

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

**INTERIM APPLICATION NO. 16889 OF 2023
WITH
FIRST APPEAL NO.1072 OF 2023**

New Sagar Darshan Co-operative }
Housing Society Ltd. }Applicant

IN THE MATTER BETWEEN

New Sagar Darshan Co-operative }Appellant
Housing Society Ltd. }

V/s.

Rohit V. Shah and Ors. } ...Respondents

**WITH
INTERIM APPLICATION NO. 16891 OF 2023
WITH
FIRST APPEAL NO. 1073 OF 2023**

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New Sagar Darshan Co-operative }
Housing Society Ltd. }Applicant

IN THE MATTER BETWEEN

New Sagar Darshan Co-operative }Appellant
Housing Society Ltd. }

V/s.

Apurv Ajay Doshi and Ors. } ...Respondents

Mr. Darius Khambata, Senior Advocate with Ms. Simantini Mohite, Mr. Karan Rukhana, Mr. J.S. Solomon, Mr. Apoorv Karekar and Ms. Devyani Deshmukh I.by M/s Solomon and Co. for the Appellants/Applicants.

Mr. Girish Godbole, Senior Advocate with Mr. Nishant Sasidharan, Mr. Darshan Mehta, Naresh Chheda, Mr. Rishab Murali and Ms. Stuti Ladia I.by Dhruve Liladhar and Co. for the Respondent Nos. 3 and 7 in 1072 of 2023 and for Respondent Nos. 1, 3 and 4 in 1073 of 2023.

Mr. Atul Damle, Senior Advocate with Parimal K. Shroff, Sachin Pandey and Dhevesh Parikh I.by M/s. Parimal K. Shroff and Co., for the Respondent Nos. 9 and 10 in First Appeal No. 1073 of 2023 and for Respondent Nos. 1 and 2 in First Appeal No. 1072 of 2023.

CORAM : KISHORE C. SANT, J.

RESERVED ON : 22ND JANUARY 2024.

PRONOUNCED ON : 1ST FEBRUARY 2024.

ORDER PER : (KISHORE C. SANT, J)

1. Heard the Parties at length.
2. These applications are filed by the original defendants/Co-operative Society challenging the common Judgment and Order passed by the learned City Civil Court, Bombay in S.C. No. 7718 of 1976 & S.C. No. 9773 of 1982 by way of impugned judgment. It is declared that the plaintiffs are entitled to use and enjoyment of school building including the additional three floors thereof as mentioned in the plaint and the plot of the land on which the school is constructed admeasuring about 1245 sq. yards and surrounded by boundary wall as per plan annexed to the plaint 'Exhibit-A'. It is further held that defendants (present applicants) are not entitled to interfere or obstruct

or restrain the use or enjoyment of the school building or any part of the portion thereof. The suit of the present appellant bearing No. 9773 of 1982 came to be dismissed.

3. The facts in short are that :

a) It is the case that the entire land admeasuring 7758 sq. yards was conveyed to the society on 23rd October 1971. The school thereafter sought permission by submitting a proposal for addition of 4 + 6 floors over the existing school building by utilising the FSI from the entire land admeasuring 7758 sq. yards.

b) In 1974 trust was registered as a Public Charitable Trust. On 6th May 1976 M/s. T. Manek Co. wrote a letter to the Society and requested for permission of the Society to enable the school to commence the work. The Society took a stand that a lease between M/s. T. Manek Co. and the school is not binding on the society. M/s. T. Manek Co. have not obtained the permission from the society as is required by the bye-laws of the society.

c). In response M/s. T. Manek Co. denied that it is nominal member of the society and claimed to be owner of the disputed land and the school building. On this, the trustees of the school filed present suit against the society for a declaration that school is having independent right

over their land which came to be granted by the City Civil Court as stated above.

4. The society also filed a suit praying for a relief of declaration that the alleged deed executed prior to conveyance is not binding upon the society and the society had become owner of the entire land of admeasuring 7758 sq. yard, which includes part of the land on which the school building stands.

