Salgaonkar

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11339 OF 2026

Antaral Co-Operative Housing Society through its Chairman Netra Bhalerao	..	Petitioner

Versus

The Enforcement Directorate (ED) & Ors.	..	Respondents

...

Mr.Abhay Anturkar i/b Mr.Yatin Malvankar for the Petitioner.

Mr.Ashish Mehta, Special Retainer Counsel ED for the Respondent Nos.1 and 2.

CORAM: BHARATI DANGRE &
ASHISH S. CHAVAN, JJ.
DATE : 13th OCTOBER, 2026

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<u>ORAL JUDGMENT</u> (PER BHARATI DANGRE, J.)

1. As directed by us, the Assistant Director, Directorate of Enforcement has tendered a photocopy of the affidavit affirmed on 09/10/2026 at Ranchi.

Mr.Mehta informs that the original of the affidavit is on its way and as soon as it is received, he shall substitute the photocopy of the affidavit with the original one.

We grant him such liberty.

2. The Petition before us involves a Co-operative Housing Society comprising of ten flats and twelve members. Flat No.4

in the said society is under attachment by the Enforcement Directorate (ED) as it is construed to be the flat purchased by laundering of money and, therefore, the offence is registered and a provisional attachment order came to be passed against Respondent No.3 on 28/02/2013.

The Adjudicating Authority, at a subsequent point of time, in exercise of its power under Section 8(3) of the Prevention of Money Laundering Act, 2000 (for short, "PML Act") has confirmed the provisional attachment and the attachment continue to remain in force as on date.

3. The difficulty posed by the Petitioner-society is that the building is more than 44 years old and it lack modern safety amenities as well as a lift facility and it has become unsafe and unsuitable for occupation. It is a specific plea of the Petitioner-society that large number of the members of the society are senior citizens and directly affected by the deteriorating condition of the building and, therefore, the society proposes to redevelop it.

In the wake of the attachment of Flat No.4 by ED, the communication was addressed by the society to it for securing a No-Objection Certificate (NOC), as if the building has to be demolished and redeveloped, it would also involve Flat No.4. However, on 02/09/2025, the request was rejected by informing the Petitioner-society that the flat is under attachment and was in custody of the learned Special Court and, therefore, the appropriate forum shall be approached.

It is the specific pleading in the Petition that because of this one flat in the society, all other members are put in

inconvenience, as the work of the development cannot take place if at all Flat No.4 is to be kept intact.

It is in this background, the Petitioner-society has approached this Court seeking writ of mandamus for issuance of a No-Objection Certificate for the redevelopment of the Petitioner-society in respect of Flat No.4, subject to preservation of the attachment over the concerned redeveloped unit.

4. When the Petition came before us, being conscious of the predicament of the Petitioner-society, we indicated that the society should file an affidavit before us, which shall ensure that upon redevelopment, the flat in lieu of Flat No.4 shall come to the ED, as presently it is under attachment and not only this, but the accruals due to the flat shall be preserved in a separate account and the PAAA to be executed, shall clearly reflect such attachment and the necessary covenants ensuring that upon redevelopment of the whole society, the flat in lieu of Flat No.4 shall be handed over to ED.

5. In compliance of our directions, the Secretary of the Petitioner-society has filed an affidavit in which it is made clear that the Petitioner-society raises no challenge or in no way seek to dilute in any manner, the provisional attachment and its confirmation or even the possession taken by the ED in the wake of the provisions under the PML Act. It is clarified that the only object of the Petitioner-society is to seek permission to carry out the redevelopment of its building, which is more than 44 year old, while preserving the rights of

the ED over the substituted asset, to be created in lieu of Flat No.4.

6. With this background being clearly set out, since the society after issuance of No-Objection Certificate, will be in a position to appoint the Developer, has set out the following safeguards that it shall follow :-

> "4. The Petitioner Society states and assures this Hon'ble Court that it shall ensure, and shall cause the developer to be appointed by the Petitioner Society (***"Developer"***) to ensure, the following safeguards for the Enforcement Directorate:
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> a. **Attachment to continue on the new flat**: The new flat to be constructed and allotted in lieu of existing Flat No. 4 ("***the New Flat"***), including the entire additional area and any parking space or other appurtenant entitlement allotted along with it, shall be the substituted asset for Flat No. 4 and shall continue to remain subject to the attachment under the PMLA and to the possession of the Enforcement Directorate under Section 8(4) of the PMLA, as if it were the property originally attached, and subject to the final outcome of the proceedings pending before the Ld. Special Court (PMLA), Ranchi.
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> b. **Identification at the outset**: The New Flat shall be specifically identified (by flat number, floor, wing and carpet area) in the approved plans and in the PAAA at the time of its execution, and shall not be changed thereafter without the prior written consent of the Enforcement Directorate or the leave of this Hon'ble Court.
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> c. **Possession of the New Flat to the Enforcement Directorate**: Upon completion of the redeveloped building and receipt of the Occupation Certificate, possession of the New Flat shall be handed over only to the authorised officer of the Enforcement Directorate (and not to Respondent No. 3 or any person claiming through him), under a panchnama, unless the Ld. Special Court directs otherwise.
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> d. **Handing over of existing Flat No. 4 for demolition**: Existing Flat No. 4 shall be handed over to the Developer for demolition only by, or in the presence of, the authorised officer of the Enforcement Directorate, after a panchnama recording its condition and any contents is drawn up. The Petitioner Society shall give the Enforcement Directorate not less than 30 days' prior written notice of the proposed date of vacating the building.
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> e. **No transfer or encumbrance**: Neither the Petitioner Society nor the Developer shall transfer, sell, mortgage, lease, license or

