

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1324 OF 2018
WITH
INTERIM APPLICATION NO. 4513 OF 2023
WITH
INTERIM APPLICATION NO. 7662 OF 2024
IN
FIRST APPEAL NO. 1117 OF 2018

SNEHA
NITIN
CHAVAN

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Sushma A. Gupta and Anr.

...Applicants /
Appellants

Versus

Minal Co-operative Housing Society Limited and ...Respondents
Ors.

WITH

INTERIM APPLICATION NO. 7880 OF 2025
IN
FIRST APPEAL NO. 1117 OF 2018

Minal Co-operative Housing Society Limited

...Applicant /
Ori. Respondent

In the matter between:

Sushama A. Gupta and Anr.

...Appellants

Versus

Minal Co-operative Housing Society Limited and ...Respondents
Ors.

Appearances on 22.08.2025 :

Mr. Ashok Gupta, Appellant No.2 in person present for the Applicants in
CAF/1324/2018, IA/7662/2024, IA/4513/2023.

Mr. Rubin Vakil a/w Adv. Humera Syed i/b Bishwajeet Mukherjee for
the Applicant in IA/7880/2025.

Mr. Rajiv Chavan, Senior Advocate a/w Ms. Asmi Desai, Ms. Sonam
Pandey, Ms. Pallavi Khale i/b Ms. Komal Punjabi for the Respondent
No.12/MCGM.

Mr. A.R. Patil, Addl. GP for the Respondent No.14/State.

Appearances on 06.10.2025 :

None for Applicants in CAF/1324/2018, IA/7662/2024, IA/4513/2023.
Mr. Rubin Vakil i/b Bishwajeet Mukherjee for the Applicant in IA/7880/2025.

Ms. Pallavi Khale i/b Ms. Komal Punjabi for the Respondent No.12/MCGM.

CORAM : M.M. SATHAYE, J.
RESERVED ON : 22ND AUGUST, 2025
PRONOUNCED ON : 6TH OCTOBER 2025.

ORDER :

1. Heard learned Counsel for the parties. All the above interim applications are connected to each other and therefore are being taken up for consideration together.

2. Civil Application No. 1324 of 2018 is filed by the Appellants in the above First Appeal (Sushma Ashok Gupta and Ashok Gupta) seeking stay of impugned Judgment and Decree dated 19.01.2018 passed in L.C. Suit No. 3067 of 1996 by the City Civil Court, Dindoshi, Mumbai. By order dated 22.03.2018, an *ex-parte* ad-interim status quo was granted in this application, in absence of Respondent No.1-Housing Society.

3. Interim Application No. 7880 of 2025 is filed by Respondent No.1 in the Appeal - Minal Co-operative Housing Society ('CHS') praying to vacate above status quo order dated 22.03.2018, or take up the appeal for final hearing.

4. Interim Application No. 4513 of 2023 is filed by Appellants (Sushma and Ashok Gupta), praying for appointment of Court Receiver in respect of area underneath and appurtenant to the notional

connection and direction to MCGM to revoke and/or cancel all permission and sanctions granted towards construction, development, redevelopment thereon and also directions to the MCGM to 'make sure' that no construction activities are carried out underneath and appurtenant to the notional connection.

5. Interim Application No. 7662 of 2024 is filed by the Appellants (Sushma Gupta and Ashok Gupta) again praying for appointment of Court Receiver over the suit property, for direction to Respondent No.12/Municipal Corporation of Greater Mumbai ('MCGM') to revoke and/or cancel of permission and sanctions granted towards constructions on the suit property, on the land underneath and appurtenant to the notional connection between two Society buildings and to reinstate solid waste drainage line as per approved plan issued by MCGM in 2008. This application also seeks direction to MCGM to 'make sure' that no construction activities are carried out on land underneath and appurtenant to notional connection and solid waste drainage line on suit property.

6. This litigation has a checkered history which will be adverted to in the subsequent paragraphs. This first appeal is of the year 2018, admitted on 20.10.2023 and considering large pendency of first appeals of earlier years, it is not possible to take up the first appeal for final hearing.

