

Shabnoor

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

WRIT PETITION NO.808 OF 2024

Gajanan Shridhar Berde ... Petitioner

V/s.

Krypton Tower Cooperative Housing
Society Ltd. Through its Secretary ... Respondent

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Dr. Uday Warunjikar a/w Ms. Gargi Warunjikar a/w
Mr. Aditya Kharkar i/by Mr. Sumit S. Kate for the
petitioner.

Mr. Rohan Sawant a/w Ms. Uma Acharya, Ms. Shivaji
Prasad i/by Jaykar & Partners, for Respondent.

CORAM : AMIT BORKAR, J.

DATED : MARCH 6, 2024

P.C.:

1. Arguable questions are raised. Hence, **Rule.**
2. Prima facie, it appears that the Cooperative Court recorded a finding that there are 64 parking spaces in the opponent society. The flat purchasers are 53 in numbers. The Model Bye-laws Nos. 65A and 65B provided that each members are entitled to one parking. The Model Bye-law No.81, provides that no member shall be allotted more than one parking space for the car owned by him or his family members.
3. The Cooperative Court, therefore, recorded a finding that

total 11 parking spaces are available with the society as per bye-laws. Therefore, the Cooperative Court by way of mandatory relief, directed society to allot parking space in favour of petitioner who is undisputedly member of the society.

4. The Cooperative Appellate Court relied on the Development Control Regulations (DCR) which require that, only a person holding area more than 40 square meters shall be entitled to parking space.

5. Prima facie, the rights of the person who becomes member of the cooperative society are regulated by the provisions of the Maharashtra Cooperative Societies Act, 1960, the Maharashtra Cooperative Societies Rules, 1961 and the Model Bye-laws. The D.C. Rules framed by the Planning Authority under the provisions of the Maharashtra Regional and Town Planning Act, 1966 which provides guidelines for development of the property. It is binding on the Planning Authority while considering an application under Section 44 of the Maharashtra Regional and Town Planning Act, 1966. Such D.C. Rules cannot supersede bye-laws which regulate rights of members of the cooperative societies. Once, the bye-laws are approved under Section 14 of the Maharashtra Cooperative Societies Act, 1960 the society and its members are bound by such approval of bye-laws. The legal position on the point of efficacy of bye-laws in the case of **Zoroastrian Co-Operative Housing Society Limited & Anr Vs. District Registrar Co-Operative Housing Society Limited & Anr.**, reported in 2005 Vol. 5 SCC 632.

6. This Court is aware that mandatory relief at the stage of

interim relief need to be granted only in exceptional cases. However, considering undisputed position referred by the Cooperative Court, an exceptional case for granting mandatory relief is made out.

7. Hence, during pendency of the writ petition, the impugned order dated 29 September 2023 passed by the Cooperative Appellate Court in A.O. No.11 of 2023 shall remain stayed which will have effect revival of Cooperative Court's order granting relief of packing.

(AMIT BORKAR, J.)