

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

WRIT PETITION (L) NO. 1939 OF 2016

Dinanath Co-operative Housing }
Society Ltd. }
a Co-operative Housing Society }
registered under M. C. S. Act, }
1960 having it's registered office }
at "Dinanath Building", Sahyog }
Nagar, Four Bungalows, }
Andheri (W), Mumbai - 400 053 } Petitioner

versus

1. The State of Maharashtra }
through Secretary, Department }
of Land Revenue, Mantralaya, }
Mumbai - 400 032 }

2. The Hon'ble Minister, }
Social Justice and Special }
Assistance Division, the State of }
Maharashtra, Mantralaya, }
Mumbai - 400 032 }

3. The Assistant Commissioner, }
Social Welfare Department, }
having his office at 4th floor, }
new administrative office, }
Ramkrishna Chemburkar Marg, }
Mumbai - 400 007 }

4. M/s. Sagar Developers, }
a registered partnership firm }
having it's address at L-1-A, }
Balkrishna Co-operative Housing }
Society Ltd., J. P. Road, }
Andheri (W), Mumbai - 400 053 }

5. Mr. Pravin Samadhan Bhotkar }
residing at Flat No. B/1501, }
Regency Crest, Sector No. 19, }
Kharghar, Navi Mumbai }

6. Deputy Chief Engineer, }
Mumbai Building Proposal, }
Municipal Corporation, }
R. K. Patkar Marg, Bandra (W), }
Mumbai - 400 050 }

Mr. N. N. Bhadrashete for the petitioner.

Mr. G. S. Godbole with Mr. Mr. Milind
More - Additional Government Pleader
for respondent nos. 1 to 3.

Mr.Milind Deshmukh for respondent no.4.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

Reserved on 30th September, 2016
Pronounced on 8th December, 2016

Judgment :-

1. Rule. Respondents waive service. By consent of both sides, Rule is made returnable forthwith.

2. By this writ petition under Article 226 of the Constitution of India, the petitioner seeks a writ of Certiorari or any other order or direction in the nature thereof calling for the records and proceedings in respect of orders dated 8th June, 2016 and 8th July, 2016 passed by respondent nos. 2 and 6 and after ascertaining their legality, propriety and correctness, the same be quashed and set aside.

3. The petitioner is a co-operative housing society registered under the Maharashtra Co-operative Societies Act, 1960. The first respondent is the State of Maharashtra and the second respondent is the Minister in-charge of the Department of Social Justice and Special Assistance, Government of Maharashtra. The third respondent is the Assistant Commissioner in the Social Welfare Department, whereas, respondent no. 4 is a registered partnership firm of builders and developers. Respondent no. 5 is not the member of the petitioner society and who filed a complaint with respondent nos. 2 and 3, based on which, the order dated 8th June, 2016 and impugned in this writ petition is passed. Respondent no. 6 is an official of the Municipal Corporation of Greater Mumbai and in-charge of scrutiny of the building proposals. He has passed the subsequent order dated 8th July, 2016.

4. The relevant facts for appreciating the rival contentions are briefly set out hereinbelow.

5. Respondent no. 1, with a view to provide houses to the persons from backward class, formulated a scheme commonly known as PWR-219. The Collector, Mumbai Suburban Division, under the said scheme known as PWR-219, allotted a plot of land to the petitioner society being Plot No. 14 forming part of Survey

No. 111-D, CTS No. 825/1/4 situate at village Amboli, Andheri (W), Mumbai - 400 053, to enable the petitioner society to construct building/s thereon comprising of flats and to allot the same to its members. On receiving said plot, Maharashtra Housing and Area Development Authority (MHADA) constructed three buildings, in all comprising of 60 flats and gave possession thereof in October, 1977. The petitioner, after taking a loan from the Maharashtra State Housing Finance Corporation Ltd., a co-operative society registered under the provisions of Maharashtra Co-operative Societies Act, 1960, carrying on business of lending amounts to housing societies throughout Maharashtra State, paid the construction cost. Each building comprising ground plus upper four floors consisting of 20 flats without lift service, totalling 60 flats were constructed and the said 60 flats were allotted to its members. As a result, there are 60 residential flats and equal number of members, namely, 60 members of the petitioner society.

6. With the passage of time and more particularly since the said three buildings having been constructed in 1969-1972 or so more than 30 years old, their condition had deteriorated. They were not in sound and good condition. There were cracks in the RCC members, steel reinforcement was exposed at various places

and had been corroded at various places, cracks developed in the walls, plaster had fallen out at various places with the result in rainy season in almost all the flats there was leakage. The Municipal Corporation of Greater Mumbai had repeatedly inspected the said buildings and at each time, issued notices under section 354 of the Mumbai Municipal Corporation Act, 1888 thereby informing the petitioner society that the buildings were in ruinous condition, likely to fall and dangerous to any person occupying, residing in or passing by the same, as more particularly set out in the said notice. Thus, since the year 2007, the Municipal Corporation of Greater Mumbai had issued notices under section 354 of the said Act continuously pointing out the ruinous condition of the said property.

7. Ultimately, the Ward Officer, K/West Ward of the Municipal Corporation issued a caution notice dated 19th June, 2010 to the petitioner society informing them that the said buildings were in dilapidated condition and called upon for urgent structural/drainage repairs and immediate remedial measures were directed to be taken, failing which, in case of any mishap, the Municipal Corporation would not be responsible for any damage and loss of life.

8. The Municipal Corporation, through its Senior Legal Assistant, filed a complaint in the Court of the Metropolitan Magistrate, 39th Court at Vile Parle, Mumbai being CC No. 7305/SS/2010 on 30th September, 2010 against the chairman and the secretary of the petitioner society complaining that they were liable for action under section 354 of the Mumbai Municipal Corporation Act, 1888 read with penal section 475-A(1)(a) of the said Act. Pursuant to the said complaint, summons dated 22nd November, 2010 were issued to the chairman and secretary of the petitioner society. The petitioner states that in view of demolition of the said three old buildings, the said case is closed on 8th August, 2012.

9. It is stated that having taken into account the deteriorating condition of the said property, leakages in various flats, cracks developed in RCC members etc., the petitioner society initiated the process of redevelopment of the said plot.

10. The petitioner society had published a notice dated 22nd December, 2002 informing members to bring quotations for redevelopment of the suit property from builders/developers known to them.

11. Pursuant to the said notice, respondent no. 4 submitted its quotation dated 27th March, 2003 on the terms and conditions as mentioned therein. Respondent no 4's said offer was discussed in the Special General Body Meeting dated 15th June, 2003 convened by the petitioner society and being satisfied with the respondent no. 4's offer, the Special General Body of the petitioner society passed a resolution appointing respondent no. 4 as the developer for the redevelopment of the said plot by demolishing the then existing three buildings comprising of 60 flats.

12. Respondent no. 4 had agreed to provide each one of the said 60 members with a 575 square feet (carpet area inclusive of balcony) flat comprising of two bed rooms, kitchen and a hall with all modern amenities, in addition Rs.4,00,000/- towards the corpus fund and a further amount for paying registration and stamp duty for an area exceeding 418 square feet, if applicable/payable.

13. In the General Body Meeting held on 29th January, 2006, in view of increase in Transferable Development Right (TDR) rates and more particularly taking into account the period of three years that had since passed (the offer of respondent no. 4 was of 27th January, 2003) the petitioner society allowed an increase in

the area for commercial use in the redeveloped buildings from 6000 square feet to 9000 square feet and resolved to execute a written development agreement.

14. In all 55 out of 60 members of the petitioner society had granted their irrevocable consent for the redevelopment project on the said plot. This consent was in the form of letters addressed by each member to respondent no. 4.

15. After considering the suggestions received from some of its members, the petitioner society executed a development agreement dated 22nd September, 2007 for the redevelopment project of the said property in favour of respondent no. 4 on the terms and conditions more particularly set out therein.

16. On or about 30th January, 2008, 14 out of 60 members of the petitioner society filed a complaint before the Consumer Disputes Redressal Forum, Suburban District Bandra, Mumbai against the petitioner, respondent no. 4 and its partners, respondent no. 3 etc. challenging said development agreement and for various other reliefs, more particularly sought therein. The said complainants also filed an application for interim reliefs therein. Initially, the District Consumer Forum granted an ex-parte ad-interim status quo on 27th June, 2008. However, after

hearing all parties at length, the District Consumer Forum vacated the said ad-interim status quo order that was passed earlier by giving a detailed reasoned order dated 20th February, 2009. Respondent no. 3, being party to the said proceedings, did not object to the redevelopment on the ground, inter alia, that their no objection had not been taken or for any other reason. The petitioner states that subsequently by an order dated 7th June, 2011, the said Complaint No. 52 of 2008 has been dismissed on merits.

17. The petitioner society, in Special General Body Meeting, on 15th March, 2009, resolved to execute supplementary agreement. Accordingly, the parties executed an agreement dated 22nd June, 2009 to amend the development agreement dated 22nd September, 2007. The said agreement is duly stamped and registered with Sub-Registrar of Assurances at Mumbai. The said development agreement dated 22nd September, 2007 was amended by the agreement dated 22nd June, 2009.

18. The petitioner states that by its letter dated 11th April, 2008, respondent no. 4, believing in good faith that permission of respondent no. 3 is needed for redevelopment of the said plot, had applied to the Administration Officer, Social Welfare Department, Government of Maharashtra, namely, respondent no. 3 to grant its no objection certificate (NOC) for:-

(a) Redevelopment of the plot of the petitioner society by using plot FSI;

(b) By using benefit of FSI by way of Transfer of Development Rights (TDR) available in view of Regulation No. 34 of D. C. Regulations of MCGM.

19. In response thereto, by its reply dated 7th June, 2008, respondent no. 3 informed the petitioner that for redevelopment of society's plot, covered under Scheme PWR-219, no provisions are made in the said scheme of grant of NOC by the said Department.

20. In these circumstances, respondent no. 4 believed in good faith that the permission of the Social Welfare Department was not necessary for redevelopment by using plot FSI and using additional FSI by way of TDR.

