

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 778 OF 2023
WITH
INTERIM APPLICATION NO. 153 OF 2023
IN
WRIT PETITION NO. 778 OF 2023

Kavita Kiran Pawaskar & Anr ...Petitioners
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

**Mr AS Khandeparkar, Senior Advocate, with Prerak A Sharma,
Rushikesh G Bhagat, Rohit P Mahadik, Vaibhav Kulkarni,
Apoorva Khandeparkar, Saurabh Mittal & Farhan Shaikh, i/b,
Prerak Sharma, for the Petitioners.**

**Mr AY Sakhare, Senior Advocate, with Rohan Mirpuray, Shailesh
Mhaske, Pooja Yadav, for the Respondent- MCGM.**

**Mr Sanjay Jain, with Arad Kilor & Viraj Jadhav, i/b Chinmaya
Acharya, for Respondent No. 5.**

Mrs Uma Palsuledesai, AGP, for the Respondent - State.

**Mr RD Soni, with Minakshi Surve, i/b, Mandar Soman for
Respondent No. 6.**

**CORAM G.S. Patel &
 Kamal Khata, JJ.**
DATED: 31st October 2023

PC:-

1. It is our considered view that this Petition is the grossest possible abuse of the process of this Court, viewed from multiple perspectives.
2. There appear to us to be only two possibilities:
 - (a) that there are deliberate, incorrect and false statements made by the two Petitioners through their alleged Constituted Attorney, (the husband of Petitioner No 1) in the Petition and on the Affidavit; or
 - (b) that there are very seriously disputed questions of fact.
3. This is quite apart from the other issue of maintainability, because what appears to be going on is a dispute between two members and the cooperative housing society of which they are members. This will not curtail our writ jurisdiction but it does seem that having not succeeded to the fullest extent before the Deputy Registrar, this Petition has come to be filed.
4. Respondent Nos 1 to 4 are the Municipal Corporation of Greater Mumbai (“**MCGM**”). Respondent No 5 is a Developer Company, West Avenue Realtors Pvt Ltd. (“**West Avenue**” or “**Developer**”). Respondent No 6 is the cooperative society (“**the Society**”). Respondent No 7 is the Urban Development Department of the Government of Maharashtra.
5. The issue pertains to one of several buildings in a layout at the Mahim Division, at DS Babrekar Marg, Prabhadevi, Mumbai

400028. This building is called Vision Crest. It is the free sale component of the project.

6. The Petitioners claim that the Society impermissibly granted the Developer permission to use the balance unutilized FSI, subject to Municipal sanction. The complaint is that in the guise of using this allegedly balance FSI, the Developer has illegally and unlawfully enclosed the refuge spaces on several floors of the building. It is argued that Municipal permission could not have been granted nor could Municipal discretion have been exercised to allow the utilisation of balance FSI by creating usable spaces in the otherwise unusable refuge areas that were previously provisioned. It is also argued that there is only a single stairwell, and enclosing the refuge areas would present a fire safety hazard. Even if the refuge areas / floors are allowed to be consumed as per the present Development Control and Promotion Regulation 2034 (“**DCPR 2034**”), the building must necessarily provide at least two stairwells. It cannot be that whilst an exemption under the DCPR 2034 is availed and the refuge area is enclosed, simultaneously the earlier Development Control Regulations of 1991 are invoked for providing single stairwell. In other words, the Developer gets the best of both worlds putting the members’ lives in peril.

7. But underlying all of this is a factual matter. There is a General Body resolution of 28th June 2015, said to have been passed at an Annual General Meeting of the 6th Respondent Society of which the Petitioners admittedly are members. Paragraph 2.6 of the Petition deals with this meeting in the following words:

“2.6 In this context, it is necessary to place on record that in support of the said Application, Respondent No. 5 has relied upon an alleged Resolution dated 28th June 2015 passed by the General Body of Respondent No. 6, of which the Petitioner is also a member, whereby Respondent No. 6 purports to have granted N.O.C. to Respondent No. 5 for the purpose of utilizing balance F.S.I. available on the said plot. **The Petitioner states that no such agenda was ever circulated and to the best of the Petitioner’s knowledge, no such meeting was ever held.** In this context, it is also necessary to place on record that the said Resolution would tantamount to alienation of Respondent No. 6’s property and therefore, the procedure prescribed under Section 79A of the Maharashtra Co-operative Societies Act needs to have been followed. However, no such procedure was ever followed by Respondent No. 5 and Respondent No. 6. **The Petitioner states that the very existence of the alleged Resolution dated 28th June 2015 is suspect.** Further, from the record, it appears that the actual true copy of the extract of the said Resolution has not been placed on record along with the Application, rather letter dated 4th April 2016 allegedly reproducing the contents of the alleged Resolution has been placed on record. Upon a perusal of the said letter, it can be seen that the same is only signed by the Secretary of Respondent No. 6 and does not bear any indication of having been ratified by the General Body of Respondent No. 6. The Petitioner therefore submits that the said Resolution that has reproduced in the letter dated 4th April 2016 cannot be said to be authentic. Hereto annexed and marked as **Exhibit “F”** is a copy of the letter dated 4th April 2016.”

