

VRJ

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

WRIT PETITION NO.9653 OF 2022

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Madhukar Jagannath Sathe & Anr. ... Petitioners

V/s.

The State of Maharashtra & Anr. ... Respondents

Mr. Virendra Tulzapurkar, Senior Advocate with Ms. Prachi Tatke and Mr. A. R. Gole for the petitioners.

Mr. J. P. Patil, AGP for the State/respondent No.1.

Mr. Aseem Naphade with Mr. Karan Jakhar i/by L. J. Law for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 27, 2024

P.C.:

1. Challenge in this writ petition is to the Clause 2 of order dated 28th April 2022 passed by the Cooperative Appellate Court. The petitioners are the disputants who filed a dispute under section 91 of the Maharashtra Cooperative Societies Act, 1960 in relation to resolution passed by the general body as regards redevelopment. In a dispute challenging such resolution, the petitioners filed an application for interim relief. The Cooperative Court rejected the application for interim relief. Therefore, the petitioners filed appeal before the Appellate Court under section 97 of the said Act. The Appellate Court, by the impugned order, dismissed the appeal, however, directed disputant by Clause 2

which reads as under:

“2. The disputants have an option of exercising their claim within tow weeks of this order of getting additional area of 25 sq.ft., each, if the flat exists for the said area. In pursuance to exercising their option as above, they shall undertake and shall deposit a sum of Rs.10,00,000/- each with the society within a period of two months from today and same shall be subject matter of the final decision of the dispute. The society to invest the said amount in fixed deposit in any nationalised bank for a period of 5 years initially and thereafter as per directions of the Ld. Trial Court. If the option is so exercised and subject to payment of the above amount, the disputants be considered for grant of additional area of 25 sq.ft. each. The same shall be without prejudice to rights and contentions of the parties. The Ld. Trial Court to decide the quantum and eligibility of the amount and interest at the time of final disposal of the dispute as per law.”

2. Once the Appellate Court holds that the petitioners have failed to make out a case for grant of interim relief, direction against such appellant cannot be issued unless and until in an appeal the Court granted interim relief and the respondent was prejudiced by such interim relief. In case of dismissal of such appeal, the Appellate Court is within its power to restore the position as on the date of filing of appeal. However, Clause 2 of the operative part of order dated 28th April 2022 placed the petitioners in a worst position than they were on the date of filing of appeal. Hence, Clause 2 of the impugned order cannot be sustained. Hence, following order:

3. The impugned order dated 28th April 2022 to the extent of

Clause 2 is quashed and set aside.

4. The writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)