

Talwalkar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 653 OF 2021**

Venkatesh Bhavan CHSL & Ors ...Petitioners
Versus
The Municipal Corporation of Greater Mumbai ...Respondents
& Ors

**WITH
INTERIM APPLICATION NO. 3063 OF 2022
IN**

WRIT PETITION NO. 653 OF 2021

Rajendra Shah & Anr ...Petitioners
Versus
Venkatesh Bhavan CHSL & Ors ...Respondents

**Mr SM Gorwadkar, Senior Advocate, i/b Kavita Salunke, for the
Petitioners.**
**Mr GS Godbole, Senior Advocate, with Vandana Mahadik, for the
Respondent-MCGM.**
**Mr Beni Chatterjee, Senior Advocate, with Ranit Bose, Udayan
Mukherjee, for Respondents Nos. 4 to 6.**
**Mr Vaibhav Joglekar, Senior Advocate, i/b Vaishali Ugale, for
Respondent No. 8.**
**Mr Arif Bookwala, Senior Advocate, with Meeza Patel, for
Respondent No. 9.**

**CORAM G.S. Patel &
 Kamal Khata, JJ.
DATED: 13th September 2023**

PC:-

1. The Petition was original filled by a Cooperative Housing Society and two individuals as office bearers. An administrator has been appointed of the Society. The Petitioners Nos. 2 and 3 are transposed as Respondents Nos. 8 & 9. The cause title in the Petition remained to be amended to delete the names of Petitioners Nos. 2 and 3 and to show the administrator of the Society as the sole Petitioner. That amendment is to be carried out forthwith without reverification.

2. Appearing on behalf of the Administrator, Mr Gorwadkar seeks leave to withdraw the Petition. This is lustily supported by Mr Beni Chatterjee, appearing for Respondents Nos. 4, 5 and 6 but equally violently opposed by the transposed Respondents Nos. 8 and 9.

3. We do not see how such an application can be opposed. In any case, the application is correctly made. Prayer clause (b) complains of certain allegedly unauthorised work done by the Respondents Nos. 4, 5 and 6 in a unit in the building. But no MCGM notice has been received or served in respect of that work. The original petition proceeded on the footing that the work was unauthorised simply because the original Petitioners said so. This is a disputed question of fact. It cannot be entertained in a Writ Petition. The entire prayer proceeds on a *priori* assumption that the work is admittedly unauthorised. That is far from admitted.

4. At the request of Mr. Gorwadkar, the Petition is dismissed as withdrawn. It is open to the Respondents Nos. 8 and 9 or other members of the Society to pursue their grievances independently in regard to the affairs of the Society.

5. The Interim Application will not survive and is disposed of accordingly.

(Kamal Khata, J)

(G. S. Patel, J)