MHTH170030522025

ORDER BELOW EXHIBIT 5 IN R.C.S. NO. 100/2025
(Anusaya Raman Sankhe and Anr. Vs. Pragati Shital CHS Ltd. and Ors.)

1. Heard Ld. Advocate Shri. R.R. Pal, Smt.P.Patil for the Plaintiffs and Ld. Advocate Shri. Suraj Jagtap for the Defendants. Written notes of arguments (Exhibits 49, 55) are submitted. Perused record.

2. The suit was filed on 15.07.2025, praying for declaration of ownership of the area of 1026.41 sq. mtrs. (mentioned as suit property, page 4, para 7, line No. 3 of the plaint) or such area out of the area of 4095 sq. mtrs. in plot No. 1 of block No. 175/1/175/2A at Boisar, Palghar as may be determined. Plaintiffs have also prayed that the Defendants be restrained from claiming ownership, taking possession of, constructing over the suit property by way of permanent injunction.

3. *Vide* the present Application for temporary injunction, the Plaintiffs pray that, till the final adjudication of the suit, the Defendants through their organization or members be restrained from claiming ownership over, seeking possession of, construction upon the area of 1026.41 sq. mtrs. i.e. suit property or such area out of the total area of 4095 sq. mtrs. in plot No. 1 of block No. 175/1/175/2A at Boisar, Palghar and be restrained from spreading misinformation against the Plaintiffs. Affidavit in support of the present application is filed. The present application is vehemently opposed by Defendant by way of say.

4. The following points of determination arise for

consideration :

Sr.No.	Points of determination	Findings
(I)	Whether the Plaintiffs have made out a *prima facie* case?	*…No.*
(II)	Whether the Plaintiffs prove that, the balance of convenience lies in their favour?	*…No.*
(III)	Whether the Plaintiffs prove that, irreparable injury will be caused to the Plaintiffs if the relief prayed is not granted?	*…No.*
(IV)	What order?	*...As per final order*

REASONS

5. The said points being inter related the same are dealt with together. Present application filed by Plaintiff may be considered under Order 39 Rules 1 and 2 of the Code of Civil Procedure (C.P.C.). The said provisions are reproduced hereinbelow for reference:-

Rule 1 Order XXXIX of Code of Civil Procedure 1908

"Cases in which temporary injunction may be granted"

Where in any suit it is proved by affidavit or otherwise –

(a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,

(c) that the defendant threatens to dispossess, the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to

the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders."

6. It is a settled position of law that, the party approaching the Court has to state all facts. While considering grant of temporary injunction, the Court also has to consider whether the parameters of *prima facie* case, balance of convenience and irreparable injury are made out.

7. Both sides have relied upon a plethora of documents. The present suit was filed on 15.07.2025, praying for declaration of ownership of the area of 1026.41 sq. mtrs. (mentioned as suit property, page 4, para 7, line No. 3 of the plaint) or such area out of the area of 4095 sq. mtrs. in plot No. 1 of block No. 175/1/175/2A at Boisar, Palghar. Plaintiffs have also prayed that the Defendants be restrained from claiming ownership, taking possession of, constructing over the suit property by way of permanent injunction. Application for rejection of plaint (Exh. 18) came to be rejected by way of Order dated 15.11.2025 as the said application pertained to only these prayers and the question of title for declaration can be decided by Civil Court.

8. Thereafter, the order for deemed conveyance was passed on 05.12.2025 (Exh. 35/1) by the competent authority under MOFA. The said order was challenged by the Plaintiff before the Hon'ble High Court. However, the writ petition came to be rejected by order dated 02.02.2026 (Exh. 35/2). It may be noted here that the order of this Court rejecting application for rejection of plaint and the order of the Hon'ble High Court rejecting the challenge to order of deemed conveyance were both passed when the plaint was in its original form.