21. The petitioner states that in the meantime, respondent no. 1 had issued circular dated 26th June, 2009, in the facts and circumstances mentioned therein, providing guidelines in respect of redevelopment of a plot of the society covered under PWR-219 Scheme. Under the said circular, it is provided, inter alia, as under:-

(a) In the place of a member from Backward Community, if society is accepting new member, such new member should also be from the same community;

- (b) Before taking up work of redevelopment, Government's permission is mandatory;
- (c) Certain amount, as mentioned therein be deposited and the Government shall have sole power to increase members in such society.

22. In the circumstances, respondent no. 4, in compliance of its various obligations contained in the development agreement, for the purpose of redevelopment of said plot, took various irreversible steps and obtained numerous permissions, approvals, sanctions, orders etc., as more particularly set out hereinbelow.

23. Respondent no. 4 and the petitioner followed up an application made to the Municipal Corporation of Greater Mumbai for getting the building plans sanctioned. The Municipal Corporation of Greater Mumbai issued the Intimation of Disapproval (IOD) dated 9th June, 2009. Subsequently it is amended, extended sanctioning the building plans for the redevelopment of said plot.

24. Respondent no. 4 has purchased the Development Rights Certificate (DRC). By giving the details of the petitioner society's plot, where the said DRC was proposed to be used (such as location and Building File No. CE/9359/WE/AK C.T.S. No. 825/1/4, Plot No. 14, village Ambivali, Andheri (W), Mumbai 400 053 and for purchasing the said DRC, respondent no. 4, through

the petitioner, paid a huge sum of Rs.5,27,26,378/- and also paid the stamp duty of Rs.15,81,791/- thereon.

25. The petitioner states that since the said Plot No. 14, forming part of Survey No. 111-D, CTS No. 825-1/4 situate at village Ambivali, Andheri (W), Mumbai 400 053 was allotted to the petitioner society by the Collector, Bombay Suburban District, permission of the Collector was required for redevelopment and the said permission was obtained. For obtaining permission from the Collector, the petitioner society, by its request letters dated 12th June, 2008 and 21st March, 2009 had requested the Collector to grant permission as prayed therein.

26. The Collector, Bombay Suburban District, by its report dated 18th June, 2009, forwarded his recommendations to the State Government and the State Government, by its order dated 30th April, 2010 permitted the demolition of the existing buildings and the reconstruction of a new building, subject to various terms and conditions mentioned therein, including 10% of the market value of said property to be deposited with the Government, MCGM's permission be obtained for use of TDR, for using 15% of area for commercial purposes, the additional lease rent and other fees to be paid as mentioned in Government Resolution dated 7th September, 2007.

27. By letter dated 5th May, 2010, the Collector informed the petitioner society to deposit an aggregate sum of Rs.1,27,38,000/- comprising Rs.1,24,56,000/- towards additional lease rent, Rs.31,14,000/- towards use of TDR and Rs.18,68,000/- towards use of 15% of constructed area for commercial use.

28. By letter dated 6th May, 2010, the State Government informed the Collector of the various terms and conditions in furtherance to its order dated 30th April, 2010. The petitioner states that by the said order, respondent no. 1 has provided that in case of additional members, in view of use of TDR and additional FSI, 20% of such additional members should be the from Backward Class and remaining 80% members from Open Class.

29. In response to demand dated 5th May, 2010 issued by the Collector, Bombay Suburban District, under its covering letter dated 19th May, 2010, respondent no. 4, through the petitioner, deposited the said sum of Rs.1,74,38,000/- by Demand Draft dated 20th May, 2010 drawn by Punjab National Bank with the Collector. The petitioner states that in furtherance of the permission dated 5th May, 2010 granted by the Collector, the society, through its Secretary, has executed guarantee bond and submitted to the office of the Collector.

30. The petitioner states that, on paying to the Collector, a sum of Rs.1,74,38,000/-, by Pay Order No. 059475 dated 20th May, 2010 issued by Punjab National Bank, Borivali (W) Branch, Mumbai (in fact it is payment made by respondent no. 4 through the society), the Collector issued order dated 21st May, 2010 granting permission for redevelopment of the society's plot, to use 100% permissible TDR on the said plot and to use 15% constructed area for commercial area.

31. Accordingly, respondent no. 4 obtained all the requisite permissions required for the redevelopment of the said plot and called upon the petitioner society to get its 60 flats vacated from its members and handover the vacant and peaceful possession of the said three buildings to enable respondent no. 4 to demolish the said buildings and complete the redevelopment in accordance with sanctioned plans. In response to respondent no. 4's said request, 42 out of 60 members of the petitioner society vacated and handed over quiet vacant and peaceful possession of their respective flats to the petitioner society and in exchange thereof, respondent no. 4 has paid each of the said 42 members the requisite monthly rent, shifting charges, brokerage and corpus fund. However, 18 out of 60 members refused to co-operate resulting in disputes and differences.

32. As provided under the said development agreement, each one of the said 42 members have been paid a monthly rent Rs.16,000/- for first 2 years and 17,000/- then onwards towards rent amount, as they are occupying alternate accommodation on rental basis.

33. As mentioned hereinabove, respondent no. 4 has paid huge amounts to purchase TDR for the purpose of redevelopment of the suit property, paid a sum of Rs.1,74,38,000/- to the learned Collector and Municipal Corporation of Greater Mumbai for getting permissions.

34. The petitioner states that the building plans for the redevelopment project of the said property was sanctioned, all the requisite permissions were obtained and since 9th June, 2009, respondent no. 4 was following up with the petitioner society to get the possession of remaining 18 flats. However, said 18 members failed and neglected to handover possession of their flats to the petitioner despite being bound and liable to do so under the development agreement. In the circumstances, the petitioner society filed Dispute No. 279 of 2011 in the Co-operative Court, Mumbai praying for possession of the said 18 flats from the said 18 non-co-operative members. The said 18 non-co-operative members filed a separate dispute being Dispute

No. 231 of 2010 challenging redevelopment. Both disputes were heard on merits. After recording evidence and by judgment and order dated 9th May, 2012, the dispute filed by the society was decreed and dispute filed by the said 18 members was dismissed. The said 18 members, thereafter, filed appeals. By judgment and order dated 9th November, 2012, said appeals were dismissed.

35. Respondent no. 4 had filed Suit No. 1020 of 2011 in this court praying, inter alia, for specific performance of said development agreement and moved Notice of Motion No. 1445 of 2011 praying for interim relief. In the said suit, all parties thereto, including the said 18 members, filed consent terms duly signed and accordingly, this court passed decree dated 9th May, 2013 in terms of the said consent terms. In these circumstances, remaining 18 members, in view of the consent terms and order dated 9th May, 2013, vacated and handed over their respective flats.

36. In these circumstances, respondent no. 4 demolished the said three old structures and constructed two multi floor towers, namely, Wing 'A' comprising in all 50 flats and Wing 'B' comprising 60 flats to be given to the existing members of petitioner society. Respondent no. 4 is entitled to deal with, dispose of the said 50 flats. The petitioner states that accordingly

50 flats in Wing 'A' are from saleable component and accordingly, respondent no. 4 has a right to deal with, dispose of, alienate the said flats and recover its cost that respondent no. 4 has incurred from time to time and towards its profit. The petitioner states that out of 50 flats generated from the use of TDR and in the process of redevelopment (over and above society's earlier 60 flats) as per conditions imposed by the Government and Collector, respondent no. 4 has to sell 20% of it, namely, 10 flats to the members from Backward Class and remaining 80% flats, namely, 40 flats can be sold to the members of Open Class. Respondent no. 4 has furnished a list showing that so far respondent no. 4 has agreed to sell 25 flats and has received substantial amount in relation to them.

37. The petitioner states that the election authority constituted under the Co-operative Societies Election Rules, 2004 appointed one Mr. Rahul Patil to conduct election process for electing managing committee for the period 2015-2020. The said election officer conducted election on 18th July, 2015, declared elected 9 members of managing committee and thereafter, in the meeting held on 25th July, 2015, the said elected members of managing committee elected office bearers including Chairman, Secretary etc.

38. The petitioner states that one Mr. Laxman Tukaram Kadam, a member of the petitioner society, belonging to Backward Community and eligible to become member of the petitioner society was duly approved by the Social Welfare Department and accordingly, he was admitted to the membership and was allotted Flat No. 15 and thus, he was and is continuing to be a member from 1977 or so. The said member filed nomination dated 19th November, 2014, thereby nominating his son one Mr. Parag Laxman Kadam as a nominee and he had filed separate application, thereby requesting the petitioner society to join his son Mr. Parag Laxman Kadam as associate member. On the said application, the said Mr. Parag Laxman Kadam was admitted as associate member continuing Laxman Kadam as a member.

39. The petitioner states that there are 60 members and respondent no. 4 has to provide 60 flats each of the area mentioned in the development agreement as and by way of permanent accommodation to the existing 60 members. Accordingly, respondent no. 4 has constructed Wing 'B' comprising in all 60 flats of the area and providing facilities, as provided in the development agreement. The said building is comprising of stilt + 2 podium floors for parking vehicles + 20 floors thereon.

40. By using TDR and remaining plot FSI available under D. C. Regulations, respondent no. 4 has constructed a building known as Wing 'A' comprising 50 flats. It consists of stilt + 2 podium levels and 17 floors thereon, comprising 50 flats of different sizes. Respondent no. 4 has right to sell the said 50 flats in view of the terms and conditions agreed upon by and between the petitioner and respondent no. 4. The petitioner states that as on the date, respondent no. 4 has already sold about 25 flats to the intending buyers. The petitioner states that as per the permissions granted by respondent no. 1, vide permission dated 30th April, 2010 (Exhibit 'H') read with subsequent letter/permission dated 5th May, 2010 (Exhibit 'I') from the office of the Collector Bombay Suburban District, respondent no. 4 is obliged to sell 20% of the said 50 flats, namely, 10 flats to the members from Backward Class in accordance with the said permission or to take steps as provided from time to time by respondent no. 1 and/or the Collector.

41. The petitioner states that as on date, entire work is complete except final internal painting coat, electric sub-station work and car stack parking.