7. Before taking any decision on the pending applications and prayers made therein, it is necessary to consider *prima facie* merit in the challenge raised by the Appellants to impugned Judgment and Decree. Appellants are Defendant Nos. 6 & 7 only. No other defendants have

challenged the decree. Respondent No. 1 is sole Plaintiff - Co-operative Housing Society. Other Respondents are co-defendants. Parties are referred to in their original capacity in the Trial Court for the sake of convenience and better understanding. Name of Defendant No. 6 is stated as Smt. Shusheela A. Gupta in Trial Court, but it is asserted by the Appellants in the appeal memo that it is in fact Smt. Sushma Gupta.

8. CASE OF Plaintiff-Society :

8.1) The suit is filed by Plaintiff-Society representing about 31 flat owners, seeking declaration that the agreement dated 02.12.1989 executed by father of Defendant No.3 (Shivkumar M. Jalan) in favour of Defendant Nos. 4 to 6 as illegal and contrary to provisions of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as 'MOFA Act' for short). Declaration is sought that construction of building/structure made by Defendant Nos. 4 to 7 ('Ramanuj' Society) is in breach of statutory requirements of Bombay Municipal Corporation Act, 1888 (hereinafter referred to as 'BMC Act' as short) read with Applicable Development Control (DC) Rules. A relief of permanent injunction to restrain Defendant Nos. 4 to 7 from using, occupying or enjoying the remaining portion and open spaces, parking spaces, recreational grounds on subject matter property is also sought. Further injunction is sought from causing obstruction to the Plaintiff-Society's use, occupation and enjoyment of the suit plot along with compulsory open spaces.

8.2) Other reliefs in the nature of mandatory injunction to remove the dividing wall and filling made by Defendant Nos. 4 to 7 to make entire property at one single level and to demolish construction made by Defendant Nos. 4 to 7 as well as direction to MCGM to remove the drainage line put up by Defendant Nos. 4 to 7, adjacent to the water storage tank of the Plaintiff-Society is also sought. Further relief of permanent injunction is also sought to restrain Defendant Nos. 4 to 7 from consuming 'TDR' and carrying out any construction. Perpetual injunction is sought against the Defendant Nos. 4 to 7 from obtaining conveyance and title in respect of property or any part thereof from legal heirs and representatives of Defendant No.1 and Mr. Shivkumar Jalan.

8.3) There are 31 flats in the Plaintiff-Society. During pendency of suit, the plot of land is transferred in the name of Plaintiff-Society by registered Deed of Conveyance dated 20.03.1998 executed by Defendant Nos. 1 to 3 i.e. Podar Family and Mr. Jalan.

8.4) Defendant No.1 and her husband Ghanshyamdas Podar (father of Defendant No.2) were original owners of the suit plot having tenements/chawls on land admeasuring 2552.13 sq. meters (excluding a structure called 'Madhav Kunj' admeasuring about 750 sq. meters) and its appurtenant land, which is suit plot bearing OP No. 188, now final plot No. 185 under TPS-II bearing City Survey No. 1611 and 1611/1 to 15 situated at Vile Parle (East), Mumbai- 400 057.

8.5) One Mr. Shivkumar Jalan (Father of Defendant No.3) acquired the development rights for construction of building of Plaintiff-Society and suit plot under agreement of sale dated 08.08.1979 from the Defendant No.1. The said Mr. Shivkumar Jalan constructed the Plaintiff-Society (Minal CHS) after getting necessary sanctions from MCGM as per sanction plan dated 28.01.1981.

8.6) The original owners have not sold 'Madhav Kunj' structure under Agreement dated 08.08.1979 to Shri. Jalan.

8.7) On rest of the portion, there was a structure occupied by tenants. Since Mr. Jalan was unable to negotiate with few tenants, he demolished only portion of existing building and constructed the Plaintiff-Society after removing part of the old structure. The said Mr. Jalan did not convey the suit plot with the building to Plaintiff-Society as required under MOFA Act. The Plaintiff-Society got itself registered in the year 1987-88.

8.8) In Annual General Meeting of the year 1993-1994, the Plaintiff-Society was given to understand that construction on the remaining portion of land will be carried out after showing sanction plan and other documents, however original Defendant Nos. 4 to 7 (including present Appellants) started construction immediately. They claimed right of construction on remaining property as per agreement dated 02.12.1989 executed by Mr. Shivkumar Jalan.

