

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION (ST.) NO.31056 OF 2018**

Shraddha Apartment Owners Association & Ors. .. Petitioner

Versus

Sanjay Shridhar Nikam .. Respondent

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Mr.N.V. Walawalkar, Senior Advocate i/by Mr.Suresh M.Sabrad and  
Mr.Amey Sabrad for the petitioners.

Mr.Rohan Hindurao Barge for the respondent.

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**CORAM : R.D. DHANUKA, J.  
DATE : 2<sup>nd</sup> November 2018**

**P.C. :-**

. By this petition under Article 227 of the Constitution of India, the petitioners have impugned the order dated 20<sup>th</sup> October 2018 passed by the learned trial Judge below Misc. Civil Application No.656 of 2018 as well as the order dated 17<sup>th</sup> August 2018 passed below Misc. Civil Application No.520 of 2018 in Regular Civil Suit No.190 of 2010. By consent of parties, writ petition was heard finally at the admission stage. Some of the relevant facts for the purpose of deciding this petition are as under :-

2. The petitioner no.1-Shraddha Apartment Owners Association is formed under the provisions of the Maharashtra Apartment Ownership

Act, 1970. CIDCO had constructed various types of buildings in Navi Mumbai. It is the case of the petitioners that the petitioner no.1 Association comprises of 23 buildings with 368 tenements constructed in the year 1984-85 formed the petitioner no.1 Association. The IIT, Mumbai filed its report on 9<sup>th</sup> May 1987 with the Municipal Corporation of Navi Mumbai opining that the buildings could not be considered as fit for human habitation and were dilapidated and dangerous condition. CIDCO issued notices to about 128 tenements out of which 112 are the members of the petitioner no.1 Association. All such members were called upon to forthwith vacate the accommodation and to shift to transit accommodation. It is the case of the petitioners that 112 members of the petitioner no.1 Association shifted to the transit camp and have been staying in transit camp since 1999.

3. An Expert Committee appointed by the State of Maharashtra submitted its report in the month of April 2004 opining that the buildings are not fit for human habitation. It is the case of the petitioners that on 20<sup>th</sup> September 2010, an Agenda of the Special General Body Meeting was issued to all the members of the petitioner no.1 Association. The respondent along with four other members filed Regular Civil Suit No.190 of 2010 before the trial Court seeking declaration that formation

of Central Committee of the petitioner no.1 Association dated 27<sup>th</sup> June 2010 was illegal and for declaration that the said formation of the petitioner no.1 Association was illegal and null and void and prayed for an injunction against the petitioners. On 10<sup>th</sup> October 2010, a Special General Body Meeting of the petitioner no.1 Association took place. In the said meeting, it was resolved that the Central Committee of the petitioner no.1 Association is dissolved and a new Managing Committee shall be elected unanimously.

4. It is the case of the petitioners that in the said meeting, 21 members of the Managing Committee were elected. Two of the members out of the earlier Central Committee which was unanimously dissolved were also elected in the new Managing Committee. The respondent along with four others filed an application (Exhibit-5) in the said suit filed by them. The said application was rejected. Appellate Court allowed the appeal filed by the respondent and others partly by an order dated 24<sup>th</sup> March 2011 however permitted the petitioner no.1 Association to take all necessary decisions permissible by law during the pendency of the suit. The said decision dated 24<sup>th</sup> March 2011 passed by the Appellate Court has not been challenged by the respondent and four others.

5. On 15<sup>th</sup> August 2013, a notice for holding meeting on 1<sup>st</sup> September 2013 was issued and various resolutions came to be passed including the resolution of continuation of the earlier committee appointed on 10<sup>th</sup> October 2010. 264 members of the petitioner no.1 Association have already signed the redevelopment agreement with M/s.E.V. Homes Construction Pvt. Ltd. On 4<sup>th</sup> February 2015, the State Government issued a notification resolving to grant permission for redevelopment of old, dilapidated and dangerous buildings which was demolished by the Municipal Corporation of Navi Mumbai which was constructed by the CIDCO. The petitioners filed an application for grant of sanction for redevelopment to the Municipal Corporation of Navi Mumbai on 17<sup>th</sup> August 2015.