42. The petitioner states that respondent no. 4 has been paying per member per month Rs.22,000/- by way of licence fee to enable

the said 60 members to obtain alternate premises for their occupation and accordingly has been and still paying Rs.13,20,000/- per month and in addition thereto, brokerage at the end of every 11 months equivalent to one month's licence fee.

43. The petitioner states that 42 members out of the said 60 members have vacated their respective premises in 2009 and since then they have been paid the rent, as agreed upon, including brokerage from time to time. So far as remaining 18 members out of 60 members, they vacated their respective premises in 2013 and since they have also been paid the monthly rent, brokerage etc.

44. The petitioner states that the members are out of their premises for last about 6 to 7 years and are eagerly awaiting for their premises. As on the date as per details given, respondent no. 4 has spent a sum of Rs.67,69,96,602/- towards rent, premium to the Government for obtaining various permissions, on construction etc.

45. The petitioner states that respondent no. 4 was making preparations through its architect to apply for and obtain Occupation Certificate and is hoping that by the end of July, 2016, they would be able to obtain Occupation Certificate and

handover premises to respective purchasers and to the members of the society in accordance with orders passed by various courts from time to time.

46. The petitioner states that respondent no. 5, who is neither member of the petitioner society nor in any way concerned with the petitioner, its members and for the redevelopment undertaken by the petitioner, appears to have made a complaint dated 17th February, 2016, making various false and frivolous allegations. In fact he has no locus to make any grievance as alleged or even otherwise. From the endorsement of the said complaint dated 17th February, 2016, it appears that on the basis of the said complaint, respondent no. 2 ordered to submit a report.

47. The petitioner society received on 20th February, 2016 a copy of a show cause notice dated 11th February, 2016 issued by respondent no. 3 herein contending, inter alia, that guidelines provided in Government Resolution dated 26th June, 2009 have been violated.

48. The petitioner society received intimation dated 23rd February, 2016 issued by the office of respondent no. 2 stating that hearing of complaint of respondent no. 5 is fixed on 2nd March, 2016 and subsequently it was adjourned to 18th March, 2016.

49. The petitioner further states that respondent no. 3 further recommended to the Deputy Registrar, Co-operative Societies to appoint an Administrator on the grounds alleged therein.

50. The petitioner states that on 28th April, 2016, in the office of respondent no. 2, hearing took place. The petitioner society filed its reply dated 28th April, 2016 and made submissions.

51. The petitioner states that on 9th July, 2016 one Mr. Raju, representative of Mr. Pravin Dabholkar delivered to the Secretary of the petitioner society a letter dated 5th July, 2016 addressed by respondent no. 3 to the petitioner society along with various annexures thereto, including order dated 8th June, 2016 passed by respondent no. 2, Government Circular dated 26th June, 2009 and various other documents. Accordingly, for the first time, the petitioner society received copy of the said order dated 8th June, 2016, from the office of respondent no. 3 as annexure to its letter dated 5th July, 2016.

52. The petitioner states that on 11th July, 2016, the petitioner received order dated 8th July, 2016 issued by respondent no. 6 thereby ordering stay to the further redevelopment work in view of stay order dated 8th June, 2016 issued by respondent no. 2.

53. On this petition and when it was moved before a division bench of this court, the following order was passed on 4th August, 2016:-

“1. An affidavit-in-reply is tendered by Mr. More, learned AGP appearing for Respondent Nos. 1 to 3, in which the Minister's interference is justified by stating that there are several complaints about the working of the Petitioner-Society and that the Petitioner-Society, comprising of members of the backward classes and to whom the Government land was allotted, was expected to work for the protection and safeguarding of the interest of such members, but was found to be acting contrary thereto.

2. Upon a specific query from the Court that, after registration as a Co-operative Housing Society and as an independent legal entity under a distinct legal Statute, namely, Maharashtra Co-operative Housing Societies Act, 1960 and the Rules framed thereunder, can the Government take up the issues of its internal working and issue any directions, much less, staying any decision or resolution of the Society, Mr. More states that today he is not ready and would study the law and would assist the Court on the next occasion.

3. Stand over to 10th August 2016.”

54. In pursuance of that order, an affidavit in reply has been filed on behalf of respondent no. 2. In that affidavit, respondent no. 2, while denying and disputing the basic facts, urges that the fifth respondent made an application on 27th February, 2016. That was an application/complaint addressed to the Hon'ble Minister, Department of Social Justice and Special Assistance, Government of Maharashtra. The fifth respondent alleged that there are many irregularities and illegalities in redevelopment of

the said property. He complained that there is an injustice to the Backward Class members. They are the real beneficiaries of the scheme and they are suffering on account of these alleged irregularities and illegalities. Since the complaint was very serious, the State took cognizance of the same. Some directions were issued on 2nd March, 2016 by the Hon'ble Minister. He called for a report from the Field Officer, namely, the Assistant Commissioner of Social Welfare. A hearing was also arranged before the Hon'ble Minister. On 28th April, 2016, a hearing was arranged before the Hon'ble Minister and on 28th April, 2016, the petitioner society through their advocate, their two members, the complainant/respondent no. 5 and the Assistant Commissioner, Social Welfare (respondent no. 3) were present. After giving full opportunity of being heard, the Hon'ble Minister arrived at a conclusion that there are serious irregularities and illegalities. Hence, it will be proper to stay the further redevelopment of the said property. It is in these circumstances that the Hon'ble Minister was pleased to grant interim stay to the reconstruction of the property. Accordingly, a detailed order was prepared and issued on 8th June, 2016.

55. On the first contention that the order is passed without jurisdiction, reliance is placed in this affidavit on Rule 10(1) of

the Rules of Business of the Government of Maharashtra, framed under Article 166(2) and (3) of the Constitution of India. The Minister of a Department is primarily responsible for disposal of work related to his Department. It is in these circumstances that it is stated that when the complaint was made, the Minister was not powerless to take cognizance of the same and to take further action. Accordingly, an interim order was passed on this complaint in due compliance with the principles of natural justice. The petitioner, therefore, cannot allege want of jurisdiction or power so also the authority of the Hon'ble Minister. The writ petition is premature. Then it is contended in para 6 that the findings in the order dated 8th June, 2016 are not perverse. They are based on the stipulation that the petitioner society has not obtained permission of Social Justice and Special Assistance Department for change in members while redevelopment of the property. This condition is specified at Sr. No. 2 in para no. 3 of the Government Resolution dated 26th June, 2009 issued by the Social Justice and Special Assistant Department. A copy of this Government Resolution is annexed to the affidavit.

56. It is contended that it is incorrect to say that there were 60 members prior to the redevelopment and they continued as members of the society. It is alleged that the petitioner has

allowed unauthorised persons (who are not members of the society) to sign various important documents. A report was called for from the Assistant Commissioner, Social Welfare, Mumbai on the complaint of respondent no. 5. At that time, it was revealed that the persons, who are not members of the society, have voted during the election of the society. The society has not obtained permission for transfer of membership to the heirs of the original members. It is in these circumstances that the society, namely, the petitioner is called upon to produce the list of original members.

57. Then, it is contended that it may be that by the letter dated 5th May, 2010, the Revenue and Forest Department has directed the Collector of Mumbai Suburban District that so far as the flats out of TDR are concerned, there should be a ratio of the members as 20% from Backward Class and 80% from Open Class category. However, this is a mistake. The attention of this court is invited to para 6 of Government Resolution dated 25th May, 2007 issued by the Revenue and Forest Department, in which, it has been clearly mentioned that the lands allotted to the Backward Class under the PWR-219 are free of cost. The allotment under this scheme is on specific conditions. This scheme is implemented by the Social Justice and Special Assistant Department. In this light

of this clear provision, the Revenue and Forest Department has no jurisdiction to interfere in this scheme. Therefore, the letter dated 5th May, 2010 is without jurisdiction. The petitioner society never applied to the Department of Social Justice and Special Assistance. It is an admitted fact that under the PWR-219 Scheme, the ratio of the members of a Backward Class society is 90% Backward Class and 10% Open Class members. Even if the flats are available out of the TDR, the fact remains that the land was allotted in terms of the above scheme. Hence, the ratio does not change. The petitioner has not maintained this ratio. Hence, it is incorrect to state that there is no violation.

58. In para 9 of this affidavit, it is stated that there are complaints of various members and other persons against the petitioner society and copies of these complaints are on the file of the said respondent.

59. Finally, it is alleged that it was the duty of the petitioner society to take permission from the Social Justice and Special Assistance Department for redevelopment of the property. At the same time, it is stated that respondent no. 4, who is the developer, had submitted an application to this very Department, but as far as this scheme (PWR-219) is concerned, the developer has no role. Therefore, his application was not entertained by the

Department. It was for the petitioner society to apply and obtain necessary permission. Hence, the Social Justice and Special Assistance Department is not estopped from insisting upon the necessary permission. Once again, it is stated that the Revenue and Forest Department and the Social Justice and Special Assistance Department are two different Departments implementing different schemes. The PWR-219 Scheme is under the control of the Social Justice and Special Assistance Department and the Collector, Mumbai Suburban District has no power to waive any of the conditions prescribed by the Social Justice and Special Assistance Department. Hence, it is not admitted that the Social Justice and Special Assistance Department is not concerned with the use of TDR. The TDR has been granted on the land which was allotted under the PWR-219 Scheme. The petitioner cannot take benefit under this scheme and at the same time expect that rules and regulations of the said scheme would be relaxed. For all these reasons, it is submitted that the writ petition be dismissed.

60. In addition to this affidavit filed on 3rd August, 2016, there is another affidavit filed on behalf of the State on 26th August, 2016. In this additional affidavit, it is stated that there are certain important documents, which will conclusively indicate

that insofar as the original allotment of the land to the petitioner society is concerned, it was a conditional one and the petitioner society is bound by the conditions imposed therein. That is how the State seeks to rely upon Government Resolution dated 15th July, 1966 resolving that the Government land should be allotted to the petitioner society for construction of residential building for accommodating members whose list is appended to the Government Resolution duly approved. Then, reliance is placed on another order dated 13th May, 1977 and the Additional Collector, Mumbai Suburban District approving the list of members of the petitioner. It is stated that since the society consists of Backward Class community and the rate of occupancy price payable for this land is below Rs.5/- per square yards, the land is granted free of occupancy price, according to the provisions of the PWR-219 Scheme. It is stated that insofar as the redevelopment of the lands allotted to Backward Class society formed by Backward Class people is concerned, the policy decision of the Government is contained in Government Resolution dated 26th June, 2009 and copy of this resolution is annexed.

