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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
INTERIM APPLICATION NO.15775 OF 2024  
IN  
FIRST APPEAL NO.789 OF 2025

Bindia Jayendra Garasia W/o.  
Nilesh Mehta and and Ors. ...Applicants/Appellants  
V/s.  
M/s Saket Co-Op. Hsg. Ltd. And Ors. ...Respondents

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Mr.Akshay R. Kapadia for Applicants/Appellants.  
Mr.Abhishek Upadhyay for Respondent No.1.

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**CORAM : M.M. SATHAYE, J.**

**DATE : 13<sup>th</sup> NOVEMBER, 2025**

**P.C. :**

1. Heard learned counsel for the parties.
2. This is an application filed by Defendant Nos. 2 to 12 seeking stay on the impugned judgment and decree dated 13.08.2024 passed by the City Civil Court, Borivali Division, Dindoshi, Mumbai in S.C.Suit No. 1415 of 2009. By the impugned judgment and decree, the Trial Court has decreed the suit filed by Respondent No.1-Society directing the Applicants and Developer to execute conveyance of the subject matter land in favour of the Society, subject to lease hold rights of one Ms. Jyoti Goyal.
3. Learned counsel for the Applicants submitted that the Applicants are tribals and as such, the very transfer of land in favour of the developer is hit by Section 36A of the Maharashtra Land Revenue Code, 1966 ('the Code' for short). He submits that the Trial

Court has not considered this aspect in proper perspective.

4. Learned counsel for Respondent-Society submitted that the objection of the Applicants has been considered by the Trial Court. That the Applicants or their predecessors have accepted monetary consideration and 5 flats during development. That they have chosen not to agitate any issue for a long time. However at the time of Society seeking conveyance, the Applicants have raised issue. That their conduct dis-entitles them from seeking any interim stay.

5. I have considered the submissions and perused the record.

6. The suit is filed seeking conveyance of the subject matter land, on which the Respondent-Society is standing. There are other prayers for seeking declaration about a document dated 11.04.2008.

7. It is recorded in the impugned judgment that the present Applicants either did not file any written statement despite sufficient opportunity or did not appear before the Court despite service of summons. The impugned judgment records that by an order dated 18.04.2015, the suit was directed to proceed without written statement against Defendant Nos.2, 4 to 10 & 12. The impugned judgment also records that there is an order dated 17.10.2015 directing that the suit shall proceed *ex-parte* against Defendant Nos. 3 and 13.

8. The objection sought to be raised before this Court, based on section 36A of the Code, has been considered by the Trial Court. The submission made by Constituted Attorney of Defendant No.8 has

been considered. The Trial Court has considered following aspects :

8.1. Record showing that Applicants or their predecessors have executed agreement in the year 1974-75 and thereafter also executed deed of confirmation in favour of Developer in the year 1981.

8.2. That the Applicants thereafter, instituted suit against the Developer and arrived at settlement under consent decree which is produced at Exhibit-46 and consideration received thereunder.

9. Learned counsel for the Respondent-Society has shown the copy of said consent terms Exh.46 dated 01.03.1989. Suit No. 2417 of 1988 was filed by the predecessors of the Applicants and Applicant No. 13 in this Court, seeking specific performance of agreement dated 30.04.1974 and subsequent agreements from same Developer. Present Respondent Society also appears to be party to that suit. A declaration was sought that agreements executed by the Developer are subsisting and binding.

10. It is recorded in the consent decree that 8 lakh cash consideration was received and nothing was due and payable. In addition, at the time of consent terms, already two flats were received and remaining three flats were agreed to be provided free of costs. The Trial Court has taken cognizance of this fact.

11. Respondent-Society has filed affidavit-in-reply dated 12.07.2025. A copy of the order dated 07.02.2025 passed by Sub-Divisional Officer, Mumbai (Western Suburbs) has been placed on record which is an order under Section 36A of the Code, by which the

subject matter land has been vested with the Government. It is submitted that the Applicant No.1 has filed appeal against the order which is pending. This order is passed after the impugned judgment and decree is passed on 13.08.2024. Be that as it may.

12. Considering the fact that the Applicant No. 13 (Hemangiri) and predecessors of other Applicants had filed suit seeking specific performance and declaration of binding about the very agreements which they are today disputing as not permissible under Section 36A of the Code, and further considering that the Applicants had settled with the Developer by accepting monetary as well as other consideration in the form of cash and flats, in my view, the conduct of the Applicants itself dis-entitles them from seeking interim relief.

13. It will have to be considered whether at the instance of Applicants with aforesaid conduct, the impugned decree can be stayed.

14. The agreement is of the year 1974 and confirmation deed is of the years 1981 and 1983. It is pointed out by the Respondent-Society that the first agreement of sale dated 30.04.1974 is executed prior to introduction of Section 36A in the Code on 06.07.1974. The Society buildings are constructed in the year 1985. The Applicants/their predecessors in the suit against the Developer compromised way back in March 1989.

15. It is therefore *prima facie* clear that the Applicants sought specific performance, declaration of binding nature and received consideration in respect of the very agreements, which they are

disputing today. Did the Applicants or their predecessors not know that they are tribals during 1974 to 1989 when they were merrily accepting cash and flats ? The Applicants' predecessors appear to be residents of Mumbai from the consent terms. Even present addresses of Applicants are from Mumbai and Baramati, Dist. Pune. If the Applicants or their predecessors were cheated by any person, as has been lamely sought to be contended today, they could have taken action against concerned person. The Application does not disclose any reason for belated objection. Overall, at this interim stage, the whole purpose of the Applicants appear to be based on convenient stand.

16. In the aforesaid facts and circumstances, in my view, the impugned judgment and decree cannot be stayed at the instance of the Applicants. **The application is therefore rejected.** The suit property shall remain subject to out come of the proceedings adopted under Section 36A of the Code.

**(M.M. SATHAYE, J.)**