9. Thereafter, by way of application dated 12.02.2026 at

Exh.30, amendment was sought to the plaint and application for interim relief was filed at Exh.32. The additional relief prayer clause 13(ए), 13(ऐ) for injunction restraining using the said order dated 05.12.2025 regarding deemed conveyance before any revenue authority or registrar or government office and not presenting the said order dated 05.12.2025 (Exh. 35/1) regarding deemed conveyance for registration before the Sub-Registrar Palghar was added. Allowing amendment does not equate to allowing a relief sought or accepting the averments made by the party. The onus of proving its case lies on the party. Post amendment, no application was preferred for rejection of plaint. However, issue was raised regarding the jurisdiction of this Court to grant the additional prayer and the present preliminary issue (Exh. 52) was framed. By way of order dated 29.04.2026, it was held that:-

> *"1. The finding to the preliminary issue is in the negative.*
>
> *2. This Court does not have jurisdiction to decide prayer clause 13 ए, ऐ.*
>
> *3. The suit shall continue as regards prayer clauses prior to amendment i.e. 13 अ, आ, इ, ई, उ, ऊ."*

10. In the present case Ld. Advocate for the Plaintiff has submitted that, this Court has jurisdiction to decide the title. He has relied upon the judgment dated 04.11.2025 of the Hon'ble Bombay High Court in *Acme Enterprises And Anr vs Deputy Registrar Co Operative Societies* (Exh. 56/1). Ld. Advocate for the Defendants, has submitted that, the said judgment is not applicable to the present facts. Ld. Advocate for Plaintiff has also relied upon the judgment in the Hon'ble Supreme Court in *Arunkumar H. Shah Huf Vs. Avon Arcade Premises Co-operative Society Limited and Ors.* [2025 0 Supreme(SC) 669] regarding MOFA and how the question of title is

dealt with in a civil suit and not before the competent authority under MOFA (para 20). He has also castigated order dated 05.12.2025 of the concerned authority (DDR) under MOFA regarding deemed conveyance challenging it's validity.

11. *Per contra,* Ld. Advocate for the Defendants has submitted that, the Order dated 05.12.2025 regarding deemed conveyance was upheld and the writ petition filed by the Plaintiffs came to be dismissed by way of Order dated 02.02.2026 (Exh. 35/2). That, Civil Court may have jurisdiction to decide on the point of title. However, the plaint was amended and the additional prayer is sought. That, the deemed conveyance order by the concerned authority appointed under the specialized law of MOFA cannot be set aside or it's execution cannot be stopped by the Civil Court. It can be and was challenged before the Hon'ble High Court. That, there is implied bar of jurisdiction of Civil Court. He has relied upon the judgment of the Hon'ble Bombay High Court in *Quantum Park Co Operative Housing vs Ahcl Pel And Ors* decided on 24 February 2026 and *Flagship Infrastructure Ltd. and Anr. vs The Competent Authority and Anr.* decided on 15 April 2025(Exh. 58/1 and 58/2). Ld. Advocate for the Plaintiff, has submitted that, the said judgments are not applicable to the present facts.

12. I have perused the said judgments. The findings in the judgments of the Hon'ble High Courts and the Hon'ble Supreme Court are most reverentially noted. Perusal of judgments also reflect that, each case has to be examined based on the facts brought forth. As per the judgment in *Arunkumar* (supra), Civil Court can decide on the point of title even if, proceeding under MOFA is pending. In *Acme* (supra), counter suits were filed between the developers and federation of housing societies regarding dispute about conveyance

and developer's right for further construction. The suits were filed before the Hon'ble Bombay High Court. In those facts, at page No. 65, para No. 84, there is conclusion that, delay in construction of building would not result in loss of ownership in land meant for construction and such delay would not result in vesting of title in the federation. The statutory scheme of MOFA is explained. However, in the present case exhibits 20/10, 3/7 are pointed out and it is stated that, the construction of the building is already completed, FSI was taken and utilized for the entire area, conversion of non-agricultural use, does not differentiate the area of 1026.41 sq. mtr. i.e. suit property. The Plaintiffs with complete knowledge continue to deny the conveyance despite passage of more than a decade. Moreover, judgments in *Quantum Park* (supra) (para 26 to 30) and *Flagship Infrastructure Ltd.* (supra) (para 16-20, 23) also bring out that the proceedings of MOFA are a special statue, the competent authority is under statutory duty to deal with the issues before itself regarding conveyance.

