

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11332 OF 2024

1. Dhiraj Gala
2. Amol Ashok Manjarekar

....*Petitioners*

: *Versus* :

1. Divisional Joint Registrar
Co-operative Societies
2. Dy. Registrar, Co-operative
Societies, K-East
3. Sundar Ravi Co-operative
Housing Society Ltd.

....*Respondents*

WITH
INTERIM APPLICATION NO. 16100 OF 2024
(For Impleadment and Intervention)

Zee Housecon Private Limited

.... *Applicant*

In the matter between

1. Dhiraj Gala
2. Amol Ashok Manjarekar

....*Petitioners*

: *Versus* :

1. Divisional Joint Registrar
Co-operative Societies
2. Dy. Registrar, Co-operative
Societies, K-East
3. Sundar Ravi Co-operative
Housing Society Ltd.

....*Respondents*

Mr. Bhavin Gala with *Mr. Dilip S. Kulkarni, for the Petitioner.*

Ms. A.A. Nadkarni, *AGP for Respondent Nos.1 & 2-State.*

Mr. Sanjay Jain with *Mr. Bhavik Lallan and Ms. Tejashree Parab i/by. Rajesh Sharma & Associates, for Respondent No.3.*

Mr. Jugal Haria i/b *Ms. Laxmi Late, for the Applicant-Intervenor in IA/16100/2024.*

CORAM : SANDEEP V. MARNE, J.

Judg. Resd. On : 22 January 2025.

Judg. Pron. On : 30 January 2025.

JUDGMENT :

1) Petitioners have filed this petition challenging the order dated 5 March 2024 passed by the Divisional Joint Registrar dismissing Revision Application No. 626/2021 preferred by them and confirming the order dated 9 September 2021 passed by the Deputy Registrar. The Deputy Registrar had rejected Petitioner's complaint alleging mismanagement and defaults committed by Respondent No.3-Society in regard to implementation of the proposal for redevelopment of society's building.

2) Briefly stated, facts of the case are that one Sundarbai owned and possessed land admeasuring 614.55 sq.mtrs bearing CTS No.996, 996/1 to 5, Village-Vile Parle, Taluka-Andheri Mumbai Suburban District. It appears that there were two tenanted structures on the said land comprising of 6 and 3 tenants. Redevelopment of the tenanted structures comprising of 6 tenants was carried out vide Development Agreement dated 29 November 1989, under which three

additional floors were added on existing ground plus one structure by constructing five flats, which were sold to flat purchasers. This resulted in 6 original tenants residing at ground and first floors and 5 flat purchasers residing at 2nd, 3rd and 4th floors of same building. It appears that the 5 flat purchasers formed and registered Sundar Ravi Co-op. Hsg. Soc. Ltd, as an exceptional case since only 5 flat purchasers were available for formation of the Society. Out of the said five flat purchasers, two flats are purchased by the Petitioners, who are original members of the Society. The land owners/Mhapsekar Family executed Deed of Conveyance in the year 2013 in favour of M/s. Zee Housecon Private Limited (**Zee Housecon**). The developer-Zee Housecon began the process of redevelopment of the property and executed agreements for allotment of permanent alternate accommodation (**PAAA**) with the nine tenants in the newly constructed building in the year 2021. On 29 May 2021, the General Body of Respondent No.3-Society adopted a Resolution admitting the original nine tenants in whose favour PAAA were executed by the Developer- Zee Housecon as members of the Society. Petitioners filed complaint before the Deputy Registrar, Co-operative Societies alleging irregularities in the redevelopment process adopted by the Society. In the said complaint, Petitioner alleged that the nine persons have been illegally admitted as members of the Society. The Deputy Registrar however disposed of the complaint by order dated 9 September 2021 not interfering with the decision for enrollment of new members as well selection of the developer for undertaking redevelopment process. The Deputy Registrar granted liberty to the Petitioners to approach the Co-operative Court to challenge the decisions taken by the General Body of the Society. Petitioners filed Revision Application No.626/2021 before the Divisional Joint Registrar challenging Deputy Registrar's order dated 9 September 2021. During pendency of the Revision Application, one of the Petitioners

simultaneously approached Co-operative Court and filed Dispute No.62/2022 challenging elections of the Managing Committee and prayed that election to the Managing Committee be held only after final decision of the Revision Application No.626/2021. It appears that the said Dispute filed before the Co-operative Court is pending. The Divisional Joint Registrar has dismissed the Revision preferred by the Petitioners by his order dated 5 March 2024. Accordingly, Petitioners have filed the present petition challenging the order passed by the Divisional Joint Registrar.