8.9) It is the case of the Plaintiff-Society that Mr. Shivkumar Jalan did not have any right to sell the remaining portion to Defendant Nos. 4 to 7 when he had agreed to transfer the property to Plaintiff-Society. Therefore, it is claimed that agreement dated 02.12.1989 is not binding on the Society. It is the case of the Plaintiff-Society that as per agreement dated 08.08.1979, Mr. Jalan was not in a position to develop remaining property admeasuring about 607.76 sq. meters which translates into balance FSI of 6550 sq. ft. and this right of development to the extent of FSI consumption of 6550 sq. ft. only is transferred by Mr. Jalan to Defendant Nos. 4 to 7 vide their agreement dated 02.12.1989.

8.10) According to the Plaintiff-Society under agreement dated 02.12.1989, the Defendant Nos. 4 to 7 are only entitled to develop balance FSI to the extent of 6550 sq. ft. and those flat purchasers should become members of Plaintiff-Society. It is also the case of Plaintiff-Society that Defendant Nos. 4 to 7 were not allowed to use 'TDR' and Development rights in the property required to be shared by the Plaintiff-Society. It is contended that Defendant Nos. 4 to 7 (including Appellants) have made construction of more than 8000 sq. ft. and have constructed palatial bungalow for their family in contravention of their entitlement as well as applicable DC Rules.

8.11) This use of additional FSI by Defendant Nos. 4 to 7 is without permission of the Plaintiff-Society and its flat purchasers. It is further case of Plaintiff-Society that BSES sub-

station has been illegally shifted by Defendant Nos. 4 to 7 behind the Plaintiff-Society's building and unauthorized construction of notional connection to join new building i.e. 'Ramanuj' to the Plaintiff-Society's building has also been constructed and drainage pipeline has been laid near water tank of the Plaintiff-Society. It is contended that despite several complaints to MCGM, no action was taken to demolish the unauthorized construction by Defendant Nos. 4 to 7 and there is collusion between officers of MCGM and Defendant Nos. 4 to 7.

DEFENCE OF APPELLANTS

9. Since the impugned decree is challenged only by Defendant Nos. 6 and 7 (Sushma and Ashok Gupta), as on today there is no challenge to the impugned decree by Defendant Nos. 4 and 5 who are family members of present Appellants.

10. The suit is contested by Defendant Nos. 4 to 7 and MCGM only. No other Defendant has filed written statement.

11. The present Appellants have filed written statement contending *inter alia* as under.

11.1) Ownership of Defendant No.1 and her husband over the suit plot and agreement of sale dated 08.08.1979 executed by them in favour of Mr. Jalan and construction of Plaintiff-Society by Mr. Jalan on part of the property is admitted.

11.2) That Mr. Jalan has executed agreement for sale

dated 02.12.1989 in their favour. That they have challenged the deed of conveyance dated 20.03.1998 executed by Defendant Nos.1 to 3 in favour of the Plaintiff-Society by filing a suit. That when Mr. Jalan assigned all his right, title and interest in favour of Defendant Nos. 4 to 6 by deed of assignment dated 02.12.1989, Defendant No.3 (son of Mr. Jalan) has no right, title and interest to execute conveyance in favour of the Plaintiff-Society. It is contended that the Plaintiff-Society has not challenged the sanctioned plan and amended plan in favour of the Appellants and therefore relief of demolition of building cannot be granted.

11.3) They contended that since Mr. Jalan could not negotiate with some of the tenants, he demolished partially and constructed Plaintiff-Society's building. That Mr. Jalan has assigned his right and interest in respect of remaining undeveloped property to the Appellants by agreement dated 02.12.1989. It is contended that there is no unauthorized construction of notional connection made by them. That remaining structure which is not developed by Mr. Jalan was dilapidated chawl which was declared unsafe and was therefore demolished. That since all the tenants agreed for redevelopment, they submitted plan for construction which was sanctioned by MCGM and construction was completed in 1994. It is contended that BSES sub-station was shifted as per sanctioned plan.

