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

**NOTICE OF MOTION NO. 379 OF 2015
IN
WRIT PETITION NO. 2494 OF 2014**

Kusum Kunj Co-Operative Housing Society ... Petitioners
and Ors.

Versus

The Municipal Corporation of Gr. Mumbai & ... Respondents
Ors.

Mr. Vishal Kanade, I/b Mr. Ashok Purohit and Co. for the
Petitioners.

Ms. Vandana Mahadik, for Respondent Nos. 1 to 5.

Mr. Pradeep Thorat, for Respondent Nos. 7 and 8. s

**CORAM: A.S. OKA AND
RIYAZ I. CHAGLA, JJ.**
DATE: 25TH JULY, 2018.

PC:-

1. In terms of order dated 17th July, 2018, there is no Affidavit filed by the Petitioner No.1. Affidavit has been filed by one Shri Amit Rohit Zaveri (the Petitioner No.2) dated 24th July, 2018 on behalf of the Petitioner Nos. 2 to 9. In the said Affidavit, the said Petitioners have stated that no change or alterations in the subject building and premises therein and no change of user can be permitted by the Municipal Corporation of Greater Mumbai without consent in writing of the owner / lessor of the land on which the building is standing.

2. The grievance of the Petitioners is about the communication / orders marked as Exhibit “CC” and “CC1” as well as permission dated 30th December 2013. The said permission dated 30th December, 2013 has been granted by the Municipal Corporation on the basis of alleged no objection certificate granted by the Petitioner No.1 on the basis of a resolution allegedly passed in the Annual General / Managing Committee Meeting. The Petitioner Nos. 2 to 9 are claiming to be the members of the Petitioner No.1. They have not challenged the alleged no objection granted by the Petitioner No.1 for change of user of the premises in the building.

3. There is a dispute raised whether the persons who have filed this Petition are entitled to represent the Petitioner No.1. In Writ Jurisdiction, we cannot decide as to who is entitled to represent the Petitioner No.1.

4. There appears to be an internal dispute amongst the members of the Petitioner No.1 – Society. Other Petition filed by persons claiming the owners of the land on which the subject building is standing for a similar relief has not been entertained by this Court. The entire issue revolves on the question whether the Petitioner No.1 was competent to grant no objection certificate for change of user and whether in fact such no objection certificate

has been granted. The decision on these issues involves adjudication of several factual aspects and disputed questions of law. Therefore, we are not inclined to entertain this Petition under Article 226 of the Constitution of India.

5. The disposal of this Petition will not prevent the Petitioner Nos. 1 and 2 from making an appropriate representation to the Municipal Corporation. Moreover, in the light of the stand taken in the Affidavit dated 24th July, 2018, the Municipal Corporation shall examine whether any illegal alterations and additions have been made in any of the premises in the subject building.

6. Subject to what is directed as above, we decline to entertain this Petition and the same is disposed of. We make it clear that we have made no adjudication on the merits of the allegations and counter allegations. The other remedies of the Petitioner are kept open.

(RIYAZ I. CHAGLA J.)

(A.S. OKA, J)