6. The Municipal Corporation of Navi Mumbai directed the petitioner no.1 Association on 3<sup>rd</sup> September 2015 to file its proposal for grant of building permission and/or issuance of commencement certificate. It is the case of the petitioners that out of 368 occupants, 272 occupants i.e.73.91% have given consent for redevelopment. The Architect of the petitioner no.1 Association accordingly made an application to the office of the Town Planning Department on 3<sup>rd</sup> November 2015. The Municipal Corporation thereafter issued a notice

in the local newspaper specifying a list of dangerous building in the three categories i.e. C1, C2 and C3 on 29<sup>th</sup> May 2016. The building of the petitioner no.1 Association was categorized under 'C1' category i.e. highly dangerous and unfit for human habitation. On 28<sup>th</sup> July 2016, Town Planning Department issued a letter to the petitioner no.1 Association that the identification committee had identified the buildings of the petitioner no.1 Association as dangerous and eligible for redevelopment and thereafter directed to make an application for building permission within a period of 15 days. On 6<sup>th</sup> August 2016, the Navi Mumbai Municipal Corporation issued a notice under Section 264 of the Maharashtra Municipal Corporation Act to all the occupants of the buildings which were not demolished earlier.

7. On 19<sup>th</sup> August 2016, the respondent filed a writ petition (9772 of 2016) in this Court. The petitioners made a statement that they were ready to reside in the said buildings at their own risk. On 11<sup>th</sup> April 2017, CIDCO granted NOC for carrying out redevelopment of its dilapidated buildings bearing Nos.22 to 44. The petitioner no.1 Association informed the CIDCO that its 112 members who are occupying the transit accommodation would vacate the premises within a period of one month from 11<sup>th</sup> April 2017. The said NOC granted by

CIDCO has been renewed till 10<sup>th</sup> April 2019. The Municipal Corporation threatened the petitioner no.1 Association of disconnection of water connection on 20<sup>th</sup> April 2017 and issued a notice on 21<sup>st</sup> April 2017 to all members of the petitioner no.1 Association to vacate the premises and threatened to take action under Section 268(1) of the Maharashtra Municipal Corporation Act in the event of the members of the petitioner no.1 Association not vacating their premises.

8. The petitioner no.1 Association had accordingly filed a writ petition (5222 of 2017) impugning the said notice dated 21<sup>st</sup> April 2017. On 3<sup>rd</sup> May 2017, this Court passed an order directing the Municipal Corporation not to disconnect water supply and electricity connection till the next date. On 18<sup>th</sup> April 2017, the said Regular Civil Suit No.190 of 2010 filed by the respondent and four others came to be decreed. It was declared that the proposed Central Committee of the petitioner no.1 Association was not recognised by CIDCO and was illegal and null and void. The trial Court passed an order of permanent injunction restraining the petitioner no.1 Association from delegating the powers and duties of the Board of Management of the petitioner no.1 Association to alleged/proposed Central Committee.

9. The petitioner no.1 Association filed Civil Application No.1067 of 2017 in the writ petition for intervention. On 3<sup>rd</sup> October 2018, Division Bench of this Court vacated the earlier order of stopping the Municipal Corporation from taking any further steps subject to following appropriate procedure prescribed in law in view of the fact that subject building was categorised as 'C1'. This Court advised the occupants to resolve the disputes amicably.

10. On 19<sup>th</sup> August 2018, the petitioner no.1 Association called a General Meeting. On 14<sup>th</sup> August 2018, the respondent filed Civil Misc. Application No.520 of 2018 in a disposed of suit i.e. Regular Civil Suit No.190 of 2010 praying that the committee formed on 29<sup>th</sup> June 2010 be restrained to convene meeting in the society and prayed for a declaration that a meeting to be held on 19<sup>th</sup> August 2018 was illegal and null and void and for other reliefs. The respondent also applied for status-quo on 14<sup>th</sup> August 2018. The said application was opposed by the petitioner no.1 Association. On 17<sup>th</sup> August 2019, the learned trial Judge directed the petitioner no.1 Association not to hold meeting as per the notice dated 7<sup>th</sup> August 2018. On 10<sup>th</sup> October 2018, the petitioner no.1 Association issued a notice to convene a meeting on 21<sup>st</sup> October 2018 for discussing the issue of redevelopment of dilapidated

building and other issues of alternate accommodation of the members of the petitioner no.1 Association.