otherwise encumber the New Flat, or create any third-party right in it, and the Petitioner Society shall not effect any transfer of the shares or membership relating to Flat No. 4/ the New Flat, except with the leave of the Ld. Special Court (PMLA) or this Hon'ble Court, as the case may be.

f. **Endorsements in the records of the Society**: The Petitioner Society shall record the subsistence of the attachment, and the particulars of the Provisional Attachment Order, the order of confirmation and the possession notice, in its Register of Members (Form I), its List of Members (Form J), its Share Register and on the share certificate relating to Flat No. 4, and shall carry the same endorsement forward to the New Flat.

g. **Disclosure in all redevelopment documents**: The pendency of the PMLA proceedings and the subsistence of the attachment over Flat No. 4 / the New Flat shall be disclosed in the Development Agreement, the Power of Attorney in favour of the Developer, and the PAAA, so that no purchaser or financier can claim to be unaware of the rights of the Enforcement Directorate.

h. **New Flat excluded from the Developer's sale component and from any charge**: The New Flat shall form part of the members' rehabilitation component and shall not be included in the Developer's free-sale component. The Developer shall not create any mortgage or charge over the New Flat in favour of any bank or financial institution for project finance, and any charge over the project land shall expressly exclude the New Flat.

i. **Safeguards to be incorporated in the Development Agreement**: The Petitioner Society shall specifically incorporate each of the safeguards stated in this affidavit, including the restriction on mortgage of the Society's land in clause (h) above, as binding covenants in the Development Agreement to be executed with the Developer. The same covenants shall be carried into the Power of Attorney and any other related document executed in the Developer's favour. The Development Agreement shall expressly provide that:

i. the Developer acknowledges the attachment of Flat No. 4 by the Enforcement Directorate and the pendency of the proceedings under the PMLA;

ii. the Developer's rights under the Development Agreement shall at all times be subject to the rights of the Enforcement Directorate and to the orders of the Ld. Special Court (PMLA) and this Hon'ble Court; and

iii. any breach of these covenants shall be a material breach, entitling the Petitioner Society to terminate the Development Agreement.

j. **Costs to be borne by the Developer**: All stamp duty, registration charges and other costs relating to the PAAA for Flat No. 4 and the New Flat shall be borne by the Developer, and no cost or liability shall be fastened upon the Enforcement Directorate.

k. **Intimation of progress**: The Petitioner Society shall keep the Enforcement Directorate informed in writing of each material stage of the redevelopment, namely, execution of the Development Agreement and the PAAA, grant of the Commencement Certificate, demolition of the existing building, grant of the Occupation Certificate and handing over of the New Flat, together with copies of the relevant documents.

l. **Abiding by the orders of the Special Court**: The Petitioner Society and the Developer shall abide by all orders that may be passed by the Ld. Special Court (PMLA), Ranchi in respect of Flat No. 4. In the event of confiscation, the New Flat and the accruals referred to in Para 5 below shall be dealt with as directed under Sections 8(5) and 9 of the PMLA; and in the event of release, they shall be dealt with as that Court may direct under Section 8(6) of the PMLA.

5. In answer to the specific query of this Hon'ble Court, I state that the entire accruals due in respect of Flat No. 4 under the redevelopment shall be set apart in a separate account, as follows:

a. "Accruals" shall mean every monetary benefit payable by the Developer in respect of Flat No. 4, including transit rent for the entire period of construction and any extension of it, corpus fund or hardship compensation, shifting charges, brokerage, any compensation for delay, any monetary consideration in lieu of additional area, and the interest earned on all such amounts.

b. **Separate, dedicated account**: The Enforcement Directorate may provide the Petitioner Society with the relevant account details where the accruals shall be deposited. The Petitioner Society shall contractually instruct the Developer to deposit all the accruals in respect of Flat No. 4 in the account provided by the Enforcement Directorate.

c. **Payment directly by the Developer**: The Developer shall deposit each accrual directly into the said account on the date it falls due to the other members. No part of the accruals shall be paid to Respondent No. 3 or any person claiming through him, or received or used by the Petitioner Society.

d. **No withdrawal or adjustment**: The Petitioner Society shall not claim, adjust or set off any amount out of the accruals, including any dues claimed in respect of Flat No. 4, except under an order of the Ld. Special Court (PMLA), Ranchi or of this Hon'ble Court."

