

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

INTERIM APPLICATION NO. 4277 OF 2026

IN

COMMERCIAL SUIT NO. 64 OF 2026

Orchid Builtcon Private Limited

...Applicant

Versus

Minal Co Operative Housing Society Limited & Ors.

...Respondents

WITH

INTERIM APPLICATION (L) NO. 28469 OF 2026

IN

COMMERCIAL SUIT NO. 64 OF 2026

Mr. Harshad Rajeshirke a/w Mr. Dhananjay Chavan and Ms. Tejasvi Salvi, for
the Applicant.

Ms. Riddhi Shah a/w Mr. H. Shah i/b Sarosh Damania, for Respondent No.1.

Mr. S. M. Faisal Warsi, for Respondent Nos.2 and 3.

CORAM : ARIF S. DOCTOR, J.

DATE : 21st AUGUST, 2026

P.C.

1. At the outset, Ms. Shah, Learned Counsel appearing for the Applicant in Interim Application (L) No. 28469 of 2026, seeks leave to withdraw the Interim Application with liberty to adopt appropriate proceedings. Interim Application (L) No. 28469 of 2026 is accordingly dismissed as withdrawn, with liberty as prayed for.

2. Interim Application No. 4517 of 2026 is not on board. The same is taken on board by consent.

3. Given the commonality of facts and issues arising for consideration in Interim Application No. 4277 of 2026 (“the Developer’s Application”) and Interim Application No. 4517 of 2026 (“the Minority Members’ Application”), both Interim Applications were heard together and are being disposed of by this common Order.

Submissions on behalf of the Developer, i.e., the Applicant, in Interim Application No. 4277 of 2026.

4. Mr. Rajeshirke, Learned Counsel appearing on behalf of the Applicant-Developer in Interim Application No. 4277 of 2026, submitted that the Applicant was appointed as the developer for redevelopment of the building belonging to Respondent No. 1-Society (“the said building”), with the approval of an overwhelming majority of its members. He pointed out that, pursuant thereto, a Development Agreement dated 10th September 2024 (“the Development Agreement”) was entered into between Respondent No. 1-Society and the Applicant-Developer.

5. Mr. Rajeshirke submitted that the said building has 14 flats and two garages and that, save and except Respondent Nos. 2 and 3, all other members of the Society consented to the redevelopment on the terms recorded in the Development Agreement. He then invited my attention to Clause 6 of the Development Agreement and pointed out that members occupying parking spaces/garages were entitled to an additional area equivalent to 30% of their existing enclosed garage area, whereas members occupying flats were entitled to an additional area equivalent to 20% of their existing area.

6. Learned Counsel submitted that the redevelopment had not proceeded solely on the ground that Respondent Nos. 2 and 3 were not cooperating with the redevelopment and were refusing to hand over possession of Garage No. 2 and Flat No. 12. He invited my attention to Clause 17.3 of the Development Agreement, to point out that while the obligation to hand over possession was that of the Society, the Developer was specifically authorised to take appropriate steps against any member who failed or neglected to vacate their premises. It was in these circumstances, he submitted, that the Applicant had instituted the present Suit and taken out Interim Application No. 4277 of 2026.

7. Mr. Rajeshirke then also submitted that the refusal of Respondent Nos. 2 and 3 to hand over possession of Garage No. 2 and Flat No. 12 was causing grave prejudice not only to the Applicant-Developer, who had already mobilised resources for undertaking the said redevelopment, but also to the other members of the Society who were out of their homes.

8. Learned Counsel then submitted that it was well settled that dissenting minority members of a Cooperative Housing Society cannot oppose redevelopment once the same is duly approved by the requisite majority. He submitted that in the present case, not only had the overwhelming majority of the members of Respondent No. 1 approved the Development Agreement, but he was at pains to point out that Respondent Nos. 2 and 3 had not even challenged the same.

9. He further pointed out that Respondent No. 2 had initiated proceedings before the Deputy Registrar of Co-operative Societies, *inter alia*, seeking (i) to

restrain the Society from appointing any developer without the consent of Respondent No. 2; (ii) a direction to the Society to measure and demarcate Garage No. 2; (iii) a direction to the Society to declare and notify Garage No. 2 as commercial premises; and (iv) a direction to the Society to enter into a development agreement providing for the allotment of a commercial unit to Respondent No. 2 or, in the alternative, to compensate Respondent No. 2 for the market value of Garage No. 2 in the event of redevelopment. He, however, pointed out that the Deputy Registrar had, vide an Order dated 17th June 2025, failed to grant the contesting Respondents any relief. He also pointed out that this Order had not been challenged by Respondent No. 2.

