

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 10501 OF 2025
IN
FIRST APPEAL NO. 1129 OF 2025

Aruna Chetan Bhatt And Ors. ...Applicants

Versus

I-20 Mahavir Nagar Co-operative Housing ...Respondents
Society Ltd. Thr. Secretary And Ors.

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Mr. Chirag Balsara a/w Mr. Milind Gyani and Ms. Jalpa Joshi for the
Applicants.

Mr. Abhishek Sawant a/w Ameet Mehta, Jill Rathod, Hardik Gaglani i/b
M/s. Solicis Lex for Respondent/Society.

CORAM : M.M. SATHAYE, J.
DATE : 4th NOVEMBER, 2025

P.C. :

1. Heard learned Counsel for the parties. Perused the record.
2. This is an application seeking interim injunction restraining the Respondent No. 1 Society from creating third party interest and from further constructing. A direction is also sought for placing on record list of existing members, agreements in their favour and other information.
3. The Applicants are original Plaintiff Nos. 3 to 8 in a suit filed against Respondent No.1 society, which is a sole Defendant. Respondent Nos. 2 and 3 are original co-plaintiffs, who have not joined in appeal. The Applicants filed suit for declaration and mandatory injunction and for possession against Respondent/Society.

4. The case of the Applicants in short is that Plaintiff Nos. 1 to 7 are successors of original owner of subject matter land Survey No. 163, from which we are presently concerned with only part. According to the Applicants, the owner had sold the said survey No. 163 in favor of one Salsette Catholic Co-Op. Housing Society, which in turn conveyed the same in two parts, one part to the entity called 'Ajanta Traders' and other part to 'Mrs. Verna Jovita Nagpal'. The present subject matter property is concerned with part of Survey No. 163 sold to Ajanta Traders.

5. According to the Applicants, since Ajanta Traders failed to observe and perform the terms and conditions of the agreement, the Applicants terminated the agreement by notice dated 14.06.1980. The termination notice was also published in newspaper on 08.08.1980. It is their case that after termination of agreement in favour of Ajanta Traders, the owners have entered into development agreement with present Plaintiff No.8, who is Appellant No.6 - Conwood Agencies Pvt. Ltd. It is their case that the Plaintiffs allowed the Respondent/society to continue to occupy the suit building 'on humanitarian consideration' and the Society is a gratuitous licensee. After the Competent Authority under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 passed an order dated 28.02.2017, the Applicants filed writ petition challenging the said order granting unilateral deemed conveyance in favour of the Respondent/society. It is submitted that after the writ petition was disposed of as not maintainable, the matter was carried to Hon'ble Supreme Court, but the challenge failed. Thereafter, the present suit is filed seeking declaration that order of Competent Authority is illegal and Respondent/Society has no right in suit property and any

transaction on the basis of order of competent authority is not binding on the Plaintiffs. A further prayer of mandatory injunction for demolition of suit building and possession of the suit property was made.

6. Admittedly, Ajanta Traders through whom Respondent No.1 Society was constructed, has not been made party to the suit.

7. The Respondent/society filed written statement contending *inter alia* that there is suppression of material facts and the suit is nothing but a litigation tactic filed with a view to pressurize Society for giving in to unlawful demands. That the suit is barred by limitation. That the society is formed in 1976 and the Plaintiffs were well aware of the existence of Society. That Plaintiffs have not initiated any proceedings against the developer of the society. That after construction of the society building and formation of the society, all rights and benefits of the suit property is vested in the Society. That as many as 40 flats and families occupying the same are involved. That since the building is more than 35 years old, the society has decided to go for redevelopment and at such crucial stage, the present litigation is initiated.

