

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

WRIT PETITION NO. 10592 OF 2024

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Anand Gopal Divekar
Age: 50 years, Occupation: Service,
Residing at: 215/2, Shaniwar Peth,
Pune – 411 030

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(Org. Respondent No.1
in Dispute No. 58 of 2024)

...Petitioner

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Versus

1) Shree Gauri Co-op Hsg Society Ltd
A Co-operative Housing Society, registered under
the Co-operative Societies Act, 1960,
Having its address at: 275, Shaniwar Peth,
Near Omprakash Temple, Pune – 411 030
Through its Chairman
Mr. Girinath Jaymangal Bharde
And Through its Secretary:
Mr. Mahesh Vasudeo Nilangekar

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(Org. Disputant in Dispute
No. 58 of 2024)

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2) Omkareshwar Developers,
A partnership Firm Registered under
the provisions of Indian Partnership Act
1932, having its registered office at:
212, Shaniwar Peth, Ameya Apartments,
Pune – 411 030.

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Through its Partners:
A] Mr. Gaurav Girish Bapat
B] Mr. Digvijay Pramod Bhosale

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(Org. Respondent No2 in
Dispute No. 58 of 2024)

... Respondents

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Mr. S.C. Wakankar, with Ms. Aishwarya Bapat, for the Petitioner.

Mr. S. S. Panchpor, with Ms. Pratibha Gavhane & Mr. A Rabade, for
Respondent No.1.

Mr. Himanshu Nagarkar, for Respondent No.2.

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CORAM : AVINASH G. GHAROTE, J.

DATE : 29th JULY, 2024

ORAL JUDGMNET:

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1. Heard Mr. S. C. Wakankar, the learned counsel for the
petitioner. The petition question the rejection of the application
filed by the petitioner under Order 7 Rule 11 (a)(d) of the Code
of Civil Procedure 1908 (“CPC”) vis-a-vis dispute filed by the 55
respondent No.1, before the Cooperative Court under Section 91
of the Maharashtra Cooperative Societies Act (“MCS Act), on the
ground that there is no cause of action for filing the dispute and
the dispute is not one falling under Section 91 (1) of the MCS
Act. The learned Cooperative Court by its Order dated 07.06.2024 60
(page 40), has rejected the application, holding that the dispute

falls under Section 91 of the MCS Act. Revision against which to the Cooperative Appellate Court has been turned down by the judgment dated 22.07.2024 (page 79), being aggrieved by which the petitioner has filed the present petition. 65

2. Mr. Wakankar, the learned counsel for the petitioner contend that, considering the reliefs claimed in the prayer clauses, in dispute under Section 91, of the MCS Act, the Cooperative Court would have no jurisdiction at all, as the question of redevelopment, cannot be said to be a business of the respondent 70 No.1-society, for which he places reliance upon the order dated 06.10.2022 passed on *Interim Application (L) No. 25993 of 2022 in Suit No. 1190/2019, Parimal H. Solanki, Applicant, in the matter of Bhoumik Co-operative Housing Society Vs Vina A. Sisawala and Ors, decided on 06.02.2022, 2) Mohinder Kaur 75 Kochar Vs Mayfair Housing Private Ltd and Ors AIR 2013 Bom 57, and 3) A-1 Co-operative Housing Society Ltd Vs R. Jaikishan and Co, 2005(1) Mh. L.J. 118*. He further submits that by way of an amendment Section 154 (B) (7) and 31 were introduced, on account of which the earlier byelaws of respondent No.1 were 80 continued and as there is no amendment to the byelaws or

adoption of the standard model form, the question of redevelopment cannot be said to be business of the society. He further submits that the impugned order of the Cooperative Court and that of the Cooperative Appellate Court are incorrect and are 85 required to be quashed and set aside.

3. Mr. S. S. Panchpor, learned counsel for the respondent No. 1 and Mr. Himanshu Nagarkar, for Respondent No.3, support the impugned orders.

4. Section 91 (1) of the MCS Act, being materiel, it is 90 reproduced as under:

“91. Disputes

(1) Notwithstanding anything contained in any other law for the time being in force, any dispute touching the constitution, elections of the committee or its officers, 95
conduct of general meetings, management or business of a society shall be referred by any of the parties to the dispute, or by a federal society to which the society is affiliated or by a creditor of the society, to the cooperative court, if both the parties thereto are one or other of the 100
 following :—

(a) a society, its committee, any past committee, any past or present officer, any past or present agent, any past or present servant or nominee,

heir or legal representative of any deceased officer, 105
deceased agent or deceased servant of the society,
or the Liquidator of the society or the Official
Assignee of a de-registered society;

(b) a member, past member or a person claiming 110
through a member, past member of a deceased
member of society, or a society which is a member
of the society or a person who claims to be a
member of the society;

(c) a person other than a member of the society, 115
with whom the society has any transactions in
respect of which any restrictions or regulations
have been imposed, made or prescribed under
sections 43, 44 or 45, and any person claiming
through such person;

(d) a surety of a member, past member or 120
deceased member, or surety of a person other than
a member with whom the society has any
transactions in respect of which restrictions have
been prescribed under section 45, whether such
surety or person is or is not a member of the 125
society;

(e) Any other society or the Liquidator of such a
society or de-registered society or the Official
Assignee of such a de-registered society.