5. It is the case of the present appellants that by way of conveyance, the entire land was conveyed in favour of the society and the society became owner of the land. The consideration of Rs. 15,00,000/- was paid to the original owner. Once the entire consideration is paid including for the land of the school, there is no question of school having separate identity/ownership over the land of the school. In the conveyance deed, it is clearly stipulated that every purchaser would become member of the society. In view of this, it was necessary for the school to obtain permission from the society.

6. In the suit preliminary objection was raised about the maintainability of the suit. In view of Section 91 of the Maharashtra Co-operative Society's Act, 1961. However, the same was rejected. Appeal was filed in this Court even that came to be rejected. There was interim relief in favour of the plaintiffs/appellants in the nature of status quo. Attention is invited of this Court to an order passed in the suit filed by the present appellants wherein in view of the status quo order passed in the earlier suit, no orders were passed and that also

attained finality as no party carried the said order in the Supreme Court. The main contention thus, is that inspite of this position learned trial Court allowed the suit of the respondents and rejected the suit of the present appellant. Various clauses of the conveyance are also pointed out to this Court.

7. It is the case of the respondent nos. 1 to 7 that lease deed in their favour was executed much prior in time of the execution of the conveyance. By the said lease a right in favour of these respondents was already created. In any case, society does not have any control over the suit land. There was a clear findings recorded while dealing with the preliminary objection that the present respondents are not nominal members of the society. The suit is not barred by provisions of Section 91 of the Maharashtra Co-operative Societies Act. No notice was also required under Section 164 of the said Act. That issue attained finality. The society thereafter cannot claim that the respondents are the members of the society or even nominal members of the society. So far the suit filed by the society, he submits that the said suit was barred by limitation and therefore, the learned Judge rightly dismissed that suit.

8. On the interim application, he submits that in case of dismissal of the suit of the appellant, there is no question of grant of any interim relief in the nature of stay as there is no executable order. So far Interim Application No. 16889 of 2023 in First Appeal No. 7072 of 2023 arising out of the Suit No. 7718 of 1976 by the school is concerned, he submits that now the trial Court has recorded

categorical findings that respondent Nos. 1 to 7 have independent right over the land and the society does not have any kind of right or control over the suit land and prays for rejection of the Interim Application.

9. Learned Senior Advocate Mr. Damle for respondent also submits that the appellant has no concern over the property. In spite of having clear knowledge, there is no challenge to the earlier lease deed and thus prays for rejection of the Interim Application.

10. Having considered submissions, this Court finds that there is categorical findings about the membership that the trust of the school is not member of the society. This Court, *prima facie* see no reason to accept the case of the appellants that the society has any kind of control over the trust and the school. However, some arguable case is made out by the plaintiff in view of the conveyance deed where it is mentioned that in case the land is divided the school will have independent right of ownership. So to say that till division of land the entire land would be of the appellant – society. Learned Advocate Mr. Godbole, however, pointed out that the land was divided in three parts even prior to conveyance and therefore, there is no question of land being treated as one land.

11. Considering all above aspects, this Court finds that the Interim Application in Appeal No. i.e. in challenging the judgment in suit No. 9773 of 1982 needs to be dismissed. So far as Interim application No. 16891 of 2023 in First Appeal No. 1073 is concerned, this Court finds that interest of appellants needs to be protected.

However, it could not be in the interest of any of the parties to stall the work of the school or to grant injunction directing the school to not carry out any construction etc. Hence, the following order:-

ORDER

i) Interim Application No. 16891 of 2023 stands dismissed.

ii) Interim application No.16889 of 2023 is partly allowed.

iii) The respondents are at liberty to make further construction of the building for the school or to carry out any activity for school, subject to outcome of the First Appeals. It is clarified that the respondents shall not claim any equity in case the appeals are allowed. In any case, the land or the property shall not be disposed off or no third party interest be created.

12. With these, the applications stand disposed of.

(KISHORE C. SANT, J)