8. The learned Trial Judge framed issues and has held that the Applicants could not prove that they are the owners of the suit property. It is held that the Applicants could not prove that Ajanta Traders had no right to carry-out any constructions. It is further not proved that the Respondent/ Society has taken possession illegally. It is also not proved that Respondent/society or its members are mere gratuitous licensee. The order passed by the Competent Authority has not been found to be

illegal. The suit is found to be barred by limitation. On such findings, the Trial Court has dismissed the suit and has declined to grant any declaration and mandatory injunction and possession of the suit property.

9. Record shows that at the time of arguments, the Applicants restricted their claim by dropping the prayer of possession.

10. Learned counsel for the Applicants submitted that the names of the Applicants did appear in the property card and therefore, without their consent, the development could not have taken place legally. He submitted that since the appeal is admitted, the Respondent/society or anybody carrying out development on behalf of society should be restrained from constructing or selling the flats therein. He further submitted that necessary disclosure about existing PAAA agreements must come on record. He submitted that at least the Respondent Society or its developer must be directed to disclose pendency of this appeal to prospective purchasers.

11. On the other hand, learned Counsel for the Respondent/Society submitted that suit has been rightly dismissed since the action of the Applicants are hopelessly belated. He submitted that existence of society and its occupation by the members, cannot go unnoticed and the Applicants have slept over their rights and at such belated stage, no injunction is warranted. He relied upon the order of the Trial Court dated 04.01.2019 by which the motion taken out by the Applicants seeking injunction against Respondent/Society from creating third party interest, was dismissed. Affidavit in Reply dated 04.09.2025 is pointed out. It is stated therein that Respondent Society consists of 40

flats with middle-class people and senior citizens involved. Society building was demolished in 2021 during pendency of the suit and its redevelopment construction started in 2023 is going on, which has reached upto 13th floor. The Applicants failed to obtain any interim relief in the Trial Court. It is therefore urged that if construction is halted, so many members of the society will be left without their upcoming residence completed, causing great hardship. It is prayed that no interim relief be granted first time in appeal.

12. I have considered the rival submissions.

13. There is no dispute that during pendency of the suit, the motion taken out by the Applicants was dismissed and no interim relief existed in their favour. It is also not disputed that the first overt action taken by the Applicants was after order of the Competent Authority dated 28.02.2017 was passed granting unilateral deemed conveyance. Perusal of the impugned Judgment shows that the Trial Court has recorded that agreements of August, 1966 and September, 1967 in favour of Ajanta Traders are not brought on record and not available and therefore, the Court has no opportunity to consider the same as to what were the terms agreed. The developer (Ajanta Traders) through whom the Respondent/Society is constructed was not made party. It has come on record that commencement certificate was issued for construction of Respondent/Society way back in September, 1976 and Society is registered in November 1976 and the occupation certificate was issued in June, 1977. Suit is filed in August 2018 seeking declaration that Respondent Society has no right, title, interest in the suit property and further declaration that Society structure/building is illegal and constructed without any right. In such circumstances, it is

not possible to believe that the Applicants had no knowledge about the entire event of society being constructed and occupied by the members, society getting registered and occupation certificate being issued. Therefore, finding of the Trial Court about suit being barred by limitation, appears justified, at least at the present stage of interim relief. There was no interim relief in favour of Applicants during pendency of the suit. Suit is thereafter dismissed on merits. Hence, there is no enough strong *prima facie* case in favour of Applicants, to restrain for the first time, the ongoing activity of construction or sell of the flats. Considering the involvement of 40 flats and its occupants and the stage of its construction, the aspect of irreparable loss and balance of convenience clearly tilts in favour of Respondent No.1 Society.

14. In the aforesaid facts and circumstances, the prayers made in the application cannot be granted and **the application is accordingly dismissed.**

15. Needless to mention that further development on the suit property, including construction and sell of flats, if any, will be subject to final outcome of the appeal.

16. It is clarified that the observations in the present order are limited to deciding this interim application and the first appeal will be decided on its own merits independently.

17. The Interim Application is disposed of in above terms.

(M.M. SATHAYE, J.)