup>2</sup>.

<sup>1</sup> (1992) 4 SCC 305.

<sup>2</sup> 2000 (3) Mh.L.J. 273.

8. Mr. Samdhani has submitted that the Petitioner was not heard prior to passing of the impugned order of bifurcation. This has been admitted by Respondent Nos.4 to 6. There was no personal hearing which was granted to the Petitioner as according to Respondent Nos.4 – 6, the impugned Order passed is “Ministerial Function”.

9. Mr. Samdhani has submitted that Section 157 of the MCS Act provides “*...provided that, no order to the prejudice of any society shall be passed, without an opportunity being given to such society to represent its case.*” He has in this context placed reliance upon the judgment of the Supreme Court **State Bank of India & Ors. v. Rajesh Agarwal & Ors**<sup>3</sup>. at paragraphs 87, 93 and 95.

10. Mr. Samdhani has submitted that in the alternative to the above submission, in any event, the Notification of 10th March, 1995 for exemption from minimum 10 members for registration of a cooperative housing society has not been complied with by Jay Anand Bungalow CHS (then proposed) and therefore, the Order of bifurcation which is based on exemption is bad in law. He has

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<sup>3</sup> (2023) 6 SCC 1.

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submitted that the said Notification provides for grant of exemption on 2 conditions (i) Plinth area of each flat should not be more than 700 Sq. ft.; (ii) no balance FSI should be available for utilization at the time of formation of society. He has submitted that the impugned Order / the purported NoC as such is liable to be set aside as the sanctioned plan of 5th November, 1988 shows the bungalow structure in existence comprising of single tenement on ground floor, one tenement on first floor, both more than 900 sq. ft. in carpet area. Further, the sanctioned plan dated 5th November, 1988 records FSI available is 14,016.3 sq. ft. which after construction of wing B, 12.10 sq. ft. of FSI was still available. He has submitted that by change in FSI rule on the date of the application for exemption, concept of TDR was introduced where 1 TDR could be loaded on the said land and Government of Maharashtra issued a notification dated 6th January, 2012 introducing the concept of fungible FSI by which additional FSI of 25% to 35% can be allowed.

11. Mr. Samdhani has submitted that the NoC for bifurcation of unit at first floor of the bungalow was granted by Respondent No.4 as the Secretary of the Petitioner.

12. Mr. Samdhani has submitted that the explanation to Section 6 of the MCS Act has not been taken into consideration in passing of the impugned Order. The explanation reads as, "Explanation - For the purposes of this section and Section 8, the expression "member of a family" means a wife, husband, father, mother, son or unmarried daughter". He has submitted that the bungalow has only two families i.e. Patel family and Joshi family. 2 names are added viz. i) Snehal Joshi (son of Dwarkadish Joshi) & ii) Jignesh Patel (son of Nanjibhai Patel) to mislead the Authority. Patel also uses "Siddhpara" as their surname. The report of the Commissioner of Cooperative Societies incorrectly records that there are 3 members.

13. Mr. Samdhani has submitted that even otherwise, the report of Commissioner of Cooperative Societies opines that in light of only 3 members, incorporation of a proposed society is not proper. This report has been ignored and no reasons in that regard are recorded in the impugned Order.

14. Mr. Samdhani has submitted that the reliance by Respondent Nos.4 – 6 on an Appeal preferred under Section 152 of

MCS Act and that the Petitioner cannot avail of concurrent remedies is misplaced. He has submitted that Writ Petition has been correctly filed as there is no appeal against the Order passed under Section 7 provided for in Section 152 of the MCS Act. He has submitted that since the Order under Section 7 is the basis of the bifurcation Order under Section 18 in the present Writ Petition, both orders are challenged. He has accordingly submitted that the Writ Petition is maintainable. He has submitted that it is settled law that right of appeal is statutory and in the absence of statute permitting appeal the only remedy is Writ Petition.

15. Mr. Samdhani has submitted that in the alternative, existence of an alternative statutory remedy does not operate as an absolute bar where the impugned order is *ex-facie* without jurisdiction, arbitrary or passed in breach of principles of natural justice. He has in this context placed reliance upon judgment of the Supreme Court in *Harbanslal Sahnia v. Indian Oil Corporation Ltd*<sup>4</sup>, Paragraph 7.

16. Mr. Samdhani has submitted that in the present case, the

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<sup>4</sup> (2003) 2 SCC 107.

procedure as prescribed under Section 18 when read with Section 17 and Rule 17 of the MCS Act and Rules, is not followed. There was no draft scheme which was prepared, when only thereafter the Federation has to be consulted. The draft order is prepared on 22nd March, 2018 even prior to the Consultation of Federation, when the response of the federation is on 6th September, 2018. He has submitted that basic necessity to prescribe the division of assets and liabilities is not even considered by Respondent No.3 in this impugned Order. Thus, it cannot be said that the Court lacks authority to entertain the Writ Petition against impugned Orders dated 8th December, 2017 and 3rd November, 2018.

