

Shabnoor

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

WRIT PETITION NO.9630 OF 2024

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Bhavesh Harish Solanki

... Petitioner

V/s.

Swatantara Bhavan, Cooperative
Housing Society Ltd. & Ors.

... Respondents

Mr. Kishor Patil i/b Mr. Pratik B. Rahade, for the
petitioner.

Mr. R. S. Tripathi i/b Chacko Joseph, for respondents.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 12, 2025

P.C.:

1. The petitioner filed Dispute No.197 of 2023. He challenged the General Body Resolution dated 17 October 2022. His case is that the resolution breaches the consent terms entered on 28 April 1976 in Dispute No.1724 of 1973 between his predecessor and respondent No.1 society. He also sought interim injunction. He requested that the society be restrained from implementing the resolution and from imposing a penalty of three thousand rupees per day on him and his family members. The penalty relates to carrying out commercial activities as mentioned in point 10(b) of the minutes of the General Body Resolution dated 17 October 2022.

2. The Cooperative Court passed an order on 29 September 2023. It partly allowed the interim application. It restrained the

society only to the extent of point X (xiii) of the resolution. That point relates to imposition of penalty. The petitioner filed Appeal No.73 of 2023 before the Appellate Court. The Appellate Court confirmed the order of the Cooperative Court.

3. Mr. Patil, the learned counsel for the petitioner relied on the consent terms. He submitted that the General Body Resolution dated 17 October 2022 conflicts with the rights given to the petitioner's predecessor under the consent terms. According to him, the society cannot enforce a resolution which is inconsistent with the consent terms. He submitted that the consent terms allowed the predecessor to carry on business. Therefore, the petitioner can use the parking space not only for personal use but also for commercial activities.

4. Per contra, the learned counsel for the society opposed the petition. He submitted that the General Body Resolution is in line with the consent terms. He referred to clause (vi) of the consent terms. He submitted that though clause (i) gives right to park, clause (vi) restricts the use. Clause (vi) states that parking of two cars, opposite Garage No.5 and near the wall of the C building, shall be used only by the then disputant, his son, and his grandson, and nobody else. According to him, the parking space can be used only for personal use of the disputant in terms of the consent terms. He submitted that the General Body has prohibited commercial use of the parking space. Such prohibition does not affect any right given under the consent terms. He therefore submitted that both Courts have rightly refused to grant injunction against the General Body Resolution.

5. Having considered the submissions advanced by the learned Advocate for the parties. It appears that the consent terms arrived at between the parties is the basis of right pleaded by the disputant, the relevant clause of the consent terms reads as under:

“1. The Society agree to permit Mr. Hamir D. Solanki to carry on his business of Motor repair garage in the Garage No.5 of “A” building of society called Anandnanagar.

2. The society agree to permit Hamir D. Solanki to park two cars opposite the said Garage No.5 and by the side of wall of “C” building.

3. Mr. Hamir D. Solanki agree to pay Rs.40/- as parking charge for two garage per month from the date the society has started recovering parking charges from other members.

4. Mr. Hamir D. Solanki agree not to carry motor repair work outside the said garage No.5.

5. Hamir D. Solanki to pay Rs. 350/- for legal charge of the dispute to the society together with arrears.

6. HE is agreed that this society had given premises to use the said garage No.5 restricted to its used by the said Hamir D. Solanki, his sons and grandsons and nobody else. If Hamir D. Solanki or his sons or grandson or any of them transfer the said garage No.5 to the transferee shall have no right to use the said garage no.5 as motor repair garage, but shall use only for parking car.”

6. The relevant clause of the General Body Resolution, which

according to the disputant taken away rights conferred upon the predecessor of the disputant by the consent terms, are clauses (vi), (ix), and (x):

“(vi) Since, we have waiting list for Car Parking, Commercial Parking is allowed only for specific time slot from 10.00 am to 7.00 pm. (Monday to Saturday).

(ix) If the Member doesn't Park Vehicle for more than 5 (Five) Months, the Society will have right to cancel Members Parking and allot the parking place to the other Society Member as per the Car Parking Waiting List. In case the old member requires car parking he has to submit new application to the Society.

(x) AGM will have the Authority to decide Parking Charges.”

7. I have examined the consent terms and the clauses of the General Body Resolution. When read together, it becomes clear that the resolution does not take away the rights given to the predecessor of the petitioner under the consent terms. The consent terms form the source of the petitioner's right. The General Body Resolution deals with regulation of parking and commercial use of parking spaces within the society. Its object is to ensure orderly use of common premises. There is no absolute prohibition against the petitioner's right. The consent terms continue to operate. The resolution only regulates use in the interest of the society at large.

8. Clause (vi) of the consent terms places a clear restriction. It states that the parking space shall be used by the then disputant,

his son, and his grandson and nobody else. This qualifies the right granted under clause (i). Therefore, the right is personal. It does not extend to outsiders or customers for commercial use. In such a situation, the limited relief that ought to have been granted by the Courts below was to protect the petitioner's right of personal parking of two cars opposite Garage No.5 and near the wall of building C. If the petitioner personally uses the parking space as per the consent terms, the provisions of the General Body Resolution regarding penalty will not apply. Only when the parking space is used contrary to the consent terms, or by persons other than those mentioned in clause (vi), the society may enforce its resolution. Hence, the writ petition deserves to be disposed of with a limited protection of the petitioner's personal right to park two cars.

9. During the pendency of the dispute, the petitioner shall be permitted to personally use the parking space for two cars opposite Garage No.5 and by the side of the wall of building C.

10. With this clarification, the writ petition stands disposed of.

(AMIT BORKAR, J.)