11. On 17<sup>th</sup> October 2018, the respondent filed a Civil Misc. Application No.656 of 2018 praying for an injunction against the petitioner no.1 Association from convening any meeting of the society and from taking any major decision. The petitioner no.1 Association also filed an application for granting status-quo in the said matter. On 20<sup>th</sup> October 2018, the learned trial Judge passed an order directing the petitioner no.1 Association not to hold any meeting till disposal of Misc. Civil Application Nos.656 of 2018 and 520 of 2018. This order passed by the learned trial Judge on 20<sup>th</sup> October 2018 is impugned by the petitioners in this writ petition.

12. Mr.Walawalkar, learned senior counsel for the petitioners invited my attention to the notices issued by the petitioner no.1 Association for holding various meetings, agenda of those meetings and minutes of meetings recorded by the petitioner no.1 Association of those meetings and would submit that the Central Committee appointed earlier was already dissolved in the Special General Body Meeting of the petitioner no.1 Association on 10<sup>th</sup> October 2010. In the said Special

General Body Meeting, 21 members of the Managing Committee were elected. He submits that an injunction was granted by the Appellate Court on 24<sup>th</sup> March 2011 allowing the appeal filed by the respondent and four others partly and permitting the petitioner no.1 Association to take all necessary decisions permissible by law.

13. In the said order, it was provided that the Central Committee formed by the petitioner no.1 Association herein which was not recognised by CIDCO was restrained from taking action in pursuance of the decision recorded in the letter dated 28<sup>th</sup> June 2010. It was further provided that the Association of the petitioners formed under the Maharashtra Apartment Ownership Act, 1970 and recognised by CIDCO was, however, at liberty to take all necessary decisions permissible by law, during pendency of suit. The order passed by the learned District Judge on 24<sup>th</sup> March 2011 during the pendency of the suit has admittedly not been challenged by the respondent and four others.

14. Learned senior counsel for the petitioner invited my attention to the final decree passed by the learned trial Judge in the said suit filed by the respondent and four others. He submits that by the said decree dated 18<sup>th</sup> April 2017, the trial Court declared that the proposed

Central Committee of the petitioner no.1 Association dated 27<sup>th</sup> June 2010 formed by the petitioners which was not recognised by CIDCO was illegal and null and void and granted permanent injunction against the petitioner no.1 Association from delegating the powers and duties of the Board of Management of the petitioner no.1 Association to alleged/proposed Central Committee. It was further directed that the Association of the petitioners formed under the Maharashtra Apartment Ownership Act, 1970 and recognised by CIDCO was, however, at liberty to take all necessary decisions permissible by law about renovation of the buildings of the petitioner no.1 Association. No part of the said decree was challenged by the respondent and four others.

15. It is submitted by the learned senior counsel that the petitioner no.1 Association is the association of the occupants of building Nos.22 to 44. In the said meeting held by the petitioner no.1 Association, the original plaintiff no.5-Mr.Narayansingh K. Rawat was personally present. He invited my attention to the averments made in the plaint of the Regular Civil Suit No.190 of 2010 filed by the respondent and four others and in particular paragraph no.1 admitting that the original plaintiffs were the lawful members of the petitioner no.1 Association. There were 368 members of the petitioner no.1 Association

consisting building Nos.22 to 44. In the plaint, it was averred by the respondent and four others that the petitioner nos.2 and 4 were the President and the Secretary respectively of the petitioner no.1 Association (part-A) consisting of building Nos.33 to 44 whereas the defendant nos.3 and 4 were the the President and the Secretary respectively of the petitioner no.1 Association (part-B) consisting of building Nos.22 to 32.

16. It is submitted by the learned senior counsel that admittedly the ad-interim order passed by the learned District Judge in the year 2011 was merged with the final decree passed by the learned trial Judge in the suit filed by the respondent and four others on 18<sup>th</sup> April 2017. He submits that the said resolution passed by the petitioner no.1 Association on 10<sup>th</sup> October 2010 in the Special General Body Meeting thereby appointing 21 new members of the Managing Committee has not been challenged by the respondent either by seeking an amendment to the suit filed by the respondent and four others nor by filing any separate suit. The said resolution has attained finality. He invited my attention to various NOCs issued by CIDCO in favour of the petitioner no.1 Association which has been renewed till 10<sup>th</sup> April 2019. He also invited my attention to various notices issued by the Municipal Corporation declaring the buildings of the petitioner no.1 Association

were categorised as 'C1' category i.e. dilapidated and dangerous condition. He submits that without disclosing the notices by the Municipal Corporation, the respondent and four others obtained status-quo order from the trial Court. The petitioners had challenged the notices issued by the Municipal Corporation threatening to disconnect the electricity and water connection admittedly.