11.4) It is contended that the agreement dated 02.12.1989 is binding on the Plaintiff-Society. It is contended that relief of

cancellation of said agreement is time barred. It is contended that they have constructed the building and laid drainage and water line as per the sanctioned plans for which consent of the Plaintiff is not necessary. Consumption of higher FSI is denied. It is contended that Mr. Jalan was entitled to develop remaining portion of the building by evicting remaining tenants. That the power and authority of Mr. Jalan to construct new building had been given to the Appellants under the agreement dated 02.12.1989. The case of collusion between them and MCGM is denied. It is contended that the notional connection between two structures was sanctioned by MCGM in the beginning. That as per the agreement dated 02.12.1989, the developer is entitled to develop the same as per his sweet will and the Plaintiff-Society has no right on the remaining FSI.

STAND OF THE MUNICIPAL CORPORATION

12. MCGM has filed written statement contending *inter-alia* that plans submitted for construction by the Appellants were granted and building of ground part plus stilt part plus three upper floors with notional connection with the Plaintiff-Society building was approved in May 1994. Thereafter, amended plan was approved in January 1995. After issuance of notice under Section 354A of the BMC Act, a proposal for regularization was given, which was approved. After complaints of the Plaintiff-Society, meetings were held and an order has been passed on 07.11.2006, as per order of Court dated 09.08.2006 passed in N.M. No.2185 of 1996. That MCGM issued Occupation Certificate upto third floor.

DECREE BY TRIAL COURT

13. The Trial Court after considering rival contentions and on appreciation of evidence has decreed the suit only partly, directing the MCGM to take action against the constructed building which is beyond sanctioned plan and which is more than permitted FSI worth 6550 sq. ft. constructed by Defendant Nos.4 to 7 (including the Appellants) on suit property. Direction is issued to MCGM to implement its order dated 07.11.2006. The Appellants are directed to remove or demolish the notional connection and to shift BSES sub-station to original position and to remove/demolish unauthorized construction beyond 6550 sq. ft. Direction is issued that if the Appellants fail to demolish as directed, MCGM to demolish the same. The Appellants are permanently restrained from obstructing members of the Plaintiff-Society from enjoying recreational ground at site. The Court has also directed inquiry as to how plans were sanctioned without any benefit to MCGM in the redevelopment/new construction even when MCGM was one of the occupants of old premises having area of 716 sq. ft.

CONSIDERATION BY THIS COURT

14. Mr. Vakil, learned Advocate appearing for the Plaintiff-Society, relying upon the averments made in IA/7880/2025 contended that the Plaintiff – Society has been embroiled in the present litigation for last about 30 years and is currently undergoing re-development. Relying on the latest Concession Report dated 28/11/2024 issued by MCGM, it is contented that the Plaintiff – Society is forced to keep the FSI consumption in abeyance on account of present litigation. It is pointed out that the Plaintiff-Society had received commencement certificate up to 8th floor, copy of which is produced on record. He submitted that since the Appellants (Mr. and Mrs. Gupta) have consumed FSI over and

above permitted to them, it is directly affecting the Plaintiff-Society in its re-development. It is submitted that if the order of status quo is not vacated, the Plaintiff – Society will suffer irreparable loss, harm and prejudice in as much as the re-development shall remain stalled.

15. Perusal of the record shows that IA/7662/2024 filed by the Appellants has been pending since April 2024. Applicants have remained absent in March 2025, sought adjournment in April 2025 and when the Society being Applicant in IA/7880/2025 pressed for its prayer for vacating the status quo, pending Applications were taken together. On 13/08/2025, Appellants again sought adjournment. However, Appellant No. 2 assured the Court that on the next date all the Applications which are on board will be proceeded on merits either through an Advocate or by himself as party in-person and no adjournment will be sought. Records further indicates that thereafter affidavit-in-reply is filed by the Appellant No. 1 through Appellant No. 2 on 20/08/2025. On 22/08/2025, Mr. Ashok Gupta, party in-person tendered notarized affidavit sworn by Appellant No. 1 in IA/7880/2025 and since the pagination was incorrect, the matter was kept back and in the afternoon session it was found that he had also filed another affidavit-in-reply, which was sent by the Registry. For the reasons best known to Appellants, two affidavits-in-reply are filed, one in the Registry and another is tendered in the Court, contending same things.

16. Mr. Ashok Gupta appeared in person and submitted on behalf of the Appellants. In view of peculiar contentions raised by him through his affidavit in reply, I am considering the same one by one below.