61. A copy of an application made by the petitioner society to the Collector, Mumbai Suburban District on 12th June, 2008 is

relied upon to submit that in this application also the petitioner society stated that it has got approval from the Social Welfare and Special Assistance Department for admitting new members. The purpose of obtaining such approval was obviously on account of the society being of Backward Class citizens, it was obliged to obtain approval from the Social welfare and Special Assistance Department. Then, reliance is placed on Government Resolution dated 1st April, 1998, which also stated to contain the policy of the Government that in respect of the lands allotted to societies of Backward Class citizens, at least 90% members have to be from Backward Class. It is in this backdrop and to ensure that the important policies of the State are not flouted that the Minister intervened by entertaining the subject complaint. In these circumstances and when final decision is yet not taken, the writ petition should not be entertained.

62. A rejoinder affidavit of the petitioner society has been filed and in which, the petitioner states that it is correct that while granting the plot of land vide order dated 15th July, 1966, the Government approved the names of 60 persons. During the period of construction of building, there were some changes in the list and such changed/modified list of members was approved vide order dated 13th May, 1977. By the letter dated 12th June,

2008, the petitioner society requested the Collector to grant permission for redevelopment, for use of TDR and for using some constructed area for commercial purpose. The petitioner society furnished the list of members and other details. Then, the rejoinder affidavit points out the details with regard to original 60 members and it is stated that as on date 52 members, including the heirs of the deceased approved members are the members of the petitioner society. That is approved by the Social Welfare Department. In case of 7 applications seeking membership and which are filed by the heirs of 7 deceased members, who are already approved members, the same are pending for approval with the Social Welfare Department. Hence, the 7 applicants so far are not admitted as members. In respect of one flat, the society has received application for membership on 27th August 2016, but it has not taken any decision on the said application. The society shall not admit the said applicant without permission from the Social Welfare Department.

63. So far as the additional members, in view of the construction of additional premises by using TDR, while granting permission, the Government and the Collector have provided that the ratio of 80% members of Open Class and 20% from Backward Class be maintained. The developer has developed the property

subject to these conditions. The purchasers of the additional premises have yet not approached the petitioner society for membership. The petitioner stated that insofar as the saleable component is concerned, it is not correct that 90% of such purchasers should be from Backward Class. It is in these circumstances that the society maintains that the Minister has no jurisdiction to interfere by entertaining the complaint. It is reiterated that society's 42 members are staying in temporary accommodations. Then, it is urged that while seeking permission for redevelopment, use of TDR of constructed area for commercial purpose, it is not necessary to approach the Social Justice and Special Assistance Department. The condition prescribed, namely, Sr. No. 2 of Government Resolution dated 26th June, 2009 is for obtaining Government permission and the same has already been obtained. All the allegations with regard to signing of important documents by unauthorised persons or unauthorised persons being allowed to vote are expressly denied. It is denied that the heirs of deceased approved members are admitted without approvals of Social Welfare Department. It is stated that the society and the developer have acted and are acting on the basis of permissions granted by orders dated 30th April, 2010, 5th May, 2010 and 21st May, 2010. It is denied that the Revenue and Forest Department has no jurisdiction to grant

permission as alleged. It is in these circumstances that it is stated that all compliances have been made in terms of the Government Resolutions and the work of development does not suffer from any legal infirmities. Hence, the writ petition be allowed.

64. It is on the above material that we have heard the rival contentions. Mr. Bhadrashete, learned advocate appearing for the petitioner submits that the allotment of the plot has been made in the year 1977. The building constructed thereon is dilapidated. Hence, it was decided to redevelop the property. The society has not made any changes in the membership. A complete chart is annexed and therefore, there was no scope for interference in such lawful work commenced and completed by the society. The permissions having been obtained and all compliances made, it was not permissible for the Minister to entertain any complaint and interfere with the redevelopment work and project as a whole. In the process, the Minister in-charge of the Social Welfare and Special Assistance Department is seeking to set at naught the Government's decision to permit the redevelopment. The entire order is without jurisdiction and can never bind the petitioner. It is ex-facie illegal and must be set aside.

65. Mr. Bhadrashete then elaborates as to how the petitioner society proceeded after obtaining the relevant permissions. In that regard, he relied upon the letter dated 5th May, 2010 Annexure 'I' to the writ petition, addressed by the Collector, Mumbai Suburban District. He submits that it is not as if the Collector was unaware of the details of the allotment to the petitioner for he refers to the details of the land and the admissible FSI. He calls upon the petitioner society to deposit/pay a sum of Rs.1,74,38,000/-. Mr. Bhadrashete submits that so far as the Government lands are concerned, in the light of the clear provisions of the Maharashtra Land Revenue Code, 1966, the competent authority is the Collector of the District. In the present case, the lands are allotted and situate in Mumbai Suburban District. Therefore, the Collector of Mumbai Suburban District is the competent authority not only to levy, assess and recover the land revenue, but also take all decisions preceding such collection. Meaning thereby, even in matters of allotment of Government lands, it is the Collector who is the competent authority. It is he who conveys, communicates and implements the decisions of allotment. Therefore, it is erroneous to state that the Collector is not competent authority or his order or permission does not bind the other Departments of the State. Our attention is invited to the conditions imposed while granting

permission and even the circular dated 30th April, 2010. It is clear from these conditions that they are imposed on the petitioner society. The conditions and permission are plot specific. Mr. Bhadrashete has invited our attention to the paragraphs of the writ petition and particularly paragraph no. 11(c) and (d) to submit that now the entire work is complete. It is time to obtain the requisite permission/certificate to occupy the premises. It is at this stage that respondent no. 2 has intervened. However, it is erroneous to assume that 90% of the flats constructed out of the use of TDR and other benefits have to be reserved for members of the Backward Class citizens. In fact the letter dated 5th May, 2010 and the circular preceding it does not impose any condition to this effect. Therefore, the second respondent's assumption is incorrect. Mr. Bhadrashete submits that as on date a sum of Rs.67,69,96,602/- towards rent premium to the Government etc. has been spent by respondent no. 4. The members of the petitioner society are eagerly awaiting the allotment in their favour. Mr. Bhadrashete relies upon the communication, copy of which is annexed to the petition at page 67, where, the Sub-District Social Welfare Officer, Mumbai Suburban District informs respondent no. 4 that as far as the allotments under the PWR-219 Scheme is concerned, the redevelopment of the property/plot does not require any no

objection certificate (NOC) from this office. There is no such stipulation in any Government Resolution or circular. Therefore, the District Social Welfare Officer cannot grant any NOC as prayed.

66. Mr. Bhadrashete also relies upon page 69 of the paper book to submit that even the Social Welfare and Special Assistance Department is of the opinion that permission of the Government will have to be sought before redevelopment of the property. However, this decision of 26th June, 2009 nowhere states that any ratio of 90% Backward Class members has to be maintained in the redeveloped premises or building. Mr. Bhadrashete invited our attention to page 189-A of the paper book to submit that the Occupation Certificate is being withheld and not granted only because of the purported stay order passed by respondent no. 2. Mr. Bhadrashete complains that the attempt by respondent no. 2 amounts to take over and interfere with the authority and power of the Municipal Corporation of Greater Mumbai to grant the Occupation Certificate as well.

67. Mr. Bhadrashete took us through the grounds or reasons assigned in the impugned order and submits that they are without any merits. He submitted that respondent no. 2 has no jurisdiction to pass any stay or restraint order. Mr. Bhadrashete

invited our attention to the affidavit in reply of the second respondent to submit that the second respondent was not empowered by any statute or law to pass the impugned order. The rules framed under Article 166 of the Constitution of India may be styled as the Rules of Business, but they do not empower any particular Minister or Head of the Department to pass the orders of the present nature. That power must flow and ought to be derived from a law or a valid rule. Such being not the case, Mr. Bhadrashete would submit that the second respondent exceeded his powers and has illegally interfered with the working, functioning and management of the petitioner society. In any event, in the light of the clarification given by the District Social Welfare Officer at page 67 of the paper book, the impugned order cannot be sustained. The redevelopment of the society's property is clearly an internal matter or concern and connected with internal management and administration of the business of the society. Nobody is empowered to interfere therewith. Mr. Bhadrashete submitted that once the order passed in the present case is read in the light of the communication from the developer dated 11th April, 2008 and the reply thereto (page 67) of the paper book, then, all the more the impugned order deserves to be quashed and set aside.

68. In support of his contentions, Mr. Bhadrashete relied upon the following judgments and decisions:-

(i) Prof. (Dr.) D. R. Bharadwaj vs. State of Maharashtra and Ors., AIR 1993 Bombay 366.

(ii) Dharam Dutt and Ors. vs. Union of India and Ors., (2004) 1 SCC 712.

(iii) Andhra Pradesh Dairy Development Corporation Federation vs. Narasimha Reddy and Ors., (2011) 9 SCC 286.

69. On the other hand, Mr. Godbole, learned Special Counsel appearing on behalf of the State and particularly respondent nos. 2 and 3 would submit that there is no merit in the writ petition and it must be dismissed. He submits that it will be not proper and correct to proceed on the footing that all the powers and authority vests only in the Collector of the Mumbai Suburban District or the Revenue and Forest Department of the Government of Maharashtra. Mr. Godbole submits that an interpretation which would empower only the Collector to deal with allotments and of specific categories particularly favouring Backward Class citizens would nullify the scheme of allotment of Government lands to Backward Class citizens of the State. The Backward Class residents of the State and particularly in the Mumbai City look to only the Department of Social Justice and

Special Assistance of the Government of Maharashtra. Mr. Godbole invited our attention to the annexures to the additional affidavit in reply dated 26th August, 2016. He submits that it is the resolution of the Revenue and Forest Department dated 15th July, 1966 under which the society claims allotment of the Government land. However, the preamble to the resolution clearly states that the allotment is made for construction of residential buildings for accommodating members of the petitioner society whose list is appended to the said resolution. That list is duly approved. It is stated that the grant shall also be subject to the terms and conditions prescribed in the Government Resolution, Revenue and Forest Department dated 23rd April, 1965.