3) I have heard Mr. Gala, the learned counsel appearing for the Petitioners. He would submit that the Deputy Registrar has erred in rejecting the complaint filed by the Petitioners and the Divisional Joint Registrar has failed to correct the errors committed by the Deputy Registrar in exercise of revisionary jurisdiction. He would submit that the nine persons admitted as members of the Society are merely tenants and they could not have been admitted as members in absence of any document of title. He would invite my attention to the agenda for the General Body Meeting dated 29 March 2021 in which the agenda was for admission of 'tenants' as members. That even in the Resolution, the said nine members are referred to as 'tenants'. That thus the Society has never disputed the fact that the said nine persons are merely tenants in respect of the premises in occupation. That there is no provision in law which permits admission of a mere tenant as a member of a cooperative society. He would submit that in a co-operative housing society, the membership is essentially referable to ownership of flat or a unit in society's building. That the person who does not even own any flat or unit in society's building is not entitled to become its member. He would rely upon Model Bye-Law No. 19(a)(iii) and (vi) adopted by the Society under which ownership of flat by a person desirous of

becoming a member is a precondition for grant of membership. That under the bye-laws, membership cannot be accorded in absence of document of title. He would submit that the premises in occupation of the said nine persons are owned by Zee Housecon and therefore the owner alone could be admitted as a member. He would submit that mere execution of PAAA in favour of the tenants do not make them owners in respect of the premises, which are now in their occupation. That PAAA merely confers ownership in respect of the alternate accommodation as and when constructed. That membership of the Society cannot be granted merely on the strength of a contingent event of the tenant's acquiring ownership in respect of the flats proposed to be constructed. Mr. Gala would therefore submit that the impugned orders passed by the Deputy Registrar and the Divisional Joint Registrar suffer from gross non-application of mind and perversity and are liable to be set aside.

4) The petitions are opposed by Mr. Jain, the learned counsel appearing for Respondent No.3-Society. He would submit that as of now, there are 14 members of the Society and except the two Petitioners, rest of the 12 members have resolved to get the plot redeveloped through the developer-Zee Housecon. That Petitioners are deliberately instituting litigation with a view to circumvent the effect of majority decision by the members to carry out redevelopment of the building. He would submit that there are two structures on the plot, out of which one is occupied by three erstwhile tenants, whereas, the second structure is occupied by six erstwhile tenants on ground and first floor and five flat purchasers on second, third and fourth floor. That therefore it is impossible to carry out redevelopment of the property without taking on board the erstwhile tenants. That the

Society has therefore rightly admitted them as members with a view to ensure smooth redevelopment of the property.

5) Mr. Jain would further submit that the nine persons are admitted as members of the Society have no longer retained their capacity as tenants and have upgraded themselves as owners by virtue of PAAA executed in their favour by the developer. After execution of PAAA, they are entitled to own flats in the redeveloped building on par with rest of the five flat purchasers. Therefore, the rights and entitlement of the erstwhile tenants stand on the same pedestal as that of the five flat purchasers. He would further submit that even in respect of the five flat purchasers, what is executed in their favour is mere Agreements for Sale under the provisions of Section 4 of Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (**MOFA**) and such agreements do not make them owners. That MOFA recognises the principle of purchase of mere occupancy rights of the building and the building is ultimately to be owned by the collective body. That therefore the assertion of the Petitioners that they are owners of flats and the nine persons are merely tenants is itself fallacious. That as on today, both the owners, as well as the nine newly incoming members are armed with registered agreements in their favour and therefore the Society has rightly admitted the said nine persons as its members. Mr. Jain would pray for dismissal of the petition.

6) Mr. Haria would appear on behalf of the Intervenor-Zee Housecon who has filed Interim Application No. 16100/2024 seeking intervention in the petition for opposing the same. Mr. Haria would adopt the submissions of Mr. Jain and would pray for dismissal of the petition.