17. Mr. Samdhani has submitted that the impugned Order of bifurcation dated 3rd November, 2018 is in violation of the procedure prescribed above and in any event, is also vitiated as it is not in consonance with the substantive purpose and object of the Section 18 of the MCS Act. The impugned Order is unreasoned and also fails to even fulfil the basic ingredients for an order under Section 18 of the MCS Act.

18. Mr. Samdhani has submitted that the Order of exemption

is in any event also vitiated by gathering the alleged reports / affidavits *ex-parte* without any opportunity to the Petitioner Society. He has submitted that the order of exemption is also unreasoned and is against the opinion of the Commissioner, without even indicating as to why the Commissioner's report is not acceptable. He has in this context placed reliance upon the judgment of this Court in *Cosmopolitan III CHS Ltd. v. Hon'ble Minister, Cooperation.*<sup>5</sup>, paragraphs 16, 18 to 28.

19. Mr. Samdhani has submitted that the opinion of the Federation is based on the exemption Order under Section 7. He has submitted that process required to be followed under Rule 17 is completely violated in the present case. He has placed reliance upon the judgment of the Supreme Court in *Hemant Vimalnath Narichania v. Anand Darshan CHS Ltd.*<sup>6</sup>, at paragraphs 16 and 17.

20. Mr. Samdhani has submitted that Section 7 of the MCS Act is for registration of a new society and any exemption required for the existing society, for example bifurcation, is Section 157, which rightly makes a provision for hearing. Thus, Sections 7 and 157

<sup>5</sup> 2025 SCC OnLine Bom 1829.

<sup>6</sup> (2016) 6 SCC 142:2016 SCC OnLine SC 182.

operates in different fields.

21. Mr. Samdhani has submitted that the contention of the Respondent Nos.4, 5 and 6 is that the judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and *malafides*. Further, that its purpose is to check whether the choice or decision is made 'lawfully' and not to check whether the choice or decision is sound.

22. Mr. Samdhani has submitted that this contention on behalf of these Respondents and their reliance placed on *Tata Cellular v. Union of India*<sup>7</sup>, paragraphs 77 to 93 in the present case is misplaced. He has submitted that judicial review of an administrative decision can be reviewed and interfered with in Writ Jurisdiction where the process is fundamentally defective or violation of mandatory procedure as well as there is non application of mind to expert / technical advice and reasons are absent or perverse. He has submitted that in the instant case every step smacks of impropriety. The impugned decision is completely arbitrary and patently illegal. He has placed reliance upon the judgment of the Supreme Court in

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<sup>7</sup> (1994) 6 SCC 651 @ 677.

*Epuru Sudhakar and Anr. v. Govt of A.P & Ors*<sup>8</sup>, at paragraph 34.

23. Dr. Virag Tulzapurkar, the learned Senior Counsel appearing for the Respondent Nos.4 to 6 has raised the preliminary issue of maintainability of Petition on the ground that the Petitioner has filed an Appeal against both the impugned Orders under Section 152 of the MCS Act. He has submitted that the Petitioner cannot avail concurrent remedies in different forum. This is a case of forum shopping and they have approached this Court having failed to get any stay on the impugned Orders challenged before the appellate authority. He has submitted that the Petition is liable to be rejected on this ground in *limine*.

24. Dr. Tulzapurkar has submitted that the challenge to the Order dated 8th December, 2017 passed by the Respondent No.1 (referred to as the exemption order) is not sustainable on facts or in law. The exemption Order was passed in the proceedings for registration of a society on an application made by these Respondents who are occupying flats in a separate structure viz. the bungalow which is different from the building in which other members are

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<sup>8</sup> (2006) 8 SCC 161.

occupying. He has submitted that the Petitioner was not party to the application. In processing the said application, the Registrar noticed that the proposed society could not be registered as the society consisted of less than 10 members. Therefore, the Registrar wrote a letter dated 9th March, 2017 to Respondent No.1 setting out facts on the basis of which application is made for registration of a society of Respondent No.4 and others and pointing out that exemption was required to be granted for registration of a society of less than 10 members. He has submitted that the Deputy Registrar had carried out inquiry as to whether the Applicants of the proposed society are members of one family and thereafter submitted a report. It was upon receipt of the report and information supplied that the Commissioner had concluded that there are 3 members and therefore, it will not be proper to form a society of 3 members. The Respondent Nos.4 to 6 have also submitted a report dated 14th October, 2017 of the concerned authorities.