17. Learned senior counsel invited my attention to the order passed by this Court on 3<sup>rd</sup> October 2018 in various writ petitions filed by both the parties advising them to sit together and take help of mediation and resolve the dispute amicably. He submits that in the said order, it was made clear that if the mediation did not materialize then the petitioner no.1 Association formed under the Maharashtra Apartment Ownership Act, 1970 in accordance with law and in accordance with mandatory provisions of the Act would submit appropriate proposal to the Planning Authorities. This Court recorded the submission made by the learned senior counsel that such a proposal had already been submitted. This submission of the learned senior counsel for the petitioner was not disputed by the learned counsel for the respondent. He submits that Annual General Meeting, however, could not be held on 16<sup>th</sup> October 2018. The petitioners had issued a notice for

holding a meeting on 21<sup>st</sup> October 2018. The respondent however fraudulently obtained an order of ad-interim injunction by filing two separate applications under Order XXXIX Rule 2 read with Order XXXIX Rule 2A of the Code of Civil Procedure, 1908.

18. It is submitted that out of 368 occupants, 272 occupants of the petitioner no.1 Association i.e.73.91% had already consented for redevelopment of the property. He submits that the respondent is the only person who is opposing the redevelopment and had filed two applications for seeking interim relief fully knowing well that all the buildings are classified in 'C1' category and have been directed to be demolished. This Court also did not interfere with the notices issued by the authorities calling upon the occupants to vacate their respective premises in view of the buildings having been found in the dilapidated and dangerous condition. He submits that in view of the recent amendment, consent of only 51% of total occupants is required for redevelopment. It is submitted that the respondent had filed two applications in a disposed of suit which was not maintainable. Learned trial Judge was *functus officio*. The respondent at most could have filed an application for execution of the decree passed by the learned trial Judge and could not have invoked the provisions of Order XXXIX Rule 2 and Order XXXIX Rule 2A of the

Code of Civil Procedure, 1908 read with Section 151 of the Code of Civil Procedure, 1908.

19. It is submitted by the learned senior counsel that the learned trial Judge has erroneously granted ad-interim injunction mainly on the ground that two members of the earlier Central Committee had signed the notices for calling a meeting which Central Committee had already been dissolved and thus the requisitions of the said meeting itself was illegal. He submits that prima facie findings of the learned trial Judge are ex facie perverse. Those two members who had sent intimation for conducting a meeting were elected as members of the new Managing Committee comprising of 21 members and thus the said intimation could not have been considered as a notice issued by the earlier Central Committee which was dissolved. He submits that though various prima facie findings were rendered by the learned trial Judge against the respondent (original applicant), learned trial Judge has passed an ad-interim injunction against the petitioners from holding a meeting then proposed to be held on 21<sup>st</sup> October 2018.

20. It is submitted that seven buildings out of 23 buildings are already demolished. The developer has already been appointed by the

petitioner no.1 Association and thus the petitioner no.1 Association having been registered under the provisions of the Maharashtra Apartment Ownership Act, 1970 and having been recognised by CIDCO were entitled to hold a meeting pursuant to the decree passed by the learned trial Judge and also the order passed by the Division Bench of this Court in group of the petitions filed by both the parties. He submits that if the impugned order is not quashed and set aside, serious prejudice would be caused to large number of members of the petitioner no.1 Association who have already vacated their premises and shifted to transit camp as well as other members. There would be no serious prejudice caused to the respondent. He is alone raising such frivolous issues.

21. Mr.Barge, learned counsel for the respondent, on the other hand, submits that the impugned order is passed by the learned trial Judge under Order XXXIX Rule 2 read with Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 and thus the remedy of the petitioners would be by way of filing of Appeal from Order and not by filing of a writ petition in this Court. This Court shall not interfere with this writ petition filed under Article 227 of the Constitution of India.

