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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 307 OF 2024

Siffin Apartments Co-operativeAppellant
Hou. Soc. Thr. Secretary

Vs.

Dilip Tulsida Nachani and orsRespondents

WITH

APPEAL FROM ORDER NO. 306 OF 2024

Siffin Apartments Co-operativeAppellant
Hou. Soc. Thr. Secretary Mr.
Mohammed Umar Khan

Vs.

Mrs. Bharti Rajiv Gulati and orsRespondents

Mr. Yogesh Birajdar for the appellant in both appeals
Mr. Govind Mundhe i/b Mr. Irani for respondent no. 1 in AO 307/2024
and for respondent nos. 1 and 4 in AO 306/2024
Mr. Adil Parsurampuriah a/w Mr. Tejas Agarwal, Mr. Harsh Shah i/b I. C.
Legal for proposed respondent no. 3
Ms. Neeta Jadhav i/b Ms. Komal Punjabi for respondent BMC

CORAM : GAURI GODSE, J.

DATE : 29th APRIL 2025

ORDER:

1. These appeals are arising out of an order of injunction granted in

a suit challenging the notice issued under Section 351 of The Mumbai Municipal Corporation Act ('the said Act'). The consent terms tendered by the parties are signed by the plaintiff, the society and proposed respondent no. 3 who claims to have agreed to purchase the suit structure. The notice is issued in respect of the suit structure which according to the Corporation is an unauthorised construction. In view of the transaction between the plaintiff and proposed respondent no. 3, the plaintiff has agreed to withdraw the suit. The appellant-society had filed a complaint based on which the impugned notice under Section 351 of the said Act was issued.

2. A perusal of the papers of the appeal and the terms agreed between the parties prima facie indicates that the machinery of the Corporation which is a public authority is sought to be used by the parties for settling the internal dispute. Such an attempt, if any, by the parties cannot be given approval through the Court by accepting the consent terms. The parties cannot be permitted to use the machinery of a public authority and the Court machinery to settle private dispute between the parties in such manner. Such practice, if any, on the part of the owners/developers and the officers of the Corporation needs to be deprecated.

3. The consent terms are taken on record. Learned counsel for the Corporation shall explain as to in what manner, a decision was taken by the concerned Designated Officer to issue notice under Section 351 of the said Act. The Corporation shall file an affidavit explaining the manner in which a decision was taken to issue notice under Section 351 of the said Act. The affidavit shall also disclose as to whether the guidelines framed in the circular dated 4th June 2013 were followed.
4. Learned counsel for the Corporation seeks three weeks time to file necessary affidavit. Time granted. Necessary affidavit to be filed in the Registry with an advance copy to the learned advocate for the appellants and the respondents.
5. The consent terms shall be kept in the record of these appeals.
6. List both the appeals on 11th June 2025.
7. Ad-interim protection operating, if any, shall continue till the next date.

[GAURI GODSE, J.]