25. Dr. Tulzapurkar has submitted that after considering the entire matter, the facts verified by visits and the documents on record, Respondent No.1 passed the order dated 8th December, 2017 granting exemption. He has submitted that proper procedure was

followed, relevant material was taken into consideration and for valid reasons, the exemption order was passed. He has submitted that in view thereof, the said exemption order is not liable to be reviewed by this Court. He has submitted that judicial review is limited only for finding out whether the process adopted or the decision made is *malafide* or arbitrary or irrational or no responsible authority acting reasonably and in accordance with the relevant law could have reached. He has submitted that the exemption order is valid and ought to be sustained in the facts of the case.

26. Dr. Tulzapurkar has submitted that it is contended by the Petitioner that before passing the exemption order no hearing was given to the Petitioner. He has submitted that the provisions of Section 7 of the MCS Act do not provide for any hearing being given. This is a matter between the Applicant, the Registrar and the Government. The Petitioner is not concerned with the said application. As against this, the provisions of Sections 17 and 18 require a hearing to be given before a bifurcation order is passed. He has submitted that bifurcation Order affects the society which is bifurcated and therefore there is an express provision for giving notice of hearing. Thus, the legislature whenever it wanted to

provide specific notice of hearing to be given, a specific provision to that effect is made.

27. Dr. Tulzapurkar has submitted that the provisions of Sections 157 are not applicable and it is a general provision. He has submitted that this case is specifically covered by Section 7 which provides for exemption from the requirements of Section 6 whenever a society is to be registered. He has submitted that the special provision overrides the general provision. He has placed reliance upon the judgment of the Supreme Court in ***Maharashtra State Board of Secondary and Higher Secondary Education v. Paritosh Bhupeshkumar Sheth***<sup>9</sup>, paragraph 20. It has been held that it is a well established doctrine of interpretation that the provisions contained in a statutory enactment or in the rules / regulations framed thereunder have to be so construed as to be in harmony with each other and that where under a specific section or rule a particular subject has received special treatment, such special provision will exclude the applicability of any general provision which might otherwise cover the topic. He has also placed reliance upon the judgment of the Supreme Court in ***Managing Director, Chhattisgarh State Co Op. Bank***

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<sup>9</sup> (1984) 4 SCC 27 @ 47.

*Maryadit v. Zila Sahakari Kendrya Bank Maryadit*<sup>10</sup>, at paragraphs 33 to 35 in this context.

28. Dr. Tulzapurkar has submitted that there is no illegality in the Order. Respondent No.1 has understood correctly the law that regulates its decision making power and has given effect to it. There is no irrationality and there is no procedural impropriety.

29. Dr. Tulzapurkar has submitted that judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and *mala fide*. He has in this context placed reliance upon the judgment of the Supreme Court in *Jagdish Mandal v. State of Orissa*<sup>11</sup>, paragraph 22.

30. Dr. Tulzapurkar has submitted that the exemption order cannot be faulted. He has submitted that the contention of the Petitioner that no hearing was given to the Petitioner is also not sustainable. He has submitted that neither the act or the rules provide for giving hearing. He has submitted that Section 7 is the provision specifically dealing with exemption against the provisions

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<sup>10</sup> (2020) 6 SCC 411 @ Pgs. 42.

<sup>11</sup> (2007) 14 SCC 517 @ 531.

contained in Section 6 which provides for conditions requiring 10 members to be there for registration of a society. He has submitted that the contention that hearing was not given before passing the exemption order is totally baseless.

31. Dr. Tulzapurkar has submitted that the Petitioner is not an aggrieved person at all in the present case regarding exemption under Section 7. He has submitted that the Petitioner has no locus to challenge the exemption order as it does not pertain to the Petitioner nor does it affect the Petitioner. It was a matter between the person who applied for registration of a society and the Government and therefore, the Petition is liable to be rejected in *limine*.

32. Dr. Tulzapurkar has submitted that the contention of the Petitioner that the provisions of Section 157 are applicable is also not correct. The exemption Order is not passed under Section 157 of the MCS Act but under Section 7 of the MCS Act. The provision contained in Section 157 are for general application to societies. Whereas the provisions contained in Section 7 are specific and / or special provision relating to exemption from conditions of registration mentioned in Section 6 of the MCS Act. When there is a

specific provision dealing with a specific situation the general provisions do not apply.

