

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

WRIT PETITION NO. 4270 OF 2022

Prashant Bassein Cooperative Housing
Society Limited & Anr. ... Petitioners
Versus
Municipal Corporation of Greater
Mumbai & Anr. ... Respondents

**WITH
INTERIM APPLICATION NO. 950 OF 2023
IN
WRIT PETITION NO. 4270 OF 2022**

Sandeep Sharad Raulgaonkar ... Applicant
Versus
Prashant Bassein Cooperative Housing
Society Limited & Anr. ... Respondent

Mr. Shreepad Murthy i/by Mr. Abhishek Patil for the Petitioners.
Ms. Pooja Yadav for the Respondent-MCGM.
Ms. Kajal Solanki i/by Mr. Durgesh Rege for the Respondent No.2.
Mr. Pratap Singh a/w Mr. Shailesh Pal for the Applicant in IA/950/
2023.

**CORAM: G. S. KULKARNI &
R. N. LADDHA, JJ.**

DATE : 31st MARCH, 2023

P.C. :-

. We have heard learned counsel for the parties. On the backdrop of the earlier order dated 28 March 2023. The said order needs to be referred, which reads thus:

“1. Mr. Murthy learned counsel for the petitioner submits that the

developers as also the society is ready and willing to execute a permanent alternate accommodation agreement with respondent No.2 as also release in favour of respondent No.2 the transit rent, as paid to the other members of the society who are stated to be eleven in number. We accept the statement of Mr. Murthy.

2. *We accordingly adjourn the proceedings to **31 March 2023** to be listed on supplementary board, so as to enable the parties to complete the formalities.*

3. *In so far as the intervenors are concerned, Mr. Murthy fairly states that the petitioners are willing to enter into an agreement as entered with other members of the society. Statement of Mr. Murthy is accepted. Let all these formalities in this regard be also completed on or before the adjourned "date of hearing."*

2. Learned counsel for the respondent no.2 informs that the petitioners have already entered into an agreement with the respondent no.2 and the agreement would now be registered.

3. Learned counsel for the petitioners, on instructions, states that the registration of the said document shall be undertaken within a period of four weeks from today. Statement, as made on behalf of the petitioners by Mr. Murthy, is accepted.

4. Insofar as the intervenor is concerned, Mr. Murthy, on the earlier occasion, had stated that the petitioners are willing to enter into an agreement as entered by the other members of the society. Further steps in that regard be taken by the petitioners within a period of eight weeks from today.

5. Insofar as the Municipal Corporation having taken a position that they could not issue a further commencement certificate to the petitioners in view of the petitioners not entering into a permanent

alternate accommodation agreement with respondent no.2, as also the other members, as fairly agreed at the bar, the legal position is covered by a decision of this Court in *Raj M. Ahuja v/s. Jain M. Ahuja*¹. Learned counsel for the Municipal Corporation would fairly accept the position that the commencement certificate cannot be now withheld in view of the law as laid down by this Court in *Raj M. Ahuja* (supra). The Municipal Corporation, accordingly, is directed to issue a further commencement certificate considering the effect of the said decision.

6. In the above circumstances, further adjudication of the petition is not called for. The petition stands disposed in the above terms. No costs. The pending Interim Application, if any, would not survive and the same stands disposed off.

7. Let the Municipal Corporation issue further commence certificate within a period of four weeks from today, if so applied.

8. Needless to observe that apart from the condition of having 100% agreement with all the members of the society, the other conditions in the commencement certificate necessarily shall be required to be complied by the petitioners.

[R. N. LADDHA, J.]

[G. S. KULKARNI, J.]

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1 Writ Petition No. 5130 of 2022 decided on 20 March 2023.