13. As such, in the present facts upon perusal of the documents, it appears that, the Plaintiffs are claiming to be owners of area of 4095 sq.mts in plot No.1, through their predecessor Shri.Raman Narayan Sankhe who is stated to have bequeathed the property to the Plaintiffs through testamentary will. It appears that, the development agreement (Exh. 3/3) dated 10.11.2005 between Shri.Raman Narayan Sankhe and developers pertained to area of **4095** sq.mts. That permission was received regarding area of 3068.59 sq.mts for construction by way of order dated 21.10.2002. Additional FSI appears to be obtained by way of order dated 08.10.2018. Accordingly, three buildings were constructed and

societies were formed who are made Defendants Nos.1 to 3. The remaining portion of 1026.41 is claimed to be belonging to Plaintiffs. It is claimed that Defendants have no right over the remaining area of 1026.41 sq.mts i.e. suit property and yet they preferred application dated 11.04.2025 for deemed conveyance regarding the entire area of **4095** sq.mts.

14. There is a revised order dated 08.10.2018 (Exh.20/10) for additional construction over area of **3989.60** sq.mts. The open area of **424.68 sq.mts** was proposed. The permission was granted subject to terms and conditions. Certain members of the Defendant societies took objection to construction and Special Civil Suit No.49/2018 was preferred against them. There is also a writ petition regarding the same pending before the Hon'ble High Court.

15. It appears that, the development agreement (Exh. 3/3) dated 10.11.2005 between Shri.Raman Narayan Sankhe and developers pertained to area of **4095** sq.mts. Additional FSI appears to be obtained by way of 08.10.2018. However, there is <u>significant difference in the areas mentioned</u>. In the final prayer itself the Plaintiffs have not been able to clarify the actual area they are claiming over, as they have claimed ownership over the suit property area is 1026.41 sq.mts or such area as may be determined. It also appears that there is a dispute regarding the area over which the Plaintiffs are claiming ownership. The Plaintiffs are also stated to be flat owners in the same construction. Despite passage of over 15 years, the land was not conveyed to the societies and the flat owners. As such order of deemed conveyance was recently passed. The said order was not set aside by the Hon'ble High Court in the writ petition preferred by the Plaintiffs. There is no explanation of the gross delay in the conveyance. The development agreement on the

basis of which the Plaintiffs are claiming, include developers as the parties who are not added as party to the present suit.

16. The further development area is also unclear. It is also argued by Ld. Advocate for Defendants that construction was sought to be done over septic tank, due to which objection was taken. When the area itself is unclear, it cannot be said that, the *prima facie* case is in the favour of the Plaintiffs.

17. As regards, irreparable injury and balance of convenience, it appears that, despite being flat owners in the same societies, the Plaintiffs did not convey the land for more than 15 years. In the event the Plaintiffs are found to be owners of any such portion of land, they can be compensated in terms of money. At this stage, considering the point of conveyance and rights of flat owners as envisaged under MOFA and the gross delay on the part of the Plaintiffs, the balance of convenience does not lie in the favour of the Plaintiffs. Hence, points No.1 to 3 are answered in the negative.

18. As to point No.4, in these circumstances,

ORDER

1. Application is rejected.
2. Costs in cause.
3. Application is accordingly disposed of.

PALLAVI SURYAKANT GOURI CHALKAR
Digitally signed by PALLAVI SURYAKANT GOURI CHALKAR
Date: 2026.04.30 16:05:18 +0530

(Smt. P.S.G. Chalkar)
2nd Jt. Civil Judge Junior Division,
Palghar.

Place: Palghar
Date: 30/04/2026

CERTIFICATE

I affirm that, the contents of this P.D.F. file Judgment/order are same, word to word, as per the original Judgment/order.

Name of Stenographer	---	Suraj S. Saddiwal Stenographer (Gr-3)
Court	---	2nd Jt.CJJD & JMFC Palghar.
Date	---	30/04/2026
Order signed by the Presiding Officer on	---	30/04/2026
Order uploaded on	---	30/04/2026