33. Dr. Tulzapurkar has submitted that there is no merit in the challenge to the Order of bifurcation under Section 18 of the MCS Act. He has submitted that there was factually a need for bifurcation of the societies and he has placed reliance upon the application for bifurcation which has been preferred by Respondent Nos.4 to 6. He has submitted that it is a factual position that the bungalow existed prior to the construction of the building. When the newly constructed building came into being it was decided to form one society and only for the sake of convenience, the occupants of the bungalow decided to joint in the society to basically avail of the benefit of togetherness. Unfortunately, the members of the bungalow never got any benefits of the society as received by the members staying in the building. He has submitted that accordingly request was addressed by Respondent Nos.4 to 6 calling for general body meeting of the Petitioner – Society for their consent for bifurcation of the two societies. It is thereafter that the application was made for bifurcation under Section 18 on 27th December, 2016. The Petitioner had by its letter dated 6th February, 2018 raised false contentions.

34. Dr. Tulzapurkar has submitted that the impugned Order of bifurcation notes that the bungalow and the building have separate and independent water supply and also separate electric supply and independent entrances. For the purpose of members, it recorded that to avoid irregular activities in the management and to prevent and protect the property and considering the interest of the members, bifurcation was required. This will also avoid frictions among the members and the supply of amenities, repairs will be carried out without complaints.

35. Dr. Tulzapurkar has submitted that the impugned Order of bifurcation is a well reasoned order recording all material facts. There is no irregularity in procedure as proper hearing has been given. He has submitted that there is neither illegality nor there is any irrationality or procedural impropriety. He has submitted that the impugned order is well reasoned and there is no reason to interfere with the same. He has accordingly submitted that the Petition is liable to be dismissed with costs.

**SUBMISSIONS IN WRIT PETITION NO.2936 OF 2022**

36. Mr. Mayur Khandeparkar, the learned Counsel appearing for the Petitioner has submitted that under the provisions of Section 11 of MOFA read with Rules 8 and 9 of MOFA Rules, the Society could seek directions against the promoter to convey the title of the property for which the flat purchasers had constituted the society as per Section 10 of MOFA. He has submitted that in the present case the Petitioner – Society was incorporated by the flat purchasers in 1988-89. The property was conveyed to the Petitioner society having 22 members under the provision of MOFA after notice to the promoter and District Deputy Registrar. He has submitted that upon granting an Order of Deemed Conveyance to the Petitioner society, the competent authority seized to have any further powers and could not entertain a second application for the same cause of action at the instance of a party who was not a society incorporated within the provisions of Section 10 of MOFA but was infact a representation made by the two family members who had called for exemption letter from the State.

37. Mr. Khandeparkar has relied upon the judgment of this

Court in **Vaidehi Akash Housing Pvt. Ltd. v. New D.N. Nagar Co-Op. Housing Society Union Ltd. and Ors**<sup>12</sup>, Paragraphs 86-90 in support of

his submission that where a building is constructed by developers, it cannot be said that such a building was caused to be constructed by the Society within the meaning of Section 2(c) of the MOFA. Further, there is no case to treat the society who is merely in the position of an owner vis-a-vis the third party purchasers, as a 'promoter' within the meaning of MOFA and foist the obligations of a promoter on the society in relation to the purchasers.

38. Mr. Khandeparkar has also relied upon the judgment of this Court in **Goregaon Pearl CHS Ltd. v. Dr. Seema Mahadev Paryekar & Ors**<sup>13</sup>, paragraphs 7 to 9 which has followed the judgment of this Court in **Vaidehi Akash (Supra)** and held that the Society is not to be treated as 'promoter' under RERA as the definition of 'promoter' under RERA is on similar lines as MOFA. In that case it was held that it is nobody's case that the Appellant society is such specified promoter in the online registrations. Besides, grievance, if any, in this behalf must be addressed to the regulatory authority thereunder and not to a civil court.

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12 2014 SCC OnLine Bom 5068.

13 2019 SCC OnLine Bom 3274.

39. Mr. Khandeparkar has also relied upon the order of the Division Bench of this Court in *Deepak Prabhakar Thakoor v. MHADA & Ors*<sup>14</sup>. It has been held that third party purchasers would have no privity of contract with the Society and the Society would in no way be responsible for any claim made by such purchasers against the society under their respective agreements for sale.

40. Mr. Khandeparkar has submitted that the bifurcation of Jay Anand CHS into Jay Anand Bungalow CHS was not done in accordance with Section 17 and Section 18 of MCS Act, 1960. He has submitted that assets were not divided as mandated, rendering subsequent transactions and orders defective.

41. Mr. Khandeparkar has submitted that Deemed Conveyance once granted by Respondent No.2 against the promoter could not be reopened on the alleged ground of bifurcation of society in respect of the very same property which was incorporated under the PR Card. The proceedings before Respondent No.2 are not maintainable. Respondent No.2 lacks the authority to exercise any jurisdiction on any application by any applicant once the Order dated

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<sup>14</sup> Writ Petition (L) No.1776 of 2023 dated 12th October, 2023.

27th May, 2016 was passed granting the Deemed Conveyance for the very same plot (part of the entire plot) to the Petitioner Society.