70. Mr. Godbole then relies upon the agreement in Form H-1, which is executed by the petitioner society with the Collector and particularly the conditions incorporated therein. Mr. Godbole submits that the allotment is for a specific purpose and to achieve a clear object. That is to assist the Backward Class citizens/residents. They were facing acute shortage of accommodation in Mumbai. To assist them and improve their living conditions, the State stepped in. Mr. Godbole submits that there is an order passed on 13th May, 1977, copy of which is at

Annexure 'B' to the additional affidavit. That is an order passed by the Additional Collector, Bombay Suburban District. He states that the conditions in Schedule 'I' to the office order have to be complied with. This orders refers to the composition of the society, namely, its members being Backward Class residents/citizens and also it is granted free of occupancy price. Mr. Godbole submits that this Government order refers to the provisions of PWR-219 Scheme. Mr. Godbole invited our attention to the conditions in Schedule 'I' to this Government order, particularly Condition No. 2 appearing at page 232 of the paper book, where, the society was directed not to enroll any additional member or substitute any member except with previous written approval of the Government. Mr. Godbole submits that it is to subserve the larger public interest and the purpose sought to be achieved that it was informed that the society shall be liable to be evicted and the land and buildings resumed by the Government without payment of any compensation in case there is breach of any of the conditions of grant of land and failure on the part of the society to remedy the breach within six months from the date of issue of notice by the Additional Collector, Bombay Suburban District communicating the breach. In that regard, he invites our attention to the condition nos. 9 and 10.

71. Mr. Godbole's emphasis is on the contents of the documents, compilation of which is handed over by him. He submits that the Backward Class Co-operative Housing Society Scheme (PWR-219) and its working was reviewed. The earlier Government Resolutions dated 27th September, 1971 and 18th February, 1972 were referred and a fresh resolution was issued on 21st February, 1974. Mr. Godbole submits that the Backward Class Co-operative Housing Societies would be governed by the terms and conditions to this resolution. The terms and conditions governing the allotment of land can safely be termed as covenants running with the land. The ratio of members, namely, Backward Class-Non-Backward Class has to be strictly maintained. Further, the implementation of the scheme is by the Department of Social Justice and Special Assistance. The land is allotted free of cost to the societies of Backward Class and it is but natural that this Department, which is in-charge of the allotment and frames the policy, implements the same. He submits that the policy decisions have to be taken by this Department and the petitioner is aware of the same. In that regard, our attention is invited to the documents, which are annexed to the additional affidavit and from the compilation. It is submitted that the petitioner is aware of the Government Resolution dated 25th May, 2007, which outlines the general scheme of allotment of Government lands to

co-operative housing societies. Condition No. 6 therein specifically refers to the co-operative housing societies of Backward Class/*Magasvargiya Sahakari Grihanirman Sanstha*. If lands are allotted to such co-operative housing societies under PWR-219 Scheme, then, the general policy outlined in Government Resolution dated 25th May, 2007 and the earlier Government Resolution does not apply to such lands. The scheme in relation to Backward Class persons is implemented by the Department of Social Justice and Special Assistance. Once the petitioner is aware of this position and also Condition No. 10 of the above Government Resolution, then, it is futile to urge that the Government Resolution dated 26th June, 2009, which is issued by the Department of Social Justice and Special Assistance is not applicable. Mr. Godbole, therefore, submits that if the entire matter is understood in this backdrop, then, the Cabinet Minister in-charge of the Department of Social Justice and Special Assistance was fully empowered to take cognizance of the complaint of respondent no. 5. Mr. Godbole relies upon the Rules of Business. He relies upon Rules 5, 7 and 10 thereof to submit that neither has the second respondent unduly, much less illegally or unauthorizedly interfered with the redevelopment project nor has he overridden the authority and power of the Department of Revenue and Forest, Government of Maharashtra.

He has ensured that the policy, which is framed and which enables grant of Government land to Backward Class citizens for their assistance and solving their problem of housing is not defeated and frustrated. That is defeated and frustrated in this case by allowing the developer to deal with the property, namely, Government land and to induct outsiders, namely, non-Backward Class citizens. The entire ratio is disturbed and that is why on both counts, namely, on jurisdiction as also on merits, the order under challenge is sustainable. It is passed in accordance with law. Neither has the Minister usurped the power of any authority nor has he exceeded his authority or acted beyond his jurisdiction. For all these reasons, the impugned order cannot be termed as vitiated by any error of law apparent on the face of the record nor it can be termed as perverse warranting interference in writ jurisdiction. Hence, the writ petition deserves to be dismissed. Mr. Godbole has sought to distinguish the judgments relied upon by Mr. Bhadrashete and therefore submits that the writ petition be dismissed.

72. Mr. Godbole has relied upon the following decisions:-

- (i) Zoroastrian Co-operative Housing Society Ltd. and Anr. vs. District Registrar, Co-operative Societies (Urban) and Ors., (2005) 5 SCC 632.

- (ii) Ramesh Himmatlal Shah vs. Harsukh J. Joshi, (1975) 2 SCC 105.
- (iii) The State of U. P. vs. Zahoor Ahmad and Anr., (1973) 2 SCC 547.
- (iv) Margret Almeida and Ors. vs. Bombay Catholic Co-operative Housing Society Ltd. and Ors., (2012) 5 SCC 642.
- (v) Mohinder Kaur Kochar vs. Mayfair Housing Pvt. Ltd. 2012 (6) Bombay C. R. 194.
- (vi) Manchegowda and Ors. vs. State of Karnataka and Ors., (1984) 3 SCC 301.

73. For properly appreciating the rival contentions, we would have to refer to certain undisputed facts.

74. The petitioner is a co-operative housing society registered under the Maharashtra Co-operative Societies Act, 1960 way back on 17th April, 1967. It holds Government land bearing Plot No. 14, Survey No. 111-D, CTS No. 825/1/4 situate at village Amboli, Andheri (W), Mumbai 400 053, admeasuring 3114 square meters. It shall be described as the said property. There were three buildings standing on the said property consisting of ground and four upper floors having 20 flats in each building thereby totaling 60 flats occupied by 60 members. The buildings were constructed 30 years ago and were in dilapidated condition requiring extensive repairs. Considering the cost of repair and maintenance, the society came to a conclusion that it is desirable

to demolish these existing buildings and reconstruct new buildings by utilising the FSI of the said property and TDR/FSI permitted to be loaded on the said property. Thus, it decided to exploit the entire development potential of the said property in the manner permissible in law.

75. It is apparent and clear that on account of the status of the buildings, they requiring structural repairs as enumerated in the notice issued under section 354 of the Mumbai Municipal Corporation Act, 1888 that the above steps were taken. Preceding these steps and decisions, proper meetings were convened by the petitioner society. Before these meetings, quotations received from the interested parties were placed. An offer was given by respondent no. 4 on 27th March, 2003. It was discussed in the Special General Body Meeting dated 15th June, 2003 after which, a resolution was passed appointing the said respondent as developer. A regular development agreement was drawn up and executed, copy of which is at Annexure 'A'. Subsequent to this agreement, as amended, respondent no. 4 took the requisite measures, applied for permission of respondent no. 3. He requested respondent no. 3 to grant NOC for redevelopment of the property by utilising the FSI and TDR. However, it was informed by the office of respondent no. 3 that no provisions are

made in the scheme for obtaining a NOC from the Department of Social Welfare/Justice and Special Assistance, Government of Maharashtra.

76. The petitioner has relied upon a Government Circular dated 26th June, 2009, copy of which is at Annexure 'E' to the writ petition. That is issued by the Department of Social Justice and Special Assistance, Government of Maharashtra. That refers to the earlier circular dated 1st April, 1998. The earlier circular dated 1st April, 1998 dealt with the subject of transfer of membership. The circular dated 26th June, 2009 is on the subject of redevelopment of the property/plots allotted to Backward Class Co-operative Housing Societies. The circular refers specifically to the benefits in the form of FSI or TDR. Because of the utilisation of the increased FSI, TDR, excess area becomes available to such societies. The buildings are constructed and flats therein are thereafter offered to purchasers who are made members of the society. Further, old and dilapidated buildings belonging to such societies are being redeveloped and when new buildings are constructed, the flats even in these buildings are offered and sold to persons who are later on enrolled as members. All this deprives the Backward Class persons of their benefits under the scheme.

77. It is in these circumstances that the Government decided that when such societies are allotted Government lands free of cost or financial assistance is provided to them in acquiring lands and properties, then, they should abide by the condition of 90% membership of Backward Class. All this is approved by the State and whenever there is a change or modification in membership, permission of the Social Justice and Special Assistance Department has to be obtained. However, it was noticed that several co-operative housing societies of Backward Class members are violating the terms and conditions. That is how by this circular, it was directed that in the co-operative societies belonging to Backward Class, wherever change in membership is effected, then, the outgoing member shall be substituted by another Backward Class member and before such co-operative housing society undertakes work of redevelopment, they should obtain permission of the Government. The third condition is that a developer engaged for the purpose of redevelopment should, prior to such redevelopment, deposit a sum mentioned in para 3 of this circular. Finally, by clause 4, it is mandated that if any addition has to be made in the number of members, then, the decision of the State Government in that regard shall be final. In this behalf it can safely be held that the question of entertaining and allowing the membership application of the flat purchasers

does not arise at this stage. It is only when the members over and above the original 60 claim any rights, then, whether the ratio of Backward Class and Non-Backward Class is maintained or otherwise will be an issue to be determined. That will be determined in accordance with the law, namely, the Maharashtra Co-operative Societies Act, 1960, the Rules of 1961, the Government Resolutions etc. by the Registrar or his delegates. At that time, appropriate steps can be taken. Presently, in the garb of the ratio being allegedly breached, no coercive action can be taken. More so, when the State's approval is obtained.