7) I have also Mr. Nadkarni, learned AGP appearing for Respondent Nos.1 and 2 who would also oppose the petition and support the orders passed by the Deputy Registrar and Divisional Joint Registrar.

8) Rival contentions of the parties now fall for my consideration.

9) The present case presents a unique conundrum where one out of the two structures is a composite structure. In one of the structures, there were only three erstwhile tenants, whereas in the other structure comprising of ground plus one floors, there were six erstwhile tenants. It appears that the then owners-Mhapsekars implemented development of the plot in the year 1980 and added three floors to the structure in which there were six erstwhile tenants. In those additional floors, (second, third and fourth floors), five flats were constructed which were sold to five flat purchasers. Thus, one out of the two structures on the plot became a composite structure comprising of six erstwhile tenants on ground and first floor and five flat purchasers on second to fourth floors. The five purchasers formed and registered Sundar Ravi CHSL. It is common ground that Respondent No.3-Society was registered as an exceptional case as 10 flat purchasers were not available for formation of the Society. The condition was therefore relaxed and accordingly, Respondent No.3-Society was permitted to be formed and registered with only 5 members. Thus, there were nine erstwhile tenants occupying their respective premises and five members of the Society who had purchased the flats. Original land owners-Mhapsekars sold and conveyed the land in favour of Intervenor- Zee Housecon vide registered Deed of Conveyance and Irrevocable General Power of Attorney dated 3 May 2013 under which

Zee Housecon has become owner of the land, buildings as well as the FSI in respect thereof. Zee Housecon negotiated with the nine tenants and agreed to provide them permanent alternate accommodations on ownership basis in the redeveloped building. Accordingly, PAAA were executed with all the nine erstwhile tenants. One of the PAAA executed in favour of Narayan D. Parmar is placed on record under which Zee Housecon has agreed to allot Flat No.102 admeasuring 505 sq.ft carpet area for office use on the first floor of the building to be constructed by it including additional area of 65 sq.ft on payment of Rs. 30,00,000/-. The relevant covenant of PAAA dated 9 February 2021 reads thus :

2. In lieu and in consideration of the TENANT/s consenting for the Re-Development of the Property and agreeing to co-operate with the Development and being in use and occupation and in possession and ownership of Flat No.4 Admeasuring about 400 sq.ft. Carpet Area using as office including balcony and other utility area on the First Floor, the Landlords agree to allot the New Flat No. 102 Admeasuring about 505 sq.ft. Carpet area including Fungible F.S.I on the 1st floor as office in the building/s to be constructed by the Landlords, which shall include Additional Area free of costs and also purchase of additional 65 Sq Ft Carpet Area for Rs 30,00,000/- on ownership basis by demolition of the existing structure and re-development of the said property, which is presently known as " Sunder Villa " and after re-development of the same, it shall be known as " ZEE SUNDER", based on the unanimous consent and permission of each and every Tenant including the TENANT/s herein and the said Society. The said allotment of the new Flat to the TENANT/s by the Landlords in lieu of Existing Area and/or acquisition of Extra Area by the TENANT/s by payment of compensation and/or for surrender / relinquishment of existing area by the TENANT/s to the Landlords for Compensation/Monetary Value, is as set out hereunder:

	Sq Ft.
Old Carpet Area of the Existing Flat	: 400
Area Relinquished / Surrendered of Existing Flat	: 80
Net Area after Relinquished/Surrendered of Existing Flat	: 320
Carpet Area offered by Developers Free of Cost	:120
Purchased Additional Area	:65
Carpet Area of the New Flat Including Fungible F.S.I.	:505
New Flat Wing and Flat Number	:102
New Flat Floor	:1 st

10) Thus, the erstwhile nine tenants got armed with PAAAs executed in their favour, under which they became entitled to own flats/units in the newly developed building on ownership basis. It appears that one of the erstwhile tenants, Mr. Narayan Parmar paid consideration of Rs.30,00,000/- for purchase of additional carpet area.