7. In addition, the affidavit also proceed to state that the PAAA to be executed between the Developer and the society shall specifically contain recitals revolving around the provisional attachment order dated 28/02/2013 and its subsequent confirmation dated 27/08/2013 by the learned Adjudicating Authority and will contain a specific mention about the pendency of the Prosecution Complaint before the learned Special Court (PMLA), Ranchi.

In addition, it is also stated that the new flat shall be identified in the PAAA by its number, floor, wing and carpet area and a specific statement to the effect that it shall be allotted in lieu of Flat No.4, which is presently under attachment of the ED and that the flat shall be delivered to ED, as and when the redevelopment work is complete and the flats are ready to be handed over to the original members. It is also undertaken to include a clause in the PAAA, indicating that the accruals in respect of Flat No.4 shall be deposited by the Developer/society in a separate account designated by ED with the description to be set out therein and shall be at the exclusive disposal of the ED.

8. It is in light of these averments in the affidavit, we have considered the affidavit tendered by ED.

The condition, which the Assistant Director of ED insist upon is, furnishing of a bank guarantee before the existing flat is handed over for demolition and that the bank guarantee shall be renewed from time to time, at the cost of the Developer until the replacement flat is actually delivered to ED and that it shall be liable to be invoked in the event that the replacement flat is not delivered within the outer time limit.

Apart from this, a statement is also made in the affidavit to the effect that a condition shall be imposed that the carpet area of the replacement flat shall not be less than the carpet area of the existing Flat No.4, including the entitlement to the additional area as well as parking and every other appurtenance and amenities which shall be provided. It is also further stated that yet a Developer is not appointed and and what is expected is that every undertaking in regards the Development Agreement to be entered with Developer upon he being selected by the Petitioner-society shall be placed before the Court. Certain other suggestions are also set out in the affidavit and we have perused the same.

We have also heard learned counsel Mr.Mehta, who is insistent upon each of the stipulations in the affidavit to be adhered to.

9. In the light of the affidavit submitted by the Petitioner-society as directed by us, we must observe that the apprehensions expressed by ED in its affidavit are largely taken care of by the affidavit submitted by the Petitioner-society. If certain factors cannot be contemplated today, we do not expect the Petitioner-society as well as the Developer to be bound by them. However, we make it clear that Flat No.4, which is under attachment, will definitely enure to the same benefits, which other members of the society shall be entitled to and the Development Agreement as well as PAAA shall contain a specific mention of the aspect that the flat is under attachment.

However, we do not agree to the suggestion that a Bank guarantee shall be furnished by the Petitioner-society, as we

must note that it is only one flat in the society which is under attachment and we do not intent to put the society under a financial pressure and particularly when the Developer and the terms of development are not yet finalised.

10. We must appreciate the *bona fides* of the Petitioner-society, as it has given a specific undertaking that in the PAAA, all the details of the attachment as well as the proceedings shall be included and not only that, it has also undertaken that any amount which is due and payable towards Flat No.4 in the Petitioner-society in form of any compensation/rent etc. shall be deposited in the account of ED exclusively and not a single farthing shall be transmitted to the accused. In our view, that sufficiently protects the interest of ED.

We also direct the Petitioner-society as well as the Developer, who shall be appointed, to keep the Directorate of Enforcement in the loop, while drafting the Development Agreement as well as the PAAA and the draft so prepared, shall be vetted through ED only as regards Flat No.4.

11. Since the proceedings are pending before the PMLA Court, Ranchi, we also direct that the Directorate of Enforcement shall furnish a copy of the affidavit which is placed before us by the Petitioner-society alongwith the order, which we have passed today before the said Court, so that it should not happen that the Ranchi Court is unaware about the attached property, which is now permitted to be dealt with in a different way, though keeping the interest of ED intact.

12. With this direction and with an undertaking from the Petitioner-society that it shall strictly adhered to the terms and stipulations set out in its affidavit dated 24/09/2026 tendered before this Court, we make the Petition absolute in terms of prayer clause (A).

We direct the Enforcement Directorate to issue a No-Objection Certificate in favour of the Petitioner-society within a period of six (6) weeks from today. We also make it clear that No-Objection Certificate shall be subject to the compliance of the stipulations stated in the affidavit filed by the Petitioner-society.

No order as to costs.

(ASHISH S. CHAVAN, J.) **(BHARATI DANGRE, J.)**