17. Appellant No. 1 – Sushma Gupta has filed affidavit-in-reply

opposing IA/7880/2025 in which it is contended that Appellants' earlier IA/7662/2024 is pending and without waiting for hearing and adjudication of the said Interim Application, the Society has filed IA/7880/2025 seeking modification of the status quo order, which is unjustified and causing serious prejudice to the Appellants. Appellant No. 2 -Ashok Gupta (Party in Person) has made submissions in support of the Appellant's case.

18. In the affidavit-in-reply, it is contended that the decree is passed against the dead Defendant Nos. 1 and 2 i.e. members of the Podar family, who were owners of the suit property and who had transferred it in favour of the Developer-Mr. Jalan. It is contended that the Defendant Nos. 2 and 3 (members of the Podar Family & Mr. Jalan) had declared that the new conveyance is made by them in the year 2015 in favour of 'Ramanuj' Society to bring an end to long pending dispute. Perusal of the so called declaration annexed by the Appellants at 'Exh-B' indicates that it was an Application for adjournment filed by the Defendant Nos. 2 and 3 before the Metropolitan Magistrate in a criminal case, stating that conveyance is being finalized by legal experts and it will be executed in the next few days. This adjournment Application can hardly be called as 'declaration' of new conveyance made as claimed by Mr. Gupta. What was that criminal case, what happened to it, nothing is informed.

19. The affidavit-in-reply goes on to contend that developer on the suit property appointed by the Plaintiff-Society has filed affidavit of plot area, though he is not owner of suit property. It is stated that owner and the first Developer-Mr. Jalan had played fraud for which criminal complaint was filed and therefore they are the necessary party in the

Appeal and their legal heirs must be impleaded. It is material to note that Appeal is filed by the Appellants themselves and they can take appropriate steps for bringing those legal heirs, if they want. It is also material to note that Appellants have not made the Plaintiff-Society's developer party to this appeal and it is their choice. Making allegations against a non-party can have no material bearing.

20. An omnibus statement is then made in the affidavit that the Respondents have played fraud on judiciary by misrepresenting and securing order of modification of the status quo. Certain earlier directions and communication of 2002 and 2005 are referred. In this respect, it is material to note that after hearing both sides, this Court has modified the order of the status quo on 21.12.2022 by a detailed order and the said order is not varied or set aside. This is nothing but an attempt to rake up contentions as to why the first order of status quo should not have been modified by this Court. This Court cannot sit in appeal over its own earlier order.

21. One letter purportedly issued by the Plaintiff-Society on 08/11/2022 is relied upon. Perusal of the said letter indicates that it is issued on behalf of the Plaintiff-Society about membership of Urmila Shivkumar Gupta, who is Appellant. Membership issue is not involved in present appeal.

22. Then the order passed in the Contempt Petition dated 16/02/2024 is relied upon. Perusal of the said order shows that after considering the orders about which contempt was alleged by the Appellants, their Contempt Petition has been dismissed by this Court.

23. In short, affidavit-in-reply filed by the Appellant No. 1 and

arguments advanced by the Appellant No. 2 party in-person are far from being relevant to the issue at hand, and orders which have attained finality are being complained about, over and over again. It is their choice that they are arguing their case through party-in-person (Appellant No. 2).

24. Perusal of the record and orders passed by this Court earlier, shows following **conduct of the Appellants :**

- i) On 24.10.2018, Appellant No.2 - Ashok Gupta appeared in-person and submitted that he has applied to Committee of the Registry for permission to appear in person.
- ii) On 21.02.2019, one Advocate Raman appeared and undertook to file Vakalatnama on behalf of the both the Appellants.
- iii) On 04.06.2019, after hearing the Advocate for the parties, this Court expressed that attempt will be made to dispose of the appeal finally at admission stage. On this day, some different advocate Ms. Sovani appeared for Appellants.
- iv) Appellant No.2 was found fit by the Committee to appear as party in-person which is recorded in order dated 26.06.2019.
- v) On 27.01.2020, one Advocate D'Souza sought time to file Vakalatnama on behalf of the Appellants.

vi) On 02.03.2020, one Advocate Kazi appeared who stated that YMK Legal will be filing Vakalatnama for the Appellants.

vii) On 26.07.2022, this Court found that Vakalatnama was filed only on behalf of Appellant No.1, and Appellant No.2 continued as party in-person and this Court recorded that individual Appellants cannot be heard separately as there may be conflict of interest. Faced with this situation, Advocate for Appellant No.1 stated that Vakalatnama will be filed for Appellant No.2 also.