42. Mr. Khandeparkar has submitted that Section 11 of the MOFA cannot be used to cure defects in the Order dated 3rd November, 2018, which failed to comply by the statutory requirement of division of assets when read with Sections 17 and 18 of the MCS Act.

43. Mr. Khandeparkar has submitted that subject property on which Jay Anand Bungalow and building CHSL was constructed and sold by the promoter, already stood transferred in favour of the Petitioner society by virtue of the conveyance duly registered. The Application by Respondent No.3 in the above Writ Petition for Deemed Conveyance in 2019 is void *ab initio*. He has submitted that the provision of Deemed Conveyance is unknown under the Transfer of Property Act and it is only provided for under MOFA as amended. He has submitted that the Authority did not have the requisite right to entertain a second application once a certificate was issued for unilateral deemed conveyance in favour of Petitioner Society which was executed, registered and title was transferred in favour of the

Petitioner Society incorporated by the purchasers who have become owners and not promoters. He has submitted that the provisions under Section 11(3) of MOFA would thus not apply.

44. Mr. Khandeparkar has submitted that A and B wings of the building and bungalow, were interconnected with one another. He has submitted that it appears that the certificate of architect issued to Jay Anand Bungalow CHS was fabricated and manipulated. He has submitted that it is not possible or practical to divide the property. This despite the fact that Jay Anand Bungalow CHS did not have minimum requirement of Society members to become a society.

45. Mr. Khandeparkar has submitted that the Deputy Registrar passed the impugned Order overlooking the order of this Court in Writ Petition No.478 of 2020.

46. Dr. Tulzapurkar, the learned Senior Counsel appearing for the Respondent No.3 has submitted that the challenge of the Petitioner to the impugned Deemed Conveyance order dated 5th November, 2020 under MOFA on the ground that there was already a Deemed Conveyance in favour of the Petitioner society vide an Order

passed on 30th March, 2017 and therefore there cannot be a further order requires to be rejected. He has submitted that the earlier Order of Deemed Conveyance was passed in respect of the entire property consisting of plots 88 and 89. The Deemed Conveyance Order dated 5th November, 2020 pertains to plot 88 on which there is a bungalow. He has submitted that the occupants of the bungalow and members of the Jay Anand Bungalow CHS are entitled to get conveyance after bifurcation of the society. The bifurcation having been done, the members of the new society are entitled to apply for conveyance.

47. Dr. Tulzapurkar has submitted that the contention of the Petitioner that the said Application for Deemed Conveyance was not maintainable as the Petitioner society who had already got the larger property consisting of plot Nos.88 and 89 conveyed by way of Deemed Conveyance, are not promoters is unsustainable. He has submitted that the Petitioner is an assignee from the promoter who was also a party to the said application. Under the definition of 'Promoter' under MOFA, an assignee of the promoter is liable under Section 11 to convey the property. He has submitted that any other interpretation results in enabling a dishonest promoter to alienate the

property to a third party. He has submitted that the definition of promoter includes an assignee.

48. Dr. Tulzapurkar has placed reliance upon the judgment in *Arunkumar H. Shah, HUF v. Avon Arcade Premises Co Operative Society Ltd*<sup>15</sup>, in support of his submission that the competent authority exercises summary power and the parties are at liberty if aggrieved by the order to file a civil Suit on the basis of title. He has submitted that the Order of Deemed Conveyance is perfectly valid and the Petition is liable to be dismissed with compensatory costs.

#### SUBMISSION IN CONTEMPT PETITION (L) NO.35195 OF 2022

49. Dr. Tulzapurkar, the learned Senior Counsel appearing for the Petitioner in the above Contempt Petition has submitted that the Respondents have violated Order dated 28th September, 2001 passed in Interim Application No.1953 of 2021 in Writ Petition No.2936 of 2022. He has submitted that by the said Order both the parties i.e. Petitioner and Respondents were ordered to maintain status quo with regard to the land covered by the Deemed

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15 (2025) 7 SCC 249.

Conveyance executed pursuant to Order dated 5th November, 2020.

50. Dr. Tulzapurkar has submitted that the Respondents have committed breach of the said order by creating rights in respect of property covered by the Deemed Conveyance pursuant to the order dated 5th November, 2020. The rights are created by entering into a Development Agreement by Respondent Nos. 1 to 8 in favour of Respondent No. 9 dated 29th September, 2022.

51. Dr. Tulzapurkar has submitted that the Development Agreement includes the bungalow property covered by the Deemed Conveyance order which admeasures 330.30 sq. mtrs. (referred to as the Petitioner's property). He has submitted that the entire property has been described in the said Development Agreement to consist of the area of 1309.80 sq. mtrs. The combined property viz. the adjoining plots of the two cooperative societies are referred to in the said agreement as the said property. He has submitted that by the reason of the provisions of the Development Agreement, it is clear that the Respondents have altered the Petitioner's property which forms part of the said property and have thus violated the order. He has placed reliance upon the provisions of the Development

Agreement.