(Emphasis added)

8. In paragraph 6 of the Affidavit-in-Reply of the Developer, the relevant extract of the resolution that was passed unanimously is reproduced. The copy of the Minutes of the Meeting dated 28th June 2015 is annexed at Exhibit “D” thereto. These Minutes inter alia note that the resolution in question was passed after a discussion, and the members present at the meeting (at page 144). At page 150, it is noted that the resolution was proposed by none other than the 2nd Petitioner before us. At Exhibit “C” from pages 140 to 143 is a list of persons to whom the AGM’s agenda (pages 140 to 141) and the AGM additional agenda (page 142 to 143) were circulated. The names of both Petitioners appear on all these lists, i.e., for circulation of the original agenda and the additional agenda, and the members present in the Meeting. There are signatures and dates of receipt seen against the names of both Petitioners at page 140. What is being shown to us in the Affidavit-in-Reply is not some typed statement or an averment but is a photocopy with various signatures, not just of these two Petitioners but all those members who received these documents.

9. The picture that thus emerges is that, contrary to what is stated in paragraph 2.6 of the Petition, both Petitioners were aware of and had received the agenda, understood the agenda item, were present when it was discussed, and the 2nd Petitioner himself proposed the resolution in favour of the agenda.

10. Mr Khandeparkar for the Petitioners would have us believe, first, that these statements in the Affidavit-in-Reply and the photocopies annexed as evidence of receipt of the agenda items are

‘forgeries’: somebody else is supposed to have signed. He draws our attention to paragraph 3 of the Affidavit-in-Rejoinder at page 359:

“3. I say that it has sought to be contended that in light of the resolution passed by Respondent No.6 Society which was allegedly proposed by me, the Petitioners have lost their locus to challenge the proposed illegal activities that are sought to be carried out by Respondent No.5 in the said Vision Crest Building. **I categorically deny having ever proposed any resolution either by myself or at the behest of Respondent No. 5.** I say that from the very inception, Respondent No.6 has been managed by Directors of Respondent No.5 who are also residents of the said Vision Crest Building. **I say that since the year 2013, not a single meeting has been called for and/or held wherein it was resolved to permit the Respondent No.5 to utilise the alleged balance FSI as contemplated vide the fabricated resolution.** I say that the illegal and irregular manner in which the affairs of Respondent No.6 Society have been conducted, which further demonstrated from the fact that the Assistant Registrar of Co-operative Societies, G North Ward has categorically found and held, vide Orders dated 4th August, 2021 that the Managing Committee of Respondent No.6 has failed to discharge its statutory duties and have therefore been dismissed and the said Committee has been dissolved. However, what is shocking to note is that the said Assistant Registrar has however appointed the same three offending Committee Members as the temporary Administrator Committee for Respondent No.6. I say that the said Order has been deliberately suppressed by both Respondent Nos. 5 and 6. I further submit that the conflict of interest of the Managing Committee of Respondent No.6 is now apparent and therefore, it can never be said that the decisions taken by the Managing Committee were ever in the interest of the Society. **I say**

that up until the point when the fraud played by Respondent No.5 and 6 became known to the Petitioners, the affairs of Respondent No.6 Society were being carried out on good faith basis and that all meeting registers as well as agendas would be signed post facto by the members as they had faith in the Managing Committee Members. I say that the said resolution is illegal and I shall take appropriate proceedings to deal with the same before the appropriate forum. Hereto annexed and marked as Exhibit “M” are copies of the Order dated 4th August, 2021 passed by the Assistant Registrar, G North Ward thereby dismissing the Managing Committee of Respondent No.6.”