(viii) In the past also, the Society was required to move this Court by IA/30446/2022 for modification of the status quo order in view of the emergency situation for demolition of the notional connection joining Plaintiff-Society and the building constructed by the Appellants. It is seen that after hearing both sides on 21/12/2022, this Court passed an order allowing the MCGM to demolish the notional connection. It was clarified that the order is without prejudice to the rights and contention of the parties.

ix) Appellants had filed IA/329/2023 for recalling above order dated 21/12/2022 which was eventually rejected as misconceived on 31.01.2023

(x) One more Application being

IA/1620/2023 was filed by the Applicants seeking directions to prevent alleged encroachment of land beneath and appurtenant to notional connection, which was also disposed of by this Court on 22/02/2023, finding that the application was beyond the scope of this appeal.

(xi) In the meantime, the Appellants obtained order of deemed conveyance from the concerned competent Court on 02.08.2021 without joining the Plaintiff-Society as party. This order of the deemed conveyance has been stayed by this Court on 13.04.2023 in WP/7981/2022 filed by the Plaintiff-Society.

(xii) Appellants then filed Contempt Petition No. 110 of 2024 alleging contempt against the Plaintiff – Society for action pursuant to the order dated 21/12/2022. This Contempt Petition has been dismissed on 16/02/2024, after hearing the Appellants.

(xiii) One more Application was filed by the Appellants being IA(L)/15096/2025 seeking declaration that present impugned judgment and decree in the very same subject suit (from which the present Appeal is arising) as null and *void ab initio* and seeking remand of the matter for fresh decision on merits. The said Application has been dismissed on 04/07/2025 as being misconceived.

25. It is therefore clear that the Appellants have filed multiple applications to add to the burden of proceedings, for same reliefs again and again, after securing an *ex-parte* status quo order to prolong the hearing of main interim Application for stay one way or the other. Considering the conduct of the Appellants as highlighted above, it is seen that the Appellants have tried every trick in the book, to prolong the hearing on interim relief, thereby trying to perpetuate the ex-party ad-interim status quo secured way back in 2018. Aforesaid various Applications filed by the Appellants and orders passed therein are clear indication of the fact that the Appellants simply want to postpone the hearing of main Interim Application in which they have secured ex-party ad-interim status quo.

26. It is also clear from the submissions of the Appellant No. 2-party in-person that Appellants wish to continue blanket status quo order which was obtained by way of ex-party ad-interim relief. Mr. Ashok Gupta has gone to the extent of pointing out from the order of ex-party ad-interim status quo dated 22/03/2018 that in para no. 4 of the said order, this Court has stated that

“4. I have perused the impugned judgment as well as the grounds raised in the appeal memo and in my considered view, it is necessary to maintain status quo.”

27. According to Mr. Gupta even though this order is ex-party order passed without hearing the Respondent-Society, once this Court says that the impugned judgment is perused and grounds in the Appeal are perused and it is necessary to maintain status quo, it means that no further order can be passed after hearing the contesting Respondents. This is preposterous. If a party-in-person insists that the Court should

throw all settled principles of procedure to wind, then the Court has to deal with it sternly, and let the necessary consequences follow.

28. At the cost of repetition, it must be noted that it is Appellants' choice that they are arguing their case through party-in-person (Appellant No. 2). Court cannot keep adjourning interim applications.

29. The whole case of the Appellants is based on the agreement/document in their favour dated 02.12.1989. Their rights flow from this document. I have perused the agreement dated 02.12.1989, by which the Appellants have received development rights in 607.76 sq. mtrs. i.e. remaining area after constructing Plaintiff-Society. There is clear recital that the Appellants are aware of the available FSI for development of the remaining property and which is only to the extent of 6550 sq. ft. and no additional FSI is available to them. The said document also clearly spells out that the Appellants shall not be entitled to disturb the possession of various flats already purchased in Respondent – Society (Minal CHS). It is also specifically agreed that the purchasers of flat/shop in construction to be erected by the Appellants shall become members of Minal CHS and conveyance will also be executed in favour of Minal CHS. The Appellants have purchased the development rights on 'as is where is' basis. The Appellants have expressly agreed that they shall be entitled to develop the remaining property only to the extent of 6550 sq. ft. and nothing more. The Appellants have also agreed expressly that they are aware that it is not possible to sub-divide the entire property into three sub-plots namely 'Madhav Kunj' portion, Plaintiff's portion and remaining property. When the Appellants have purchased development rights with such limitation and fetters, in my view, they cannot seek substantial