78. By virtue of the development agreement, respondent no. 4 took various steps, he obtained permission, approvals, sanctions from the Municipal Corporation of Greater Mumbai. Since the plot was allotted to the petitioner society by the Collector, Mumbai Suburban District, his permission and approval was sought for the said project.

79. We have perused carefully the materials and it is disclosed in the petition itself that the petitioner society addressed letters dated 12th June, 2008 and 21st March, 2009 requesting the Collector to grant the permission. The Collector submitted a report dated 18th June, 2009 to the State Government and the State Government, by its order dated 30th April, 2010, agreed to

the request. It issued the requisite order and copy of which is at annexure 'H'. The Government order is society and land specific. In the earlier order, it does not say anything with regard to the constitution of a co-operative housing society, its membership etc. It only says that the redevelopment is permitted on the terms and conditions set out in that order and which could be imposed by the Collector as well.

80. When such a record was placed before the Collector, he, in turn, addressed a communication dated 5th October, 2010. He granted the necessary permission and imposed a condition of deposit of Rs. 1,74,38,000/- and an indemnity bond on a stamp paper to be executed. In response to this, the sum has been deposited by Demand Draft and equally, the indemnity/guarantee bond has been submitted. Thereafter, further steps have been taken and it is evident that some of the non-confirming members of the petitioner society later on fell in line. The redevelopment project is complete. It is at such a stage that respondent no. 5, who is neither member of the petitioner society nor in any way concerned with the petitioner, made the subject complaint.

81. A copy of that complaint is annexed as Annexure 'Q'. We have carefully perused it and what we find is that respondent no.5 is a resident of Sector No. 19, Kharghar, Navi Mumbai. He

makes a complaint on 17th February, 2016. In his complaint, he makes certain general allegations and questions the redevelopment project. He states that the redevelopment project has not been initiated and completed in accordance with the Government policy, rules, regulations and conditions of allotment. He does not, in his complaint, explain as to how he is affected by such redevelopment or whether he is interested in the property or he has any contractual relationship with the society.

82. The petitioner, on being forwarded with a copy of this letter as also one show cause notice issued by the Assistant Commissioner, Social Welfare, Mumbai Suburban District dated 11th February, 2016, clarified in writing that there is absolutely no substance in the allegations. The petitioner denied that the terms and conditions of allotment have been violated. The petitioner relied upon the Government order dated 30th April, 2010 and the conditions incorporated therein, which requires the petitioner to call upon the developer to sell 20% of the additional premises only to persons from Backward Class. The ratio as per this order is being maintained. The petitioner clarified that the society would come to know as to whether the said developer has maintained the said ratio when it receives the applications for membership from the purchasers of these additional premises.

As on date, these allegations cannot be accepted for they have no basis. There is no question of any action being taken. The petitioner clarified that there is no substance in the other allegations as well. The detailed reply, copy of which is to be found at pages 176 to 184 of the paper book, also takes care of the objection of the second respondent, particularly that a permission from the Social Justice and Special Assistance Department/Social Welfare Department is necessary. The petitioner raises a specific ground that no such permission is required even in terms of the Government Resolution dated 26th June, 2009.

83. We have carefully perused this Government Resolution and we do not find that any permission is required specifically from this Department. We do not agree with Mr. Godbole that this Resolution has imposed any condition that the ratio of Backward Class to Open Class members has to be maintained and throughout. If the society consisting of 60 members enrolled way back in 1970 applied for and obtained a plot of land which can be allotted only by the Revenue and Forest Department, then, what we have found is an attempt by another Department of the Government to foist or thrust upon the petitioner additional conditions and terms for redevelopment of the petitioner's property. If any Department of the Government finds that the

membership of the society has been offered to those who are not eligible to apply for and obtain it, then, it is not as if such Departments in the Government have no remedies or are powerless. It is common ground that once a co-operative housing society is registered, it is governed by the Maharashtra Co-operative Societies Act, 1960 and the Maharashtra Co-operative Societies Rules, 1961. There are enough provisions in that Act empowering the statutory authorities to take cognizance of the complaints and grievances of those who have not been enrolled as members. Equally, these authorities can take note of the objections and remarks of other Departments of the Government that in peculiar societies, such as the petitioner, the office bearers cannot take any decision contrary to the by-laws or rules and regulations. They have not enrolled members in the stated and given ratio. We do not think that respondent no. 2 could have entertained any complaint of respondent no. 5 and obstructed the redevelopment project in the manner done. In the impugned order, we have not found any reason assigned by the concerned Minister. Rather, the stand before us that no permission is required from the Social Welfare Department was reiterated. Yet, the impugned order proceeds to hold that the policy decision contained in the Government Resolution dated 26th June, 2009 together with the terms and conditions thereof have not been

complied with. The petitioner society has not taken permission while making changes in its constitution and composition from the Department of Social Justice and Special Assistance. This observation pre-supposes that changes in the constitution and composition of the petitioner society have already been effected. The society has clarified that the developer was made aware of all the terms and conditions imposed while allotment of the plot. Respondent no. 4 is implementing the redevelopment project. The ratio and required to be maintained in terms of the Government order was also brought to his notice. It is premature to hold that the developer has sold all the additional premises only to Non-Backward Class persons and therefore, not maintained the ratio. The society has clarified that the purchasers of these additional premises would have to be enrolled as members of the petitioner society. They would have to apply in the prescribed format for membership. A decision would be taken on their applications and if at all such of those who are entitled and belonging to Backward Class are not enrolled as members, then, they have adequate remedies available to them in law. Even the State can then forward any complaints of such persons and for necessary action by the society. The society would also ensure due compliance with the Government orders and policies. The impugned order proceeds on the footing that the society has not

maintained 90% reservation for Backward Class persons. On what material this conclusion is based is not clear at all. Where such allegation is to be found, either in the complaint or in any document styled as a report, is not clarified to us at all. If there are complaints about the working of the society, then, those who have such issues, can always approach an appropriate forum.

84. We have been unable to find from the affidavit in reply any material which would indicate that as far as the redevelopment project is concerned, there are any violations of the terms and conditions, based on which, the allotment of the plot or land has been made.

85. Though Mr. Godbole would emphasise the stand in the affidavit of respondent no. 2 that in PWR-219 Scheme, the ratio of members of the Backward Class Co-operative Society is 90% Backward Class and 10% Open Class and this ratio has to be maintained even while redeveloping the society's property, Mr. Godbole has been unable to point out anything from the whole scheme to the above effect. We have carefully perused each and every document which has been placed before us by Mr. Godbole. We find that though the allotment of land or plot to the petitioner society consisting of Backward Class members is in accordance with the old PWR-219 Scheme, we have not found in the primary

document or in the document, namely, Government Resolution dated 21st February, 1974 any condition which would oblige the petitioner to maintain any specific ratio. Annexure 'A' to that Government Resolution having been carefully perused by us, we do not find that though the benefits of the scheme are available to Scheduled Caste, Schedule Tribe, Nomadic Tribe, Other Backward Class etc, still, the scheme postulates communal mixing. It also aims at removing untouchability. Therefore, 10% Non-Backward Class persons are permitted to be members of Backward Class Co-operative Housing Societies of all categories. These Non-Backward Class members are entitled to get the same financial benefits which are made available to the majority members of the Backward Class Co-operative Housing Societies. However, the Backward Class persons can join Non-Backward Class societies and they would be entitled to certain concession. Therefore, though Mr. Godbole vehemently relies on this Government Resolution, we do not find that the same prohibits enrollment of Non-Backward Class members. Now, with regard to the ratio, even in the additional affidavit filed, we do not find that after redevelopment, 90% members have to be from Backward Class. For the redevelopment of such societies, a distinct policy is enunciated and in that, it is apparent that the essential composition has to be maintained. Meaning thereby, the original

society of Backward Class persons must comprise of 90% Backward Class members and 10% Open Class members. After TDR is generated and additional premises are made available, they have to be disposed of in terms of the Government Resolution dated 25th May, 2007, which has been highlighted in the order of the Government dated 30th April, 2010 and the Collector's communication dated 5th May, 2010 (see page 96). The ratio that has to be maintained is that the additional premises have to be disposed of as 20% to Backward Class and 80% to Open Class/Non-Backward Class. This is how the Government has understood its policy. That is part and parcel of the record and with the Government itself. It is in these circumstances that presently we are not inclined to agree with Mr. Godbole that the redevelopment project suffered from fundamental legal infirmities or that the same defeats the very purpose and object of allotment of plots of land to Backward Class persons.

86. We have found from the impugned order that in a completed project, another Wing or Department of the State has sought to interfere with a view to prevent the petitioner from obtaining the requisite certificates from the local authority so as to enable its members to occupy the premises. Meaning thereby, at the stage

of consideration of the application for grant of Occupation Certificate, the Government has stepped in and that too at the instance of a complete stranger. There is no denial of the fact that respondent no. 5 is in no way connected with the petitioner society. He is neither an office bearer nor a member thereof. At his instance, it was not permissible for the State to have intervened and stalled the issue of Occupation Certificate to the building of the petitioner society. We find that this is a clear attempt of interfering with the internal affairs of a co-operative housing society governed by the Maharashtra Co-operative Societies Act, 1960. More so, when the Government Resolution dated 26th June, 2009 on the subject of redevelopment of properties/plot allotted to societies like the petitioner contemplates obtaining approval from the State Government which is obtained. That Government Resolution does not name any particular Department of the Government.

87. We find that the reliance by Mr. Bhadrashete on a Division Bench judgment of this court to be apposite and appropriate.