Provided that, an industrial dispute as 130
defined in clause (k) of section 2 of the Industrial
Disputes Act, 1947, or rejection of nomination

paper at the election to a committee of any society
 or refusal of admission to membership by a society
 to any person qualified therefor or any proceeding 135
 for the recovery of the amount as arrear of land
 revenue on a certificate granted by the Registrar
 under sub-section (1) or (2) of section 101 or sub-
 section (1) of section 137 or the recovery
 proceeding of the Registrar or any officer 140
 subordinate to him or an officer of society notified
 by the State Government, who is empowered by
 the Registrar under sub-section (1) of section 156,
 or any orders, decisions, awards and actions of the
 Registrar against which an appeal under section 145
 152 or 152A and revision under section 154 of the
 Act have been provided shall not be deemed to be
 a dispute for the purposes of this section.”

5. The reliefs claimed by the respondent No.1 in dispute under 150
 Section 91 of the MCS Act are as under:

- (a) it be declared that the resolutions passed in the 38th
 Annual General Body Meeting dated 13.12.2020 and Special
 General Body meeting of the members of the Disputant
 Society, dated 30.04.2022 (attached herewith) is binding 155
 upon the Opponent No.1.
- (b) the Opponent No.1 be ordered by an order of
 mandatory injunction to vacate the said flat for

redevelopment project of the said property and deliver possession thereof, to the Disputant Society for being entrusted to the Opponent No.2 for redevelopment of the said Property. 160

(c) the Opponent No.1, his agents, servants or any person claiming through him be directed by an order of prohibitory injunction not to create any third-party interest in respect of the said flat and from causing any obstruction of any nature whatsoever for redevelopment of the said property, 165

(d) as prayed for by a separate application, the Opponent No.1, his agents, servants or any person claiming through him be directed by an order of prohibitory injunction not to create any third-party interest in respect of the said flat and from causing any obstruction of any nature whatsoever for redevelopment of the said property till the final disposal of the dispute, 170 175

(e) as prayed for by separate application, during the pendency of the dispute, the Opponent No. 1 be mandatorily ordered by an order of mandatory injunction to vacate the said Flat and deliver possession thereof to the Disputant Society and/or the Opponent No.2 for redevelopment of the said Property, 180

(f) failure on the part of the Opponent No.1 to do so in terms of prayer clause (e) above, appropriate

Receiver and/or Commissioner and/or Authorized Representative be appointed to take possession of the said Flat from the Opponent No.1, even by employing help of the police, for redevelopment of the said Property, 185

(g) the cost of the present dispute be awarded to the Disputant from the Opponent No.1, 190

(h) any other order deemed fit and proper be passed.”

6. It cannot be disputed that the respondent No.1, is a Cooperative Housing Society, in view of which, the society had bought land, construed apartment/flats and allotted to them to its members. It is also disputed that this action, on part of respondent No.1-society, would be one, which is falling within the expression business of the society. It is also not disputed that the petitioner is a member of the respondent No.1-society. In light of this position, and in view of the reliefs claimed it will have to be considered as to whether the respondent No.1-society had a right, to pass a Resolution dated 13.12.2020 and 30.04.2022. It is material to note that the passing of these Resolutions and the authority of the Annual General Meeting(“AGM”) to pass it, is not 195 200 205

in question. In fact it is the society, which has come to the Cooperative Court seeking enforcement of these Resolutions, and for declaring that these are binding upon the petitioner, who admittedly is a member of the respondent No.1-society. 210

7. Considering this position, in my considered opinion prayer clause (a) made in the Dispute would definitely be a relief which can be considered to be falling under Section 91(1) of the MCS Act. It is also material to note that the question of redevelopment of the property, has to be considered, in light of the obligations of 215 the society under its bylaws, of providing apartment or flats to its members, which can also be done, on account of the fact, that over a period time the earlier construction which was made and has become old and unstable, and the majority of the members, in this case 31 out 32 had unanimously resolved to get new flats, in 220 any construction, which may be made again, for this purpose, if the services of a third party is engaged, that by itself, cannot be termed that the society is engaging in a business of redevelopment as all that is being done, is for the members to have new flats, in place of the old, which, as it is, was the original 225 obligation of the society concerning that it is a cooperative

housing society. In this light of the matter, the Resolutions dated 13.12.2020 and 30.4.2022 are only being sought to be enforced as against the present petitioner, which would be a subject, as indicated above, falling within the four-corners of Section 91(1) 230 of the MCS Act. The reliefs, which are being claimed subsequently are only consequential reliefs.

8. It does not behove well for the petitioner who is the sole disenter in the Resolutions passed in the AGM dated 13.12.2020 and 30.4.2022, which have been passed with major 31:1 out of 235 the total member of 32, to hold all the other members to ransom by declining to follow the Resolutions which have been passed by majority and thereby force the respondent No.1 to approach the Cooperative Court under Section 91.

9. Though *Parimal H. Solanki, Mohinder Kaur Kochar and A-1* 240 *Co-operative Housing Society Ltd (Supra)* have been relied upon, what was challenged there, was the activity which was undertaken by the society of redevelopment. In the instant case, the main reliefs has been sought, is the enforcement of the Resolutions as indicated above, which would be within the 245 domain and Jurisdiction of the learned Cooperative Court to

entertain and decide, for the Cooperative Court would be imminently having Jurisdiction, to declare that a member of the society, would be bound by the Resolutions passed by the society in its AGM.

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10. In that view of the matter, I am not inclined to interfere with the impugned Order and Judgment. The Petitions is therefore dismissed. No costs.

(AVINASH G. GHAROTE, J.)

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