(Emphasis added)

11. To describe this as outrageous is putting it at its mildest. Essentially, we are asked to enter the territory of not only disputed questions of fact but to get into questions of forgery, fabrication, and so forth, because it is clear that if the Petitioners were aware of and one of them propounded or proposed the resolution, there is no question now of their mounting such a Petition questioning the manner in which the balance FSI is being utilised. This is apart from the fact that what has been shown in the Affidavit-in-Reply prima facie indicates that the statements in paragraph 2.6 of the Petition and paragraph 3 of the Affidavit-in Rejoinder are unreliable and unworthy of consideration. If there are such egregious forgeries and fabrications, the question is what have the Petitioners done about it? We are told that they approached the Deputy Registrar to appoint an administrator and this order has been stayed. But fabrication and forgery of one's signature is not simply a matter of approaching a Deputy Registrar. Nothing else seems to have been done by these

two Petitioners. No other so-called 'forgery' or 'fabrication' is pointed out. Only the Petitioners' signatures are said to be 'forged'. Not one member supports the Petitioners. Every other member of the Society is, therefore, equally culpable and must be a party to this fraud, fabrication and conspiracy against only these two Petitioners. Only their version is the unvarnished truth. A more far-fetched construct is hard to imagine.

12. Interestingly, the Petition is verified by the husband of the 1st Petitioner who says that the contents inter alia of paragraph 2 are true to his own knowledge That would include paragraph 2.6, quoted above.

13. We are asked to believe that of all the signatures at pages 140, 141, 142 and 143, only those of these two Petitioners are somehow smuggled in as fabrication or forgeries. Why anyone would want to do this is unexplained. The minutes of the meeting are on the letter head of the Society and bear the rubber stamp of the Society. There was absolutely no reason for anyone to illicitly mention the name of the 2nd Petitioner because, obviously, there were others present at that meeting as well. Anyone could have proposed this agenda. There is nothing to indicate any prior dispute that could be said to be sought to be papered over by including the name of the 2nd Petitioner as the proposer of the resolution in question.

14. All this protestation by the 2nd Petitioner is curiously at odds with what he himself says in the Rejoinder at page 359 and 360, quoted above. It is there that the Petitioner says that up until that

point when the [alleged] fraud became known to the Petitioners, the affairs of the Society were carried out in good faith and—

”all meeting registers as well as agendas would be signed post facto ...”

But this necessarily means that the attendance sheets at pages 140 to 143 are *not* ‘forgeries’ and that the signatures on those are *not* fake. In short, these two Petitioners will resort to any statement that catches their fancies so long as they get their way.

15. We also notice at Exhibit “E” at page 182 that the assertion of post facto signature is ex facie denied by the document on record. This is now a separate acknowledgement of the distribution of the minutes of the AGM of 28th June 2015. It is shown to have been received by the 1st Petitioner on 20th July 2015 and by the 2nd Petitioner on 20th July 2015. Of course, it is now very convenient for the Petitioners to say that neither of them signed this statement themselves, but this does not mean that it was not signed on their behalf.

16. The record shows the unreliability of the Petition. The resolution of 28th June 2015 shows that the right to utilise the balance FSI was given by the Society to the Developer for a significant consideration to the Society’s corpus fund. There is nothing before us that would persuade us to hold that the minutes of this meeting are unreliable, false or cannot be trusted. The Petitioners’ self-serving say-so is immaterial because the Minutes covered other agenda items too. Now the discussion on the proposal of the Developer was Agenda Item 7. The Minutes in this regard run

from page 148 to page 150. The Developer's proposal was in writing. This was also before the General Body. The proposal was explained, and this is minuted. Then a suggestion was noted from members present that the Developer should compensate the Society for issuing the No Objection Certificate. One suggestion was to replace all four lifts and also to provide free gym equipment. Four items were demanded: corpus fund, replacement of lifts, free gymnasium equipment, additional area for the recreational club. The answer from the Developer's representative who was present is also noted in those minutes itself, including as to the free gym equipment, increased recreational area, corpus fund of Rs One Crore and all four passenger lifts being replaced including the stretcher lift. Every floor was also to have panic exit fittings. It is on this, and with these five requirements, that the resolution came to be proposed and passed; and the proposer for this particular resolution was none other than the 2nd Petitioner. Nowhere is there an explanation as to why anybody should have singled out the 2nd Petitioner as the proposer for this particular resolution.

17. Curiously, there was another resolution for Agenda Item 2 which was to adopt the annual report and audited accounts for the financial year 2014–15. This item was also passed by unanimous resolution. It was proposed by someone else, *but it was seconded by the 2nd Petitioner*. And the 2nd Petitioner does not say anything at all about this. The 2nd Petitioner quite conveniently disclaims only one particular resolution but does not explain how his name appears elsewhere other than to make the allegation that all this was being done in good faith and post facto — and of which there is no evidence at all.