52. Dr. Tulzapurkar has submitted that the Respondent Nos.1 to 8 have created rights in favour of Respondent No.9 in respect of the Petitioner's property. He has referred to the two Scenarios described in the Development Agreement. Scenario (1) refers to the area 1309.80 sq. mtrs i.e. the said property and Scenario (2) describes the area admeasuring 979.50 sq. mtrs. i.e. the property of the building and excludes the Petitioner's property. He has submitted that except for describing the property covered in Scenario 1 and 2, there is no other provision in the agreement that the agreement does not cover the Petitioner's property. He has submitted that the description in Scenario 1 and 2 is only to create a cloud or a ruse to get out of the order of status quo.

53. Dr. Tulzapurkar has submitted that the entire agreement read as a whole clearly shows that Respondent No.9 by virtue of the said agreement has become entitled to develop the said property which includes the Petitioner's property, demolish the structure on the Petitioner's property, use FSI and all benefits arising from the Petitioner's property and also mortgage the Petitioner's property.

Respondent No.1 has further agreed to execute conveyance and documents for transfer of “the said property” which includes the Petitioner’s property. He has submitted that the said Development Agreement contains an obligation on the part of the members and society to handover vacant and peaceful possession of the said property within 30 days of obtaining IOD by Respondent No.9 to enable Respondent No.9 to demolish the structures on the said property for redevelopment. Respondent No.9 becomes entitled to load TDR FSI on the said property. Respondent No.9 are entitled to submit plans for development of the said property.

54. Dr. Tulzapurkar has accordingly submitted that there is a clear violation of the said Order dated 28th September, 2021.

55. Dr. Tulzapurkar has submitted that the redevelopment plan claims incentives as per Table 12 of Regulation 33(7) (B) of the DCPR, which provides a 50% FSI on rehabilitation component amounting to 10 sq. mtrs. equal to 107.64 sq. ft. per consenting member. The Respondent No.9 has based the calculation on 110 members, yielding 1100 Sq. mtrs. of incentive FSI. This includes four members of the Petitioner. As per the Conveyance Deed of

Respondent No.1, the total membership comprises 22 members, 18 from Respondent No.1 society and 4 from the Petitioner society. There are two other societies. He has submitted that inclusion of additional 10 sq. mtrs. pertaining the Petitioner's property results in entitlement to a portion of incentive FSI which pertains to the Petitioner's property. Thus, this clearly shows that the Respondents have violated the status quo order. Once this FSI pertaining to the Petitioner's property is dealt with by Respondent No.9, it will cause a perpetual loss to the Petitioner's Society.

56. Dr. Tulzapurkar has submitted that it is crystal clear that rights are created after the said order and particularly the premium has been paid by Respondent No.9 to MCGM on the basis of the entire property, resulting in the forfeiture of the right to load TDR on the Petitioner's property in future.

57. Dr. Tulzapurkar has submitted that unless the Respondents purge themselves of the contempt, they are not entitled to proceed with the main Petition. He has submitted that as a general rule, the Respondents are required to clear their contempt before they can be heard. This is not a case falling in any exceptions to the

said rule because the order of which violation has taken place is not sought to be challenged by the Respondents or the Respondents are not merely defending any proceedings but are seeking assistance from the court on their own. He has in this context placed reliance on the judgments of this Court in *Extrusion Processes Pvt. Ltd. v. Goregaon Electrical Industries Pvt. Ltd*<sup>16</sup>, at paragraphs 455, 456, 457 & 458 and *Nenshi Monji (Bombay) v. State of Maharashtra*<sup>17</sup>, at paragraphs 402, 403 and 404.

58. Dr. Tulzapurkar has submitted that the Respondents are guilty of violating the Order dated 28th September, 2021 by breaching the order of status quo and creating rights in favour of Respondent No.9 who was aware of the said Order. Respondent No.1 is not entitled to proceed with Writ Petition No.478 of 2020 without purging the contempt and all the Respondents are liable to be dealt with in accordance with law for the violation of the said Order.

59. Mr. Mayur Khandeparkar has relied upon 'Proforma I' of the sanctioned plan which is annexed to the Affidavit in Reply of Respondent No.18. He has submitted that from Proforma I it is clear

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<sup>16</sup> (LXVII) Bom. L.R. Page 453.