22. Learned counsel for the respondent invited my attention to the prayers in the suit and the order dated 24<sup>th</sup> March 2011 passed by the Appellate Court granting injunction against the petitioners. He submits that the appointment of so called new committee thus was contrary to the order passed by the Appellate Court on 24<sup>th</sup> March 2011. He invited my attention to the agenda of the meeting dated 10<sup>th</sup> October 2010 and would submit that the said meeting itself was illegal and contrary to the injunction order passed by the learned trial Judge. He submits that the said Managing Committee of 21 members in fact was created on 27<sup>th</sup> June 2010 and not on 10<sup>th</sup> October 2010. It is submitted that in any event, in view of the injunction order passed by the Appellate Court on 24<sup>th</sup> March 2011, the petitioner no.1 Association could not have been permitted to hold any meeting for the purpose of redevelopment or otherwise and has been thus rightly restrained by the learned trial Judge in the impugned order.

23. It is submitted by the learned counsel that the Appellate Court in the interim order and thereafter the learned trial Judge in the final judgment and decree had recorded a categorical finding that the constitution of the Central Committee was totally illegal and not

recognised by CIDCO. The petitioners have accepted the said decree passed by the learned trial Judge and thus could not hold any meeting.

24. Learned counsel appearing for the respondent placed reliance on the judgment of this Court in the case of ***Municipal Corporation of Greater Mumbai Vs. Bhikanlal Nanakchand Sharma, 2007 (3) Mh.L.J. 649*** and in particular paragraphs 9 and 11 thereof in support of the submission that the application under Order XXXIX Rule 2 read with Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 can be filed even in a disposed of a suit.

25. Mr. Walawalkar, learned senior counsel for the petitioners in rejoinder submits that the resolution passed by the petitioner no.1 Association appointing 21 members of the Managing Committee on 10<sup>th</sup> October 2010 has not been challenged by the respondent or by other four members in the said suit. The impugned order passed by the Appellate Court on 24<sup>th</sup> March 2011 has been merged with the final decree passed by the learned trial Judge. Both these order in any event permit the petitioner no.1 Association duly recognised by CIDCO and registered under the Maharashtra Apartment Ownership Act, 1970 to take further steps towards redevelopment of the buildings. There were

two committees. However in the Annual General Meeting, it was decided to form one committee of the petitioner no.1 Association. He submits that the petitioner no.1 Association has already been recognised by CIDCO and had granted various permission and NOCs which are still in force. He submits that merely because of two members from the earlier Central Committee having been newly elected in the Managing Committee, their authority could not be challenged by the respondent. Neither any separate suit nor any amendment was sought in the suit then pending on the date of such resolution. The trial Court could not have granted ad-interim injunction on an erroneous premise that those two members were also the members the earlier Central Committee which was dissolved. He submits that if the impugned order passed by the learned trial Judge is not set aside, serious prejudice would be caused to the members of the petitioner no.1 Association. Balance of convenience is in favour of the petitioner no.1 Association and its members and not in favour of the respondent who is alone fighting a frivolous litigation filed by him.

### **REASONS AND CONCLUSIONS**

26. A perusal of the record indicates that the Expert Committee appointed by the State of Maharashtra and the Municipal Corporation has

after visiting the building has already recommended that the buildings in question are in dilapidated and in danger condition. All such buildings whose occupants are the members of the petitioner no.1 Association are already classified 'C1' category i.e. "highly danger and unfit for human habitation." Though this court had granted initial stay against the action of the Navi Mumbai against the occupants of such buildings, the Municipal Corporation has been now permitted to proceed with the notices issued by the Municipal Corporation and to demolish the buildings. The Municipal Corporation is likely to demolish those buildings which are not demolished till date though some of the buildings are already demolished.

27. A perusal of the record further indicates that 112 members of the petitioner no.1 Association have already shifted to transit camp in the year 1999 and are still staying in the transit camp. This assertion of the petitioner has not been disputed by the respondent. A perusal of the record further indicates that prior to 10<sup>th</sup> October 2010, a Central Committee of the petitioner no.1 was appointed, the constitution of which committee was disputed by some of the members. On 10<sup>th</sup> October, 2010, a Special General Body Meeting took place wherein the earlier Central Committee of the petitioner no.1 Association came to be unanimously

dissolved and the new management committee of 21 members came to be elected.