88. Mr. Bhadrashete relied upon a Division Bench judgment in the case of *Prof. (Dr.) D. R. Bharadwaj vs. State of Maharashtra and Ors.*¹. In the backdrop of a similar case of interference by the Government/Collector, the Division Bench held as under:-

¹ AIR 1993 Bom. 366

“10. Maharashtra Co-operative Societies Act, 1960 was enacted by State Legislature to consolidate and amend the law relating to the Co-operative Societies in the State of Maharashtra. Legislature desired to consolidate and amend the law relating to Societies with a view to providing for the orderly development for the cooperative movement in the State of Maharashtra in accordance with the relevant directive principles of State policy enunciated in the Constitution of India. The Act is a self-contained Code for regulating the activities of Co-operative Societies and exhaustively provides for registration of the Society, enrolment of members, rights and liabilities of members, the incorporation duties and privileges of Societies, the management of Societies as well as settlement of disputes between Societies and the members. In City of Bombay and other parts of the State, several Co-operative Housing Societies are registered with the object of providing shelter to the members and the Housing Societies are classified as tenant-ownership Housing Society, tenant co-partnership Housing Society and other Housing Societies. Tenant-ownership Housing Societies are those where land is held either on leasehold or freehold basis by Societies and houses are owned or are to be owned by members. Due to paucity of available land for construction of houses in City of Bombay, several applications were received by Government of Maharashtra for "grant of Government lands for the purpose of formation of Housing Societies. The Government decided to grant lands to Housing Societies in accordance with the provisions of Maharashtra Land Revenue Code, 1966. The lands are granted in favour of the Society with a condition that the lands will not be alienated or transferred and would be used for the purpose of construction of houses, to be occupied by members. The Government by Resolution dated May 12, 1983 took a policy decision that the grant of Government land to Housing Societies should be on certain terms and conditions. Section 48 of Land Revenue Code specifically provides that the State Government has a right to dispose of lands on such terms and conditions as it deemed fit. The terms and conditions set out by Government Resolution are with an object of ensuring that Government lands are used for the purpose of housing and only by those occupants who fulfil certain conditions. The anxiety of the State Government was to ensure that the few available Government lands should be put to the best use for the benefit of persons who genuinely need accommodation at a reasonable price.

While allotting Government lands, the Resolution demands that the allotment should be only to Co-operative Housing Societies and not to individuals with a view to prevent exploitation of the land and buildings to be erected thereon. The Government was also desirous of ensuring that members to be enrolled in such Housing Societies should be the genuine members and who fulfil the terms and conditions annexed to the resolution. The Government lands are not allotted unless the Society is duly registered under the Cooperative Societies Act. The Government Resolution dated May 12, 1983 is a policy decision and is not a statutory provision which creates any right in the Government to evict an occupier from the tenement of a Housing Society. The terms and conditions on which the land is allotted to the Society entitles the Government to resume both, the land and the building construed thereon, in cases where the Society commits the breach of the terms and conditions and in cases where the Society fails to take action against the occupier in spite of breaches committed. The right of resumption vested in the State Government is to be exercised against the Society and not against an individual occupant of a tenement. The provisions of Maharashtra Land Revenue Code set out the right of the Government to dispose of Government lands and the power to resume in case of breach of terms and conditions but the Code nowhere provides that the Government can recover a tenement out of building of the Society.

11. On registration of Co-operative Housing Society under the Act, the rights and liabilities of members qua the Society are to be determined with reference to the statutory provisions. Chapter III of the Act deals with the Subject of members and the rights and liabilities and the right of a person to be enrolled as a member has to be determined with reference to the provisions of the Act and the bye-laws of the Society. For ascertaining whether a person should be enrolled as a member of a registered Housing Society, it is not permissible to refer to the terms and conditions of the grant unless those terms and conditions form part of the bye-laws. One of the terms of grant of Government lands is that a Society shall not enroll any new member or substitute any member without prior written permission of the said authority and this term is incorporated in Model Bye-law No. 17(c) which, inter alia, provides that admission of a person to membership of the Society directly or as a result of transfer shall be subject to the approval of the

Collector of the District if the Society has been given land by Government. In view of the specific bye-law, the condition of seeking prior approval provided in the terms and conditions at the time of allotment of Government land is to be strictly observed by the Society. The question which requires determination is when once the Society is duly registered under the provisions of the Act is it open for the Collector to proceed to terminate the membership of an occupant and direct the Society to recover possession? In our judgment, it is not open for the Collector to bypass the statutory provisions contained in the Societies Act and assume the right to terminate the membership and permit the Society to take possession. The Collector by assuming jurisdiction is obviously trespassing on the statutory powers conferred on the Society as well as on the Courts constituted under the Act to determine the disputes between the members and the Society.

12. Section 35 of the Act confers statutory right on Society to expel a member by resolution passed by majority of not less than three-fourths of the members entitled to vote and present at the general meeting. The power to expel a member is circumscribed by the provision that the member should be guilty of acts which are detrimental to the interest or proper working of the Society. The resolution to expel a member is not valid unless the member to be expelled is given opportunity of presenting his case to the general body and the resolution cannot be put to effect unless it is approved by the Registrar. Proviso to sub-section (1) of Section 35 makes it clear that power to expel a member is available only to the Society and the power can be exercised only in the manner prescribed by the Act and the Rules. It is also not left to the exclusive determination of the Society as to whether a member is liable to be expelled for acts which are detrimental to the interest or proper working of the Society and the decision of the Society is subject to the approval of the Registrar of Co-operative Societies. The member who is to be expelled is provided with a right to file an appeal under Section 152 of the Act to the State Government. The provisions of Section 35 clearly indicate that a right to determine whether a member should be expelled for certain acts is available only to the Society and not to any other authority including the State Government. The power to expel a member is not available to the Collector merely because the building of the Society is constructed on the land allotted by the

Government. It is not open for the Additional Collector to determine that a particular member should be expelled merely because the Society requests the Additional Collector to take proceedings. The consequences of expulsion of a member under Section 35 is that the name of the member is struck off from the register of members. Even expulsion of a member and the fact that name of the member is struck off from the register will not automatically entitle the Society to recover possession. In case the member who is expelled declines to restore possession to the Society, then the Society is bound to adopt proceedings under Chapter II of the Act. Section 91, inter alia, provides that any dispute between a Society and a member shall be referred to a co-operative Court. Section 91-A provides for constitution of Cooperative Court to adjudicate upon all disputes. Section 97 of the Act provides that any party aggrieved by the decision of the Cooperative Court can prefer an appeal to Cooperative Appellate Court. These provisions unmistakably establish that the Act has created a forum which must be approached for resolving the dispute between Society on the one hand and members on the other and in view of the statutory provisions, it is not permissible for any authority howsoever high it may be, to interfere with the administration of Housing Society and direct that a member should be expelled or Society can recover possession from a member.”

89. Now a co-operative society stands elevated and has attained a constitutional status. Article 43B of the Constitution of India inserted by the Constitution (Ninety-seventh amendment) Act, 2011 with effect from 15th February, 2012 reads as under:-

“ARTICLE 43B. Promotion of co-operative societies. - The State shall endeavour to promote voluntary formulation, autonomous functioning, democratic control and professional management of co-operative societies.”

90. In a decision in the case of *Dharam Dutt and Ors. vs. Union of India*² prior to this constitutional amendment, the Hon'ble

² (2004) 1 SCC 712

Supreme Court of India was considering a challenge to an Ordinance. The Central Government had taken over the society so also its immovable and movable properties. The society, namely, Indian Council of World Affairs challenged it and in that context so also highlighting the mandate of Article 19(1)(c) of the Constitution of India, the Hon'ble Supreme Court of India held thus:-

“28. A right to form unions guaranteed by Article 19(1)(c) does not carry with it a fundamental right in the union so formed to achieve every object for which it was formed with the legal consequence that any legislation not falling within clause (4) of Article 19 which might in any way hamper the fulfillment of those objects, should be declared unconstitutional and void. Even a very liberal interpretation cannot lead to the conclusion that the trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise. The right to strike or the right to declare a lock-out may be controlled or restricted by appropriate industrial legislation, and the validity of such legislation would have to be tested not with reference to the criteria laid down in clause (4) of Article 19 but by totally different considerations. A right guaranteed by Article 19(1)(c) on a literal reading thereof can be subjected to those restrictions which satisfy the test of clause (4) of Article 19. The rights not included in the literal meaning of Article 19(1)(c) but which are sought to be included therein as flowing therefrom i.e. every right which is necessary in order that the association, brought into existence, fulfills every object for which it is formed, the qualifications therefor would not merely be those in clause (4) of Article 19 but would be more numerous and very different. Restrictions which bore upon and took into account the several fields in which associations or unions of citizens might legitimately engage themselves, would also become relevant.

... ..

36. Article 19 confers fundamental rights on citizens. The rights conferred by Article 19 (1) are not available to and

cannot be claimed by any person who is not and cannot be a citizen of India. A statutory right -- as distinguished from a fundamental right -- conferred on persons or citizens is capable of being deprived of or taken away by legislation. The fundamental rights cannot be taken away by any legislation; a legislation can only impose reasonable restrictions on the exercise of the right. Out of the several rights enumerated in clause (1) of Article 19, the right at sub-clause (a) is not merely a right of speech and expression but a right to freedom of speech and expression. The enumeration of other rights is not by reference to freedom. In the words of the then Chief Justice Patanjali Sastri in *State of W.B. v. Subodh Gopal Bose* these rights are great and basic rights which are recognized and guaranteed as the natural rights, inherent in the status of a citizen of a free country. Yet, there cannot be any liberty absolute in nature and uncontrolled in operation so as to confer a right wholly free from any restraint. Had there been no restraints, the rights and freedoms may tend to become the synonyms of anarchy and disorder. The founding fathers of the Constitution, therefore, conditioned the enumerated rights and freedoms reasonably and such reasonable restrictions are found to be enumerated in clauses (2) to (6) of Article 19 excepting for sub-clauses (i) and (ii) of clause (6), the laws falling within which descriptions are immune from attack on the exercise of legislative power within their ambit (See: *H.C. Narayanappa v. State of Mysore.*)

... ..