18. We fail to understand how these two Petitioners expect a Writ Court to entertain the disputed questions of fact, all of which are the matter of evidence to be tried in the Civil Court and required to be proved by proper evidence and cross-examination. It is impossible to understand what it is that the Petitioners are now canvassing before us. We must accept and proceed on their theory that no resolution was passed authorising the Developer to use the balance FSI. We must accept the theory that no agenda was circulated, that no meeting was held, that the attendance registers are fabricated and false, that the minutes are fabricated and false, and that the entire action or proposal to use the balance FSI is wholly unauthorised apart from whether or not it is in consonance with municipal law.

19. This is, of course, completely independent of the law as settled in this Court that in matters of Co-operative Societies, individual members cannot strike out on their own. They are bound by the majority decisions of the Society.¹

20. To summarize:

- (a) The Petitioners believe, contrary to the overwhelming weight of decided law, that they are not bound by decisions of the Society in general meeting. That, they say, is immaterial. It is not.

¹ *Vaidehi Akash Housing Pvt Ltd v New DN Nagar Co-operative Housing Society Union Ltd & Ors* 2014 SCC OnLine Bom 5068; *Aditya Developers v Nirmal Anand Co-operative Housing Society Ltd & Ors*, 2016 SCC OnLine Bom 100 : (2016) 3 MhLJ 761; *Time Field Corporation vs Sankalp CHSL & Ors*, 2022 SCC OnLine Bom 1436; *Deepak Prabhakar Thakoor & Ors vs MHADA & Ors*, 2023 SCC OnLine Bom 2234.

- (b) The Petition first alleges that there was no meeting of 28th June 2015 at all. Then, when it is pointed out that the agenda and the supplementary agenda were circulated and signatures taken, it is alleged that these are forgeries. But the Petitioners did nothing about the alleged forgeries. When minutes are shown and the 2nd Petitioner is shown to have proposed the contentious resolution, the *new* theory propounded in rejoinder is that ‘usually’ and ‘in good faith’, minutes were signed post-facto. But ‘post-facto’ means after the fact; and the fact means the holding of the meeting. Therefore, there *was* a meeting, and the Petitioner did propose the resolution. In any case, minutes are never signed by every member of the general body. There is no such requirement. Then it is alleged that the list showing receipt of the minutes also has forged signatures — but everywhere only the signatures of these two Petitioners are forged. Not one other Society member files an affidavit or comes forward to substantiate any of this. And the 2nd Petitioner does not explain his have seconded *another* resolution, i.e., the adoption of the minutes of the previous meeting.
- (c) It does not matter, we are told, that this is a Writ Petition in which the Petitioners are now raising disputed questions of fact and claiming forgery and fabrication. That, we are told, is immaterial. It is not.
- (d) The Petitioners have no obligation, we are asked to believe, to state their position candidly and at the

forefront. Even if they take conflicting positions, all equally unreliable, it is supposedly immaterial. It is not.

21. We have no hesitation in concluding that this Petition is entirely motivated, vexatious and mischievous. Vital material has been actively suppressed or falsely disputed. Courts have regularly held that one who suppresses material particulars or makes false assertions is guilty of misleading the Court. Such a Petition is liable to be dismissed at any stage and indeed would invite an order of exemplary and even punitive costs.²

22. The Petitioners cannot address the question of compliance or inconsistency with municipal law unless their own bona fides are beyond doubt. If their Petition is shown to be wholly lacking in bona fides, the Petition will not be entertained at their instance.

23. It is for these reasons we hold that this Petition is thoroughly mischievous. :In the light of what we have held, we decline to allow these two Petitioners to attempt these misadventures with the Court as if our Courts are places where they can take chances without consequences. There will be an order of costs against each of the Petitioners in the amount of Rs 1 Lakh, payable to the Society. The amount is to be paid within one week from the date this order is uploaded. The society will be entitled to recover the amount as Society dues.

² *SP Chengalvaraya Naidu v Jagannath & Ors*, (1994) 1 SCC 1; *Dalip Singh v State of Uttar Pradesh & Ors*, (2010) 2 SCC 114.

24. There is a common order passed in this and the connected Petitions on 20th July 2022 (RD Dhanuka and Kamal Khata, JJ). There was also a question of a municipal stop work notice to the Developer. Mr Sakhare makes a statement that on inspection it was found that the Developer has effected the necessary compliances and cured or removed the deficiencies. He tenders a communication dated 18th July 2022. It is taken on record and marked “X” for identification with today’s date.

25. The Petition is rejected. All Interim and Ad-Interim Orders stand vacated. Mr Khandeparkar’s application for a continuance of the ad-Interim Order is summarily rejected. We are also not staying the order of costs.

(Kamal Khata, J)

(G. S. Patel, J)