11) Respondent No.3-Society which earlier comprised of only five members, decided to participate in the redevelopment process undertaken by the developer- Zee Housecon and convened Special General Body meeting on 29 March 2021. There were two agendas to be taken up for discussion viz. redevelopment of the Society building and considering applications made by the erstwhile tenants as members of the Society. Since Respondent No.3-Society decided to participate in the redevelopment process, which was kickstarted by Zee Housecon by executing PAAA with the erstwhile tenants, a unique conundrum got created where the redevelopment process could not be carried out without the society members and erstwhile tenants coming together. To solve this conundrum, the Society decided to admit the nine erstwhile tenants who were armed with PAAA's executed in their favour as its members. A decision was apparently taken to ensure that collective decision is taken by the five erstwhile members of the society and nine erstwhile tenants through one collective body. This is why the Society adopted the Resolution in the General Body Meeting held on 9 March 2021 to admit the nine erstwhile tenants as its members. The Society also resolved to participate in the redevelopment process undertaken by Zee Housecon.

12) It appears that the two Petitioners are opposing the redevelopment process and voted against the Resolution. However, the Resolutions for admission of the erstwhile tenants was approved by

majority of the three members. The redevelopment process is also supported by the nine new incoming members, as well as by three old members. The position that stands today is that out of the total 14 members of Respondent No.3-Society, 12 members support the redevelopment process, whereas the two Petitioners are opposing the same.

13) Faced with the difficulty of the Resolution being adopted by majority, both for admission of the nine members, as well as for participation in the redevelopment process, the Petitioners initially filed complaint dated 18 June 2021 before the Deputy Registrar.

14) The broad grievances raised by the Petitioner in complaint dated 18 June 2021 filed before the Deputy Registrar was with regard to the redevelopment process undertaken by the Society. In that complaint, Petitioners also raised a grievance of admission of nine members without their consent. The relevant averments made in the complaint relating to admission of nine new members in complaint dated 18 June 2021 reads thus :

5. The society has allegedly admitted 9(nine) members to the society. How is this possible? Two of the existing members the undersigned Mr. Dhiraj Gala and Mr. Amol Manjrekar have not agreed to the admission of any new member. Additionally, Mr. Gala is the Chairman of the society. The Society is holding some very valuable development rights and legal rights to the underlying land. How can any new member be admitted to the society without unanimous approval by all 5 (five) existing members? Also, we have been registered with special statutory provision and permission and hence we have to be strictly compliant for this.

15) Thus, the only grievance made by the Petitioners about admission of nine members was lack of unanimity by all the five members for approving their admission. Beyond this, no contention was raised by the Petitioners that the said nine persons lacked inherent

eligibility for being admitted as members of Respondent No.3-Society. The Deputy Registrar rejected the complaint by order dated 9 September 2021 holding that the Resolution for admission of nine persons was adopted after due discussion and with majority of members. Before the Deputy Registrar, Petitioners never disputed eligibility of the said nine persons for being admitted as Society's members and therefore there was no occasion for the Deputy Registrar to go into the issue as to whether mere tenants can be admitted as Society's members. Even before the Divisional Joint Registrar, Petitioner raised only following five grounds in support of challenge to the order dated 9 September 2021 :

GROUND S

1. The Respondent No.1 has seriously erred in passing the proper Order within the meaning of 'Order/Judgment'. The Respondent No. 1 has stated his observations and inferences; Thus, the Respondent No. 1 has vehemently failed to 'adjudicate' the complaint dated 18th June, 2021.
2. Respondent No. 2 has held the so called Special General Body Meetings dated 29th March, 2021; 22nd May, 2021 and 3rd June, 2021; without proper compliance of the statutory provisions of The Maharashtra Cooperative Societies Act, 1960; the Rules 1961 thereunder and the Model Bye-Laws of Cooperative Housing Societies-2014.
3. Respondent No. 2 has admitted the tenants/occupants as the bona-fide members of the Respondent No. 2 without proper compliance as contemplated under the relevant Act.
4. The prohibitions/restrictions notified by the Department of Cooperation and Textiles, Maharashtra State on the holding of the General Body Meetings due to pandemic of Co-VID-19 have been grossly violated by the Respondent No. 2.
5. The very presence of M/s. Zee Infra Group is without any proper process and ought to have been prohibited unless and until the proper process was complied with.

16) Thus, no specific ground was raised about lack of eligibility for nine persons for being admitted as members of the Society.