Submissions on behalf of the Society, i.e., Respondent No. 1 in Interim Application No. 4277 of 2026

10. Ms. Shah, Learned Counsel appearing for the Society, adopted the submissions advanced by Mr. Rajeshirke. She invited my attention to the sanctioned plans of the building in question to point out that the same comprised twelve flats and two garages, including Garage No. 2. She submitted that Garage No. 2 was therefore part of the Society's building/property. She submitted that Garage No. 2 was, at all times and continues to be shown as a garage, and it was on this basis that the same was reflected and dealt with in the Development Agreement.

11. Ms. Shah submitted that just because Respondent No. 2 was using the said Garage No. 2 for commercial purposes would not, in any manner, affect the entitlement of Respondent No. 2 in respect thereof under the Development

Agreement. She submitted that Respondent No. 2, being a member of the Society, was bound by resolutions validly passed by the requisite majority and the terms of the Development Agreement, which she reiterated the contesting Respondents had not even challenged.

12. Ms. Shah further submitted that all the other members of the Society vacated their respective premises as far back as 8th March 2026; however, the redevelopment had been stalled only on account of the obstructionist attitude of Respondent Nos. 2 and 3. She submitted that because of this obstructionist attitude, the other members of the Society were also being deprived of the benefits owing to them, under the Development Agreement, such as the monthly rent and/or other benefits payable under the Development Agreement. She therefore supported the reliefs sought by the Developer in Interim Application No. 4277 of 2026.

Submissions on behalf of the minority members, viz., Respondent Nos. 2 and 3 in Interim Application No. 4277 of 2026 and the Applicants in Interim Application No. 4517 of 2026

13. Mr. Warsi, Learned Counsel appearing for the minority members, at the outset, clarified that Respondent Nos. 2 and 3 did not have any problem in submitting Flat 12 to redevelopment, nor were they averse to the redevelopment *per se*.

14. He submitted that, even in relation to Garage No. 2, Respondent No. 2 was not opposing its handing over for redevelopment but was only seeking “to be suitably compensated” for doing so. He submitted that Garage No. 2 was, in

substance, an independent commercial unit, in respect of which the Society has issued to Respondent No. 2, a separate share certificate. He submitted that Respondent No. 2 had, for the last 40 years, used Garage No. 2 as an independent commercial premises and that the Municipal Corporation had even issued a licence under the applicable Shops and Establishments legislation in respect thereof. He further submitted that Garage No. 2 had been separately assessed and billed for electricity and maintenance charges, which has also been independently paid by Respondent No. 2. All these factors, he submitted, would entitle Respondent No. 2 to be suitably compensated by the Developer treating Garage No. 2 as an independent flat/unit of the society.

15. Mr. Warsi then placed reliance on the decision of the Hon'ble Supreme Court in *Nahalchand Laloochand Pvt. Ltd. v. Panchali Co-operative Housing Society Ltd.*¹ to submit that a garage sold under a registered document does not constitute a common area and that, upon redevelopment, its owner is entitled to an equivalent replacement or proportionate compensation. He also placed reliance on the decision of this Court in *Mistry Park CHS Ltd., Mumbai v. Dr. Bharat Prem Shivdasani & Ors.*² to point out that the Court had held that membership of a society could not be denied to a person owning a garage, which constituted an independent structure in respect of which a share certificate had been issued by the Society.

16. Mr. Warsi then also pointed out that Respondent Nos. 2 and 3 had instituted Suit No. 556 of 2026 before the City Civil Court at Dindoshi against

1 (2010) 9 SCC 536.

2 2023 SCC OnLine Bom 3002.

the Society as well as the Developer, seeking protection against the forceful eviction of Respondent Nos. 2 and 3 from their respective premises in the said building. He submitted that the Applicant-Developer had, in the said Suit, made a statement to the effect that the Developer did not intend to forcefully evict Respondent Nos. 2 and 3. He submitted that the Applicant-Developer despite this solemn statement, was now taking steps to take possession of Garage No. 2 for the purposes of redevelopment.

17. Mr. Warsi therefore submitted that Respondent No. 2 ought to be suitably compensated in respect of Garage No. 2, as it was an independent unit that was being used for commercial purposes. He stated that, upon such compensation being paid, Respondent No. 2 would have no objection to handing over possession of Garage No. 2 to the Applicant.

18. Mr. Rajeshirke, learned Counsel appearing for the Applicant-Developer, then stated on instructions that, should Respondent No. 2 succeed in appropriate proceedings in establishing that Garage No. 2 constitutes an independent commercial unit and/or that Respondent No. 2 is otherwise entitled to redevelopment benefits different from those presently offered under the Development Agreement, the Developer shall extend to Respondent No. 2 such additional area, compensation and/or redevelopment benefits as may consequently be found due and payable. He submitted that this statement can be accepted as an undertaking given to the Court.

19. After having heard the Learned Counsel for the parties and having considered both the material and case law upon which reliance has been placed,

I have no hesitation in holding that Interim Application No. 4277 of 2026 must succeed, and even otherwise, Interim Application No. 4517 of 2026 must be rejected. I say so for the following reasons, viz.

