

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 17684 OF 2024

Dhananjay Balwant Bokil And Ors

... **Petitioners**

Versus

The State Of Maharashtra Thr
Government Pleader And Ors

... **Respondents**

Mr. Vaibhav Ugle *i/b Mr. Shubham Vasekar for the Petitioner.*

Ms. M. S. Srivastava, *AGP for Respondent-State.*

Mr. Shailendra S. Kanetkar *for Respondent No.4.*

Mr. Rhishikesh M. Pethe *for Respondent No.5.*

CORAM : SANDEEP V. MARNE, J.

DATE : 8 APRIL 2025.

P.C. :

1) Petitioner Nos. 1 to 6 are lessees of plots leased out to them by the fourth Respondent-Society. As of now, what stands on the plots of Petitioners are individual bungalows. Petitioners are desirous of constructing multi storey buildings on their individual plots and accordingly applied for No Objection of the society, which the society refused. Petitioners approached Deputy Registrar who directed issuance of NOC to the Petitioners for construction of multi storey buildings on the plots leased out to them. The order of the Deputy Registrar has been set aside by the Divisional Joint Registrar and whose order is further upheld by the Hon'ble Minister, Co-operation.

2) In the light of the above Petition, the issue that arises for consideration is whether Petitioners are entitled to construct

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multi storey buildings comprising of multiple flats to be sold to outsiders on plots leased out to them in their capacity as member of the fourth Respondent-Society. It appears that in exercise of power under Section 79A of the Maharashtra Co-operative Societies Act, 1960, the State Government had issued a directive for incorporation of condition in bye-laws of all housing society directing removal of any prohibition on individual members from constructing multi storey buildings on plots allotted/leased out to them by the society. Such directive became subject matter of challenge before Division Bench of this Court in ***Karvenagar Sahakari Griha Rachana Sanstha Maryadit, Pune and Anr. Vs. State of Maharashtra and Ors.***¹. The Division Bench struck down the said directive. The judgment of the Division Bench has been upheld by the Hon'ble Apex Court in ***State of Maharashtra & Vs. Karvenagar Sahakari Griharachana Sanstha Maryadit and Ors.***²

3) *Prima facie*, therefore the position that exists as of today is that there is no mandatory requirement for any housing society to permit construction of multi storey buildings on individual plots allotted/leased out to its members. It is a discretion left for the individual society to permit such development.

4) Mr. Kanetkar, the learned counsel appearing for fourth Respondent-Society would submit that the society has decided not to permit its members to develop plots leased out to them for construction of multi storey buildings. On the other hand Mr. Ugle, the learned counsel appearing for Petitioners has relied on bye-laws of the fourth Respondent-Society, under which construction of such

1 1989 Mh.LJ. 320

2 (2000) 9 SCC 295

multi storey buildings on plots leased out by the fourth Respondent-Society is permissible. Mr. Kanetkar would clarify that the said bye-laws adopted in the meeting held on 5 January 1991 has since been modified and that under the current bye-laws, it is impermissible to construct multi storey buildings by members of the society. However, such updated bye-laws have not been placed on record.

5) Mr. Ugle would also invite my attention to the fact that as many as five members of the fourth Respondent-Society have already constructed multi storey buildings on plots leased out to them. From information relied upon at page 12 of the compilation of documents, it appears that as of today there are five multi storey buildings standing on various plots of the fourth Respondent-Society. Some of such buildings are constructed on a single plot whereas some of the buildings are constructed by amalgamation of multiple plots. In that view of the matter, it would be necessary for the fourth Respondent-Society to clarify as to how it permitted construction of such five multi storey buildings on its plots.

6) In the light of the above position, it would be necessary for the fourth Respondent-Society to file an affidavit producing the latest bye-laws as well as clarifying the position as to how construction of multi storey buildings by its members has been permitted in the past. Let affidavit-in-reply be filed within a period of two weeks.

7) List the Petition for further consideration under caption 'for circulation' on **28 April 2025**.

[SANDEEP V. MARNE, J.]