

AGK

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

WRIT PETITION NO.13527 OF 2022

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Anil Keshav Vanjpe

... Petitioner

V/s.

Shri Krishna Govind Prasad CHS

Ltd., through Secretary & Ors.

... Respondents

Mr. Anil K. Vanjpe for the petitioner.

Mr. Pankaj J. Das i/by Mr.Abhijeet Barve for respondent
No.1.

Mr. Jayesh Joshi for respondent No.2.

Mrs. V.S. Nimbalkar, AGP for respondent Nos.3 &
4/State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 2, 2024

PC.:

1. The petitioner/a member of a cooperative housing society has filed dispute before the Cooperative Court under Section 91 of the Maharashtra Cooperative Societies Act, 1960 essentially challenging the decision of the general body of the said society deciding to redevelop the building owned by the society.

2. Respondent No.1/society has 28 members. The dispute is filed by a single member/petitioner. The petitioner has filed dispute seeking a relief that the decision to redevelop building

belonging to the society and appointment of project consultant be declared as bad in law and in breach of directions dated 3 January 2009 issued by the Government of Maharashtra. Relief of permanent injunction restraining the society and appointed persons from carrying out work of redevelopment was also sought. In the said dispute, the petitioner filed an application for temporary injunction restraining the society and appointed person or their representatives from taking further steps for redevelopment of two buildings of the society.

3. The Cooperative Court and the Cooperative Appellate Court rejected the temporary injunction application. Hence, the petitioner has filed present writ petition.

4. The petitioner who appears in person has submitted that the agreement entered into by the housing society with the developer is a fraudulent document which does not contain recitals as per mandatory requirements. The procedure followed for redevelopment is in breach of directions issued by the Government of Maharashtra under Section 73A of the said Act. The redevelopment was unnecessary as the buildings were only 44 years old. The opinion of structural engineer to certify building to be dilapidated were not taken before taking decision of redevelopment and, therefore, the Courts below ought to have granted the relief of temporary injunction against the society and the development.

5. The position of law in relation to challenge to the decision of the general body for redevelopment of the society is no longer *res*

integra in view of the judgment of this Court in **Godi Kamgar Griha Sanstha Ltd. v. -Jerry Thomas Cherian** reported in 2010 (5) All M.R. 91. A coordinate Bench of this Court held that the decision of majority of members based on general body resolution is binding on minority members unless it is shown that the decision to sanction redevelopment scheme was based on fraud, misrepresentation or collusion.

6. Section 73 of the Maharashtra Cooperative Societies Act, 1960 confers status of supreme body on the general body. Dissent by minority member in relation to the decision taken by the majority members cannot be challenged on the usual grounds unless it is shown that the decision of the general body is in breach of mandatory provisions of the Act, Rules and Bye-laws. The Courts below have considered efficacy of directions issued under Section 79A by the State of Maharashtra. Relying on an unreported judgment of a coordinate Bench of this Court, it is held that such directions are advisory in nature and breach of such directions will not have consequences of annulment of general body resolution. Moreover, the petitioner being member of a cooperative society is bound by the decision of a general body. If the majority of members desire to redevelop the building, the effect of such decision cannot be stalled at the instance of a single member as the purpose of registration of the cooperative housing society is to benefit the members and the object of cooperative society is for mutual cooperation of the members.

7. In so far as the contention of fraudulent nature of agreement is concerned, though the provisions of the Code of Civil Procedure,

1908 are not strictly applicable to the proceedings under Section 91 of the Maharashtra Cooperative Societies Act, 1960; however broad principles of Order VI Rule 4 of the Code of Civil Procedure, 1908 requires a person alleging fraud to give details of such fraud. Mere stating expressing “fraud” during the course of arguments is not sufficient to adjudicate such contention in absence of details of fraud. Non-mentioning of certain events in the agreement will be of no consequence unless resultant legal prejudice caused to the petitioner is proved. If the majority of members are of the opinion that the building needs to be redeveloped, it is not necessary that such building is dilapidated needs to be proved before taking such decision by the general body. It is after all majority of members of general body to take decision in the interest of majority of members. Therefore, in my opinion, the Courts below have rightly rejected the application.

8. The writ petition, therefore, stands dismissed. No costs.

9. At this stage, the petitioner seeks stay of the order. Since there is no executable order, request for stay of the order is rejected.

(AMIT BORKAR, J.)