<sup>17</sup> 2015 (5) Mh.L.J. 397.

that there is a deduction of 330.30 Sq. mtrs. from the total plot area prior to calculation of FSI. He has submitted that there is no utilization of any FSI, TDR, incentive FSI or fungible FSI or any form of FSI on the area admeasuring 330.30 Sq. mtrs. Thus, there is compliance with the said Order dated 28th September, 2021 in maintaining status quo. He has submitted that there is non utilization of FSI of the status quo area as per Order dated 23rd September, 2021 covered under Conveyance Order dated 5th November, 2020.

60. Mr. Khandeparkar has submitted that scenario 1 and Scenario 2 are not a cloud. In fact the Index II (Compilation page 1) categorically records the ambit as of date to the extent of 979.50 sq. mtrs. is contemplated.

61. Mr. Khandeparkar has submitted that amalgamation of the plot can never be termed as violation or breaches as what is granted under Deemed Conveyance Order dated 5th November, 2020 is the undivided portion and in no manner can the amalgamation of larger plot be termed as breach.

62. Mr. Khandeparkar has accordingly submitted that the

Contempt Petition be dismissed with costs.

### **FINDINGS**

63. Having considered the submissions in the above two Writ Petitions and Contempt Petition, since a preliminary objection has been raised by Dr. Tulzapurkar to the hearing of the Writ Petition No.478 of 2020 on the ground that the Petitioner is alleged to be guilty of violating the order dated 28th September, 2021 i.e. by breaching the order of status quo and creating rights in favour of Respondent No.9 by entering into Development Agreement which covers the property of the Jay Anand Bungalow CHS, it would be pertinent to first deal with this preliminary objection.

64. I have perused the Recitals as well as the relevant Clauses of the Development Agreement. Recital (O) specifically discloses the status quo order dated 28th September, 2021 and Clause (6) (a) though referring to the entire property admeasuring 1309.80 Sq. ft. mentions Scenarios (1) and (2) i.e. in Clause 6(b) and 6(c) respectively. It is provided in Clause 6(c) that Scenario 2 is applicable in view of the status quo order and the entitlement of the

developer is only restricted to the extent of 979.50 Sq. mtrs. This can be read with the clause 6(d) which defines the said property (“entire property”) and provides that currently Scenario 2 shall be applicable where the development rights of the Developer are restricted to the extent of 979.50 sq. mtrs. (excluding the portion of 330.30 sq. mtrs. pursuant to Order dated 28th September, 2021). Further clause 6(h) defines the total Constructible Area, where Scenario 2 of the said property is applicable and FSI available on 979.50 Sq. mtrs. is claimed. Clause 6(m) defines total saleable area which shall be constructed on utilization of FSI that is available on 979.50 Sq. mtrs. only. Further, Clause 32 grants development rights in respect of the said property which allows the developer to only utilize FSI available on 979.50 Sq. mtrs. Schedule II of Development Agreement specifically talks about Scenario 2 where the Development rights are also restricted to the extent of 979.50 Sq. mtrs. Further, Proforma I of the sanctioned plan shows deduction of 330.30 sq. mtrs. from the total plot area prior to calculation of FSI. Thus, by entering into the Development Agreement the Petitioner cannot be said to have violated the status quo Order dated 28th September, 2021.

65. Having arrived at a finding that there is no violation of

the status quo Order dated 28th September, 2021. I then proceed to consider the challenge to the exemption order and bifurcation order in Writ Petition No.478 of 2020 as well as the challenge to the Order of Deemed Conveyance in favour of Jay Anand Bungalow CHS in Writ Petition No.2936 of 2022.

66. The Ministry of Cooperation and Industry, Government of Maharashtra had granted exemption for formation of new society to Respondent No.4 under Section 7 of the MCS Act vide exemption Order dated 8th December, 2017. However, from the plain language of this section, it provides for registration of a new society. In the present case, the Petitioner Society had already been granted a Deemed Conveyance on 27th May, 2016. Thus, the Petitioner Society was already an existing society to whom the Deemed Conveyance had been granted. The exemption order is the pre-requisite for granting the bifurcation order and unless the exemption to form the society had been granted, there could have been no bifurcation of the Petitioner Society. I find much merit in the submission of Mr. Samdhani on behalf of the Petitioner that Section 157 of the MCS Act is applied on an existing society in the interest of members of 'such society'. Whereas Sections 6 and 7 of the MCS Act fall under Chapter

II which governs registration of a society and hence would have no application in cases where the society is already registered, as in the present case.