28. It is not in dispute that when the said new committee of the 21 members of the petitioner no.1 was elected on 10<sup>th</sup> October,2010, there was no stay granted by the trial court below Ex.5 filed by the respondent and four others. Ex.5 application was rejected by the learned trial judge on 29<sup>th</sup> October,2010. However, on 24<sup>th</sup> March,2011 the appellate court passed an order in Misc. Civil Appeal No.28 of 2011 below Ex.12 filed by the respondent and four others holding that the Central Committee formed by the petitioner no.1 Association which was not recognized by the CIDCO and was restrained from taking action in pursuance of the decision recorded in letter dated 28<sup>th</sup> August,2010 and notice dated 20<sup>th</sup> September,2010. The appellate court however granted liberty to the Association of the petitioner no.1 formed under Maharashtra Apartment Ownership Act, 1970 and recognized by CIDCO was to take all the necessary decisions permissible in law during the pendency of the suit. The said order passed by the appellate court was not challenged by any of the party.

29. During the pendency of the said suit, the petitioner no.1

issued a notice on 15<sup>th</sup> August,2013 for holding a meeting on 1<sup>st</sup> September, 2013. In the said meeting held on 1<sup>st</sup> September,2013, various resolutions came to be passed by the petitioner no.1 including confirmation of the earlier committee. The respondent has not disputed that the 264 members of the petitioner no.1 Association has already signed the redevelopment agreement with M/s.E. V. Homes Construction Pvt. Ltd. It is not in dispute that the State Government has issued a notification on 4<sup>th</sup> February,2015 to grant permission for redevelopment of the old, dilapidated, dangerous buildings which had demolished by the Municipal Corporation of Navi Mumbai and those buildings which had been constructed by the CIDCO. A perusal of the record further indicates that the petitioner no.1 had made an application for grant of sanction of the redevelopment of the Municipal Corporation of the Navi Mumbai on 17<sup>th</sup> August,2015. Various permissions have been granted by the Municipal Corporation in favour of the petitioner no.1. The Municipal Corporation directed the petitioner no.1 to file its proposal for grant of building permission. Out of 368 occupants, 272 occupants (73.91%) have given their consent for redevelopment. Under the latest amendment, the consent of all 51% of the occupants is required for carrying out redevelopment.

30. A perusal of the record further indicates that the Municipal Corporation has issued notices in the newspaper Lokmat declaring the buildings in question as dangerous and categorized the buildings under C-1 Category. The Town Planning Department also has issued a letter to the petitioner no.1 Association identifying the buildings of the petitioner no.1 Association dangerous and eligible for redevelopment. The petitioner no.1 has been directed to file an application for permission within a period of 15 days by the letter dated 28<sup>th</sup> July, 2016.

31. The respondent has not disputed that the Navi Mumbai Municipal Corporation issued notice under section 264 of the Maharashtra Municipal Corporations Act to all the occupants of various buildings on 6<sup>th</sup> August, 2016 to vacate the buildings. The said notice has been upheld by this court. Insofar as submission of the learned counsel for the respondent that the decision of the petitioner no.1 in the meeting held on 10<sup>th</sup> October, 2010, holding election of 21 members of the new managing committee is illegal and bad in law in view of the same being an alleged violation of the order dated 24<sup>th</sup> March, 2011 is concerned, in my view there is no merit in this submission of the learned counsel. On 10<sup>th</sup> October, 2010 when the said 21 members of the new managing committee were elected, there was no *ad-interim* injunction granted

against the petitioner no.1. The injunction was granted for the first time on 24<sup>th</sup> March,2011. The said order dated 24<sup>th</sup> March,2011 had subsequently merged with the decree passed by the trial court on 18<sup>th</sup> April, 2017. The said interim injunction was thus not continued. The final decree and judgment dated 18<sup>th</sup> April, 2017 has not been challenged by any of the parties.

32. Be that as it may, it is an admitted position that the respondent has not challenged the resolution dated 10<sup>th</sup> October,2010 passed in the Special General Body Meeting of the petitioner no.1 Association by filing a separate suit or by seeking an amendment to the Regular Civil Suit No. 190 of 2010 which was pending as on the date of the said resolution dated 10<sup>th</sup> October,2010. In my view, the learned trial judge thus could not have granted any injunction against the petitioner no.1 from holding the meeting of the petitioner no.1. The meeting was absolutely necessary to take further steps in view of the disposal of the writ petition filed by both the parties refusing to interfere with the notices issued with the Municipal Corporation and declaring the buildings of the petitioner no.1 as dangerous and in dilapidated condition falling under 'C1' category.