- A. It is not in dispute that, save and except Respondent Nos. 2 and 3, all the other members of Respondent No. 1-Society have consented to the redevelopment and have executed the Development Agreement. Crucially, Respondent Nos. 2 and 3 have not challenged the Development Agreement and have fairly stated, in the course of arguments, that they are not averse to the redevelopment but only seek “*to be suitably compensated*” in respect of Garage No. 2. Thus, the dispute raised by Respondent Nos. 2 and 3 is not with the redevelopment *per se*, but with the entitlement claimed in respect of Garage No. 2 under the Development Agreement.
- B. It is now well settled that minority dissenting members of a society cannot ordinarily oppose redevelopment which has been duly approved by the requisite majority of its members. Any individual right or entitlement asserted by such members may be preserved and adjudicated in appropriate proceedings without, in any manner, frustrating the duly approved redevelopment. In the present case, all the members of Respondent No. 1-Society have executed the Development Agreement, save and except Respondent Nos. 2 and 3. As already noted, Respondent Nos. 2 and 3 are not averse to the redevelopment *per se*, but the grievance is confined only to first “being

suitably compensated” in respect of Garage No. 2. Such a grievance cannot, in my view, justify Respondent No. 2 refusing to hand over possession of Garage No. 2 and thereby stalling the redevelopment of the entire Society.

- C. Even if I were to assume that Garage No. 2 constitutes an independent commercial unit akin to a flat, that by itself would not justify Respondent Nos. 2 and 3 refusing to hand over possession thereof for redevelopment. The claim of Respondent No. 2 is essentially one of entitlement to particular redevelopment benefits in respect of Garage No. 2. It is indeed curious as to how Respondent No. 2 can on the one hand claim that the redevelopment is not being opposed and yet on the other refuse to hand over possession of Garage No. 2 solely on the ground that Respondent No. 2 first seeks “to be suitably compensated” in respect thereof.
- D. If Respondent No. 2 asserts that Garage No. 2 constitutes an independent commercial unit or a separate flat, it would necessarily be for Respondent No. 2 to establish that assertion in appropriate proceedings. The mere assertion of such a claim does not, in the facts of the present case, entitle Respondent No. 2 to obstruct the redevelopment duly approved by the requisite majority of the Society members. Indeed, the reliefs sought by Respondent Nos. 2 and 3 before the Deputy Registrar in relation to Garage No. 2 were not granted, and, as noted earlier, that order has not been challenged.

- E. There can be no quarrel with the propositions of law laid down in *Nahalchand Laloochand Pvt. Ltd.* and *Mistry Park CHS Ltd.* However, in my view, neither of these decisions would in any manner support the stand taken by Respondent No. 2 in refusing to hand over possession of Garage No. 2 for redevelopment by first “being suitably compensated” for Garage No. 2, nor would these decisions entitle Respondent Nos. 2 and 3 to stall the entire redevelopment solely on the basis of Respondent No. 2’s claimed entitlement in respect of Garage No. 2. The nature and extent of that entitlement, if any, must be determined in appropriate proceedings and cannot obstruct the redevelopment in the meantime.
- F. Significantly, Mr. Rajeshirke, the Learned Counsel appearing for the Applicant-Developer, has stated on instructions that, should Respondent No. 2 succeed in appropriate proceedings in establishing that Garage No. 2 constitutes an independent commercial unit and/or that Respondent No. 2 is otherwise entitled to redevelopment benefits different from those presently offered under the Development Agreement, the Developer shall extend to Respondent No. 2 such additional area, compensation and/or redevelopment benefits as may consequently be found due and payable. In my view, this adequately safeguards the interests of Respondent No. 2 while ensuring that the redevelopment is not stalled in the meantime.

20. In the aforesaid circumstances, the balance of convenience is clearly in favour of permitting the redevelopment to proceed while preserving Respondent No. 2's rights and contentions concerning Garage No. 2 for adjudication in appropriate proceedings.

21. For the aforesaid reasons, the following Order is passed.

ORDER

- i. Interim Application No. 4277 of 2026 is allowed in terms of prayer clauses (a) and (b).
- ii. Consequently, Interim Application No. 4517 of 2026 is dismissed.
- iii. All rights and contentions of Respondent No. 2 in respect of Garage No. 2, including as regards its alleged status as an independent commercial unit and/or the redevelopment benefits or compensation claimed in respect thereof, are expressly kept open to be agitated in appropriate proceedings.
- iv. The statement made by Mr. Rajeshirke, the Learned Counsel appearing for the Applicant-Developer, recorded in paragraph '18.' is accepted as an undertaking given to this Court.
- v. The observations in this Order are strictly only for the purpose of deciding the present Applications and shall have no bearing on any other legal proceedings which are either pending or to be initiated between the parties. All rights and contentions of the parties are expressly kept open.

[ARIF S. DOCTOR, J.]