17) Thus, both the proceedings before the Deputy Registrar as well as the Divisional Joint Registrar essentially centered around the

alleged irregularities in the development process and the eligibility of nine persons for being admitted as members of the Society was not really in issue. This appears to be the reason why the Divisional Joint Registrar also did not have occasion to go into the issue of eligibility of the said nine persons to be admitted as members of the Society. The Divisional Joint Registrar accordingly concentrated on the allegations of arbitrary and unilateral decisions/resolutions and recorded following findings :

Conclusion:-

I have perused the Revision Application filed by the Applicants, relevant papers/ documents placed on record and the impugned letter dated 09/09/2021 of the lower Authority.

The Applicants in the present case has mainly raised the grounds that, the Appellants have filed complaint dated 18/06/2021 before Respondent No. 1 and brought to notice of the Respondent No. 1 the various defaults caused by the Respondent No. 2 through purported Secretary and Treasurer and how the purported Secretary and Treasurer are/ were taking arbitrary and unilateral decisions/resolutions without regard to the statutory provisions.

On the aforesaid ground it seems that, the society has been registered on 11/12/1997 as a special case of only 5 members. The carpet area of the society is less than 600 sq. ft. and the number of members is less than 10, therefore, as per the Government order dated 10/03/1995, the requirement of minimum 10 persons for registration of co-operative housing society was relaxed as a special matter and the said society was registered.

Further, it appears that the special general meeting of the society was held on 29/03/2021 in the presence of 03 members out of 05 members of the said society, after discussing the merits of the application received by the committee for the membership of total 09 tenants, it was agreed to approve the membership of the society to the 09 tenants. Also, a resolution was passed to appoint M/s. Zee Housecon Pvt. Ltd. as a Developer for redevelopment of the society. Since the membership was granted to 9 tenants in the special general meeting date 29/03/2021, Mr. Tudhar Bharat Parekh and Shri. Dhruv Kirod Rathod has been appointed as two vacant committee members in the committee of society in the special general meeting of the society held on 22/05/2021. Further, it seems that out of total 14 unit holders on the said plot, 12 unit holders, tenants/ members are, agreed for redevelopment process of the society building. Therefore, the Respondent Deputy Registrar vide impugned letter dated 09/09/2021 disposed of the complaint filed by the Applicants herein.

In view of aforesaid inferences, the Applicants have not established their case by valid grounds and hence, the present case deserves to be dismissed. Whereas, on the other side, the Respondent Deputy Registrar after following due process of law has correctly issued impugned letter. Therefore, I do not find any reason to interfere with the impugned letter.

18) Contrary to the real case of the Petitioners raised before the Deputy Registrar and Divisional Joint Registrar, Mr. Gala improved upon the same before this Court. He has strenuously argued the point of illegality in admission of nine persons as members though no specific ground is raised about eligibility of said nine persons for being admitted as members even in the present petition. In this regard, the grounds raised in the petition are reproduced thus:

24. GROUNDS:

A. That the Impugned Order dated 15th March, 2024 is *ex facie* illegal, perverse, void, unconstitutional, fraudulent, magnified, bad in law and deserves to be quashed and set aside:

B. That the Impugned Order dated 15th March, 2024 is in breach of the statutory provisions under the Maharashtra Cooperative Societies Act, 1960 and the Rules 1961 and the Model Bye-Laws of Cooperative Housing Societies-2014;

C. That the Impugned Order dated 15th March, 2024 was passed in violation of the principles of natural justice;

D. That the Hon'ble Divisional Joint Registrar, Cooperative Societies, Konkan Division, Mumbai has failed to consider the spirit and soul of the Revision Appeal bearing the no RA/686/2022 filed by the Petitioners before DJR;

E. That the Hon'ble DJR failed to take the serious cognizance of the wilful negligence caused by the Respondent No 2 and Respondent No 3 and serious commissions and/or omissions caused by Respondent No 3; which resulted in irreversible and irreparable loss/damage caused to the Petitioners for none of their default

F. That the Impugned Order is arbitrary and unreasonable;

G. That the Impugned Order is perverse. The findings contained in the impugned order are contrary to the material on record before Respondent No 1

H. That the Impugned Order is vitiated by non-application of mind;

I. That the Impugned Order is therefore liable to be struck down

19) Therefore, it is not even necessary to decide the issue of correctness of the decision taken by the General Body of the Society to admit nine members as its members in absence of the said point being raised before the Deputy and Divisional Joint Registrars or supported by pleadings in the present petition.