relief against the Plaintiff-Society and its members, in the form of an injunction, not to construct on the land below the notional connection of the land and appurtenant thereto. If such substantive prayers are entertained, it will amount to entertaining independent proceedings directly at appellate stage, which is not permissible in law.

30. The Appellants have not filed the present suit and they are only defending the prayers made by the Plaintiff-Society. Admittedly, substantive suit filed by the Appellants (Suit No. 9134/2000 – old HC Suit No. 4525/2000), challenging the title of the Plaintiff-Society to the entire land, was dismissed by City Civil Court, Dindoshi on 19.10.2013. The Appellants' Notice of Motion No. 4645/2015 for its restoration has also been dismissed on 26.11.2018. Its copy is produced on record with affidavit of the Respondent Society to IA/4513/2023. As such, title of the Plaintiff-Society is undisputed.

31. It is also important to note that, as on today, out of three purchasers of the development rights under document dated 02.12.1989, only Sushma Gupta is contesting and the other two persons Lata Gupta and Urmila Gupta have not even filed appeal challenging the impugned judgment and decree. Thus Mr. Ashok Gupta – Appellant No. 2 is not even purchaser under the document dated 02.12.1989.

32. So far as the Appellants' prayer of appointment of Court Receiver is concerned, it is settled position of law that appointment of Court Receiver is within the judicious discretion of the Court based on facts and circumstances of each case. The impugned decree is only about removal / demolition of the construction made by the Appellants beyond permissible 6550 sq.ft. worth of FSI. There are no rival claims

on extra constructed portion. Plaintiff-Society does not want to occupy extra construction made by the Appellants. There are rival claims on FSI use beyond permitted limit under the Appellants' document dated 02.12.1989. Court receiver cannot take FSI in custody. For this reason, coupled with all the aforesaid facts and circumstances, in my view this is not a fit case to exercise discretion for appointment of Court Receiver.

33. So far as the prayer of reinstatement of solid waste drainage line is concerned, the prayer is opposed by the Respondent-Society by contending in their affidavit-in-reply that the Respondent-Society has not in any manner disturbed the drainage line of the Appellant and one of the member of the Gupta family (Respondent No. 11) made application in respect of drainage line. Copy of such Application and reply of MCGM are produced at page nos. 369 and 370 of the reply. Said copies indicate that request was not made on behalf of the Respondent – Society. In that view of the matter, there is nothing to indicate that the drainage line is damaged by the Respondent No. 1. In any case, as noted earlier, this prayer is also in the nature of making a substantive claim, which cannot be entertained first time at Appellate stage without proper evidence to verify rival claims. In that view of the matter, the said prayer also deserves to be rejected.

34. Considering all the aforesaid facts and circumstances, in my view, there is no enough strong *prima facie* case to grant blanket status quo. There is no enough strong *prima facie* case to delay re-development of Respondent-Society for 31 members and such other persons from Appellants' building who wish to join the Respondent-Society, if any. Overall picture emerging in the opinion of this Court is that Appellants (2 persons) are stalling the development of all others

involved by filing multiple applications and keeping the real consideration from reaching its logical end.

35. In view of all the above considerations, at least at this stage, the Trial Court seems to have considered all the aspects of the matter in proper perspective.

36. Therefore, all the above interim applications **are disposed of** by passing following order :

(A) IA No. 4513 of 2023 and IA No. 7662 of 2024 are rejected.

(B) Civil Application No. 1324 of 2018 is rejected and IA No. 7880/2025 is allowed. *Ex-parte* status quo order dated 22.03.2018 is vacated.

(C) It is clarified that further development on the suit plot at the instance of Respondent No. 1 Society, will be subject to final outcome of appeal.

(M. M. SATHAYE, J.)