43. The Preamble to the Act declares the Indian Council of World Affairs (ICWA) to be an institution of national importance and to provide for its incorporation. The same declaration is contained in the body of the Act vide Section 2. The pre-existing society ICWA and the new body corporate, also given the name of ICWA, bear a similarity of names. Yet, it is clear that the impugned Act only deals with ICWA the pre-existing body and ICWA the body corporate under the impugned Act. The new body takes over the activities of the pre-existing society by running the institution which too is known as ICWA. So far as the society ICWA is concerned, it has been left intact, untouched and un-interfered with. There is no tampering with the membership or the governing body of the society. The society is still free to carry on its other activities. No membership of the old society has been dropped. No new member has been forced or thrust upon the society. The impugned legislation nominates members who will be members of the council, the new body corporate, different

from the society. The pith and substance of the impugned legislation is to take over an institution of national importance. As the formation of the society, which is a voluntary association, is not adversely affected and the members of the society are free to continue with such association, the validity of the impugned legislation cannot be tested by reference to sub-clauses (a) and (c) of clause (1) of Article 19. The activity of the society which was being conducted through the institution ICWA has been adversely affected and to that extent the validity of the legislation shall have to be tested by reference to sub-clause (g) of clause (1) of Article 19. The activity was of the society and the society cannot claim a fundamental right. Even otherwise, the impugned legislation is a reasonable legislation enacted in the interest of the general public and to govern an institution of national importance. It is valid.

... ..

58. It was further submitted that the provisions of the Societies Registration Act, 1860 were effective enough which, if invoked, could have taken care of the alleged grievances. If there was any truth or substance therein the same could have been found on enquiries being held. In our opinion, in a given set of facts and circumstances, merely because an alternative action under the Societies Registration Act, 1860 could have served the purpose, a case cannot be and is not made out for finding fault with another legislation if the same be within the legislative competence of the Parliament, which it is, as will be seen hereinafter.”

91. Thereafter, in a decision in the case of *Andhra Pradesh Dairy Development Corporation Federation vs. B. Narasimha Reddy and Ors.*³ in the context of this very freedom, the Hon'ble Supreme Court of India held as under:-

“46. The Government has inherent power to promote the general welfare of the people and in order to achieve the said goal, the State is free to exercise its sovereign powers of legislation to regulate the conduct of its citizens to the extent, that their rights shall not stand abridged.

³ (2011) 9 SCC 286

47. *The co-operative movement by its very nature, is a form of voluntary association where individuals unite for mutual benefit in the production and distribution of wealth upon principles of equity, reason and common good. So, the basic purpose of forming a co-operative society remains to promote the economic interest of its members in accordance with the well recognised co-operative principles. Members of an association have the right to be associated only with those whom they consider eligible to be admitted and have right to deny admission to those with whom they do not want to associate. The right to form an association cannot be infringed by forced inclusion of unwarranted persons in a group. Right to associate is for the purpose of enjoying in expressive activities. The constitutional right to freely associate with others encompasses associational ties designed to further the social, legal and economic benefits of the members of the association. By statutory interventions, the State is not permitted to change the fundamental character of the association or alter the composition of the society itself. The significant encroachment upon associational freedom cannot be justified on the basis of any interest of the Government. However, when the association gets registered under the Co-operative Societies Act, it is governed by the provisions of the Act and rules framed thereunder. In case the association has an option/choice to get registered under a particular statute, if there are more than one statutes operating in the field, the State cannot force the society to get itself registered under a statute for which the society has not applied.*

61. *Cooperative law is based on voluntary action of its members. Once a society is formed and its members voluntarily take a decision to get it registered under the X Act, the registration authority may reject the registration application if conditions prescribed under X Act are not fulfilled or for any other permissible reason. The registration authority does not have a right to register the said society under Y Act or even a superior authority is not competent to pass an order that the society would be registered under the Y Act. Such an order, if passed, would be in violation of the first basic cooperative principle that every action shall be as desired by its members voluntarily. Introducing such a concept of compulsion would violate Article 19(1)(c) of the Constitution of India. It is not permissible in law to do something indirectly, if it is not permissible to be done directly. (See Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd.)*

92. Pertinently, in this decision, the Hon'ble Supreme Court referred to earlier judgments, including in the case of *Dharam Dutt* (supra).

93. We do not find Mr. Godbole's reliance on the judgment in the case of *Zoroastrian Co-operative Housing Society Ltd.* (supra) to be well placed. It was a case where after formation and registration of the society, one of the members of the society sold the plot in which he had constructed a residential building, to the father of respondent no. 2 before the Hon'ble Supreme Court of India with previous consent of the petitioner society. The father of respondent no. 2 was also admitted to membership of the society as he was qualified for such admission in terms of the by-laws of the society. After the rights devolved on respondent no. 2, consequent on the death of his father, he became a member of the society of his volition. He applied to the society for permission to demolish the bungalow that had been put up and to construct a commercial building in its place. The society refused him permission stating that the by-laws of the society did not permit commercial use of the land. Thereafter, respondent no. 2 applied to the society for permission to demolish the bungalow and to construct residential flats to be sold to Parsis. The society acceded to the request of respondent no. 2, making it clear that

the flats constructed could only be sold to Parsis. Respondent no. 2 did not take any steps pursuant to that permission for seven years. Apprehending that respondent no. 2 intended to violate the by-laws of the society, the society passed a resolution reminding its members that in accordance with by-law 7, no person other than a Parsi could become a new member of the society and informing the existing members of the society that they could not sell their plots or bungalows to any person not belonging to the Parsi community. Respondent no. 2 started negotiations with respondent no. 3 a builder's association in violation of the restriction on sale of shares or property to a non-Parsi. That is how a case was filed before the Board of Nominees for injunction restraining respondent no. 2 from putting up any construction and from transferring the same to outsiders in violation of the by-law without valid prior permission from the society. Though, initially an interim order of injunction was granted, the Board informed the society that the society could not restrict its membership only to the Parsi community and that membership should remain open for every person. That is how the earlier order came to be vacated. Once again, respondent no. 2 and armed with such an order, sought permission to transfer his shares to respondent no. 3. That application was rejected. In the meanwhile, the society also challenged the order of the Board

of Nominees vacating the order of injunction before the Gujarat State Co-operative Societies Tribunal and respondent nos. 2 and 3 challenged the rejection of the request of respondent no. 2 to sell his plot to respondent no 3 by way of an appeal before the Registrar of Co-operative Societies under section 24 of the Gujarat State Co-operative Societies Act. The tribunal took a view that the by-law restricting membership to Parsi was a restriction on the rights to property and the right to alienate property and therefore, was invalid in terms of Article 300-A of the Constitution of India. This order was challenged by the society and its Chairman before the Gujarat High Court. A learned Single Judge of the Gujarat High Court dismissed that writ petition. The society and the Chairman challenged that decision before a Division Bench, but the Letters Patent Appeal was also dismissed. That is how the matter was carried to the Hon'ble Supreme Court of India. It is in this factual backdrop that the observations relied upon by Mr. Godbole have to be seen. Paras 23 to 26 emphasise the principle that there could be a restriction of the nature contemplated by the by-laws of that society and there was nothing erroneous in restricting the membership to certain persons. Paras 29 to 32 are highlighted, but we do not think that Mr. Godbole appearing as a Special Counsel for the State can rely upon this judgment and to support the impugned actions. None of

the paragraphs and particularly paras 42-43, which lay down settled principles and reiterate them would come to his assistance.

94. Similarly, the other judgments relied upon by Mr. Godbole, namely, in the case of *Ramesh Himmatlal Shah vs. Harsukh Jadhavji Joshi*⁴ would be of any assistance. Mr. Godbole would submit that a share of the co-operative housing society in the property is capable of being transferred. We do not see how these judgments and particularly the other one in the case of *Margret Almeida vs. Bombay Catholic Co-operative Housing Society Ltd.*⁵ would carry the arguments of Mr. Godbole further.

95. The interests of the Backward Class, Scheduled Caste and Scheduled Tribe have to be protected. They are constitutionally recognised, but it cannot be that a society comprising of Backward Class citizens and functioning in terms of the existing law, namely, the Maharashtra Co-operative Societies Act, 1960 can be called upon in the teeth of the Government order itself by another Wing or Department of the Government to stop a valid construction/redevelopment activity. In the garb of relying on the above principles we do not think that Mr. Godbole can justify the impugned order. The State was not justified in interfering

4 (1975) 2 SCC 105

5 (2012) 5 SCC 642

with a completed redevelopment project at the stage of occupation of flats by the society members. No Rule prohibited redevelopment of a plot belonging to a co-operative housing society by it. In the view we have taken, we do not deem it necessary to consider Mr. Godbole's submission that the terms and conditions of the PWR Scheme or the allotment order are covenants running with the land. Apart from the fact that the basic materials for these submissions are lacking in the pleadings, the record available, we have not found any such term enabling us to invoke and apply this principle at the stage of redevelopment of the petitioner's property.

96. As a result of the above discussion, we find that the impugned order is ex-facie illegal, erroneous, arbitrary and violates the mandate of Article 14 of the Constitution of India. Even in the matters of present nature, the state ought to act fairly, reasonably and in non-arbitrary manner. It cannot, at the behest and instance of anybody, much less a stranger, interfere with the administration of a lawful association or a co-operative housing society as in the instant case and violate the mandate of Article 19(1)(c) of the Constitution of India as well. Once all these constitutional provisions are violated, then, the impugned order cannot be sustained. It is quashed and set aside. Rule is

made absolute in terms of prayer clause (a). There would be no order as to costs.

97. At this stage Mr. Godbole prays for continuation of the order of status-quo which was subject matter of challenge in this writ petition. He also prays for the stay to the judgment and order pronounced today.

98. This request is opposed by Mr. Bhadrashete. Mr. Bhadrashete points out that the buildings are ready and fit for occupation but the certificate is withheld by the Municipal Corporation on account of the order of status-quo of the Minister/ 2nd respondent and the pendency of the writ petition.

99. After hearing both sides on this limited point, we are of the view that what Mr. Godbole in fact seeks is a continuation of the order passed by the Minister and which we have quashed and set aside. We cannot and having observed that there is violation of the constitutional mandate and serious prejudice and hardship to the petitioner society either continue that order or stay our order. Both requests are refused.

(B.P.COLABAWALLA, J.) (S.C.DHARMADHIKARI, J.)