67. Thus, in my considered view the exemption could, if at all, have been granted under Section 157 of the MCS Act which is a specific provision for an existing society. Under the said Section, the Petitioner was required to be heard prior to the passing of the impugned Order of exemption. The Respondent Nos.4 to 6 have admitted that the impugned Order was passed without granting personal hearing to the Petitioner on the ground as stated by them, namely that the order passed is “Ministerial Function”. This in my view is stated to be rejected. The exemption Order having formed the basis of the bifurcation order, the Petitioner was necessarily required to be heard. Section 157 of the MCS Act provides, “...provided that, no order to the prejudice of any society shall be passed, without an opportunity being given to such society to represent its case.” The principles of *Audi alteram partem* are necessarily required to be followed as has been held by the Supreme Court in ***State Bank of India & Ors. v. Rajesh Agarwal & Ors. (Supra).***

68. Accordingly, the exemption order having been passed without granting an opportunity of hearing to the Petitioner, is in violation of the principles of natural justice and hence on this ground alone requires to be set aside.

69. On merits of the exemption order, also, the Notification dated 10th March, 1995 for exemption from minimum 10 members for registration of a cooperative housing society has not been complied with. The two conditions viz. (i) Plinth area of each flat should not be more than 700 Sq. ft., (ii) no balance FSI should be available for utilization at the time of formation of society have also not been met. This in view of bungalow structure in existence comprising of single tenement on ground floor, one tenement on first floor, both more than 900 sq. ft. in carpet area. Further, there being 12.10 sq. ft. of FSI still available for utilization at the time of formation of the society. For this reason too the impugned Order of exemption is liable to be set aside.

70. Further, explanation to Section 6 of the MCS Act was required to be taken into consideration and which provided that “member of a family means a wife, husband, father, mother, son or

unmarried daughter". The bungalow has only two families i.e. Patel family and Joshi family. The Report of Commissioner of Cooperative Society had incorrectly recorded there were three members. Even otherwise, the said Report opines that in light of only 3 members incorporation of the proposed society was not proper. This Report has been ignored and no reasons for departure are recorded in the impugned Order. The impugned Order of exemption is thus in violation of Section 6 of the MCS Act.

71. In view of the exemption order being contrary to law the bifurcation of the Petitioner society could never have been granted. It is provided in Section 18 of the MCS Act read with Section 17 of the MCS Act that a bifurcation can only be a general body resolution of 3/4th of the members, unless, in exceptional cases it is in 'public interest' or 'in the interest of members' (plural / majority) and not minuscule minority. This has been held by the Supreme Court in *Janata Dal v. H.S. Chowdhary & Ors. (Supra)*. I find from the facts of the present case that it does not fall within the defined criteria of 'public interest' or in the 'interest of members' as it is not in larger interest of members apart from the majority of the members having opposed bifurcation. Further, the judgment relied upon by the

Petitioner viz. **Bombay Catholic CHS Ltd. (Supra)** is apposite.

72. I do not find any merit in the preliminary objection raised by Dr. Tulzapurkar namely that the Petitioner has preferred an Appeal under Section 152 of the MCS Act and thus cannot avail the concurrent remedy. The impugned Order of exemption being under Section 7 of the MCS Act, is not appellable and hence writ is appropriate remedy. Further, as held above the impugned Order is *ex-facie* without jurisdiction, arbitrary and / or passed in breach of principles of natural justice and hence in any event writ is the only appropriate remedy.

73. The impugned bifurcation order is not made in accordance with the procedure prescribed under Section 18 read with Section 17 of the MCS Act and Rule 17 of the MCS Rules, particularly since there is absence of draft scheme prepared prior to consultation with the Federation. The opinion of the federation is based on the exemption order under Section 7 and as held, the exemption order is required to be set aside.

74. Accordingly, the impugned exemption order dated 8th

December, 2017 and impugned bifurcation Order dated 3rd November, 2018 are quashed and set aside. Writ Petition No.478 of 2020 is made absolute in terms of prayer Clause (a).

75. In so far as the order of Deemed Conveyance dated 5th November, 2020 passed by the Deputy Registrar, CS, Dadar, Mumbai which has been impugned in Writ Petition No.2936 of 2022 is concerned, I find much merit in the submissions of Mr. Mayur Khandeparkar that Section 11 (3) of the MOFA cannot apply where in the present case, the Petitioner Society has already been granted Deemed Conveyance and by virtue of which the competent authority seized to have any further powers and could not have entertained a second application for Deemed Conveyance by a party who was not a society incorporated under Section 10 of MOFA.

76. Having held that the exemption order as well as bifurcation order are set aside, the resultant Deemed Conveyance order itself is required to be set aside. Section 11 of MOFA cannot be used to cure defects in the bifurcation order dated 3rd November, 2018 which has failed to comply with the statutory requirement of division of assets.



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77. In view thereof, Writ Petition No.2936 of 2022 is also made absolute in terms of prayer Clause (a).

78. The Contempt Petition and Writ Petitions are accordingly disposed of.

79. Interim Application No.1953 of 2021 does not survive and is also disposed of accordingly.

**[ R.I. CHAGLA J. ]**