33. A perusal of the impugned order passed by the learned trial judge granting ad-interim injunction in holding meeting by the petitioner no.1 indicates that the said order came to be passed mainly on the premise that two of the members of the Central Committee of the petitioner no.1 which was dissolved in the Annual General Meeting held on 10<sup>th</sup> October,2010 had signed the letters of intimations for conducting a meeting. The learned trial judge totally overlooked the fact that the said two members who were earlier members of the Central Committee were re-elected in the said meeting on 10<sup>th</sup> October,2010 and were forming part of the new managing committee of 21 members and were thus authorized to issue such letter of intimation to all the members of the petitioner no.1 Association. The impugned order granting ad-interim injunction in favour of the respondent shows clear perversity.

34. A perusal of the record indicates that though there are large number of members of the petitioner no.1 Association, the said Regular Civil Suit No. 190 of 2010 was filed only by four members of the Association. In the plaint of the Regular Civil Suit No. 190 of 2010 filed by the respondent and four others, it was admitted by them that they were lawful members of the petitioner no.1 Association. The validity of the constitution of the petitioner no.1 Association or the Committee duly

elected in the Annual General Meeting held on 10<sup>th</sup> October,2010 thus could not be challenged by those four members of the Association.

35. In so far as the application filed under Order XXXIX Rule 2 and Order XXXIX Rule 2A on which an ad-interim order came to be passed by the learned trial judge is concerned, the said applications were filed only by the respondent alone. Except the respondent, no other members have objected to the redevelopment of the buildings which are in dilapidated and dangerous condition and have challenged the constitution of the new managing committee of 21 members duly elected in the meeting held on 10<sup>th</sup> October,2010. In my view, even otherwise on the basis of such applications made by the sole member, the learned trial judge could not have granted any injunction contrary to the decree passed in the suit and the order passed by the Division Bench of this court.

36. Be that as it may, the petitioner no.1 has been recognized by the CIDCO. CIDCO has granted various NOC in favour of the petitioner no.1 for carrying out new development. The NOC granted by the CIDCO has been renewed from time to time and is in force till 10<sup>th</sup> April, 2019. In these circumstances, in my view even otherwise the petitioner no.1 has satisfied the condition imposed in the decree passed by the learned

trial court on 18<sup>th</sup> April,2017 in Regular Civil Suit No.190 of 2010 as well as the order passed by the Division Bench of this court referred to aforesaid. In my view, a single member of the petitioner no.1 Association cannot stop the majority of the members of the petitioner no.1 Association from taking further steps so as to comply with the provisions of law referred to aforesaid which would be in the interest of all the members including the respondent.

37. Insofar as judgment of this court in case of ***Municipal Corporation of Gr.Mumbai and others*** (supra) relied upon by the learned counsel for the respondent is concerned, there is no dispute about the proposition of law laid down by this court in the said judgment. However, since the impugned order passed by the learned trial judge is *ex-facie* perverse and contrary to the provisions of law, the petitioners were not required to exhaust the alternate remedy available in law, if any, before filing this writ petition. In my view there is thus merit in this submission of the learned counsel for the respondent.

38. In my view the impugned orders passed by the learned trial judge on 20<sup>th</sup> October,2018 below Civil Misc. Application No.656 of 2018 as well as order dated 17<sup>th</sup> August,2018 passed below Civil Misc.

Application No.520 of 2018 are perverse and deserves to be quashed and set aside.

39. I, therefore, pass the following order :-

- (i) The impugned order dated 20<sup>th</sup> October,2018 passed by the learned trial judge below Civil Misc. Application No.656 of 2018 as well as order dated 17<sup>th</sup> August,2018 passed below Civil Misc.Application No.520 of 2018 are quashed and set aside.
- (ii) The learned trial judge is directed to dispose of the Civil Misc. Application No.656 of 2018 and Civil Misc.Application No.520 of 2018 expeditiously without being influenced by the observations made and the conclusion drawn in the impugned order dated 20<sup>th</sup> October,2018 and 17<sup>th</sup> August,2018 and shall consider the observations and the findings rendered by this court in this judgment while disposing of the Civil Misc. Application No.656 of 2018 and Civil Misc. Application No.520 of 2018.
- (iii) Writ Petition is allowed in aforesaid terms.
- (iv) There shall be no order as to costs.
- (v) The parties as well as the learned trial court to act on the authenticated copy of this order.

***R.D. DHANUKA, J.***