20) However, since the point is strenuously argued before this Court and since this Court has not found any merit in the submission about illegality in admission of nine persons as members, it would be appropriate to deal with this issue so as to prevent any further litigation in this regard.

21) So far as the nine persons, who were erstwhile tenants are concerned, they are now armed with PAAAs executed in their favour. Therefore, they have ceased to be ordinary tenants and have come on almost the same pedestal as that of original five members of the Society as both of them would ultimately be entitled to flats in the newly constructed building. The objective of formation of Society and to admit members is to ensure effective management of the land and the building. One of the objectives is also to secure conveyance of the land and building and acquisition of ownership thereof by the Society. There can be no denial of the fact that the erstwhile nine tenants, as well the original five members of the Society are ultimately going to be the flat owners in the newly constructed building. The Society is otherwise bound to admit the erstwhile nine tenants as members of the Society. In that view of the matter, Petitioners cannot be permitted to adopt a hypertechnical approach by contending that the said nine persons are yet to acquire ownership in respect of the existing building and hence

ineligible to become members of the Society. Once the broad objective behind formation of Society and admission of members is borne in mind, I do not see any defect in admission of such nine tenants as members of the Society, which would ensure that a collective decision is taken by all the stakeholders with regard to the redevelopment process, as well as management of newly constructed building.

22) Reliance of Mr. Gala on provisions of Bye-law No.19 dealing with 'Conditions for Membership' does not cut any ice. Bye-law No.19(a)(iii) and (vi) provides thus :

(iii) applicant has given the application, as prescribed the particulars in regard to any house, plot or flat owned by him or any of the Members of his family, anywhere in the area of operation of the Society.

(vi) applicant has submitted along with the application for Membership of the Society, a certified copy of the agreement, duly stamped entered into by him with the Promoter (Builder) or transferor under Section 4 of the Ownership Flats Act.

23) One of the documents which needs to be submitted for seeking admission as member of the Society is the Agreement executed with the Promoter. The erstwhile nine tenants are armed with such agreements and the same can be relied upon for the purpose of their admission as members of the Society. In the unique facts and circumstances of the present case, I am not inclined to accept the proposition sought to be canvassed by Mr. Gala that PAAA executed in favour of the nine erstwhile tenants do not make them owners of existing premises and that the PAAA does not constitute document of ownership of flat. The issue in this regard is kept open to be decided in appropriate case.

24) In the present case, the decision taken by the General Body of the Society merely ensures that all the stakeholders are taken on board and collective decisions are taken in the matter of redevelopment of the building. There is no dispute to the position that the nine erstwhile tenants would someday become members of the Society. What Mr. Gala expects is that for the time being the Developer- Zee Housecon should be made member in respect of the nine premises and as and when the construction of the new building is complete, membership can be transferred in favour of the said nine erstwhile tenants. In the facts and circumstances of the present case, I am not inclined to direct adoption of such methodology for the following reasons :

- (i) Petitioners are minority members opposed to redevelopment of the building.
- (ii) The real intention behind adopting hypertechnical approach of opposing admission of nine erstwhile tenants as members of the Society is aimed at scuttling the redevelopment process.
- (iii) Petitioners never questioned eligibility of nine erstwhile tenants to become members of the Society either before the Deputy Registrar or before the Divisional Joint Registrar.
- (iv) The Resolution adopted by the General Body of the Society in meeting held on 29 March 2021 admitting nine erstwhile tenants as Society members has not been challenged in Dispute Application No. 62/2022 filed by one of the Petitioners before the Co-operative Court.
- (v) The erstwhile nine tenants would otherwise become members of the Society at some point of time in future.

25) Considering the above position, I am not inclined to exercise extraordinary jurisdiction of this Court under the provisions of Article 227 of the Constitution of India for interfering in the impugned orders passed by the Deputy Registrar and Divisional Joint Registrar. The Writ Petition is devoid of merits. It is accordingly **dismissed** with no order as to costs.

NEETA
SHAILESH
SAWANT

[SANDEEP V. MARNE, J.]

Digitally signed by
NEETA SHAILESH
SAWANT

Date: 2025.01.30
19:17:26 +0530