

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****WRIT PETITION NO. 2573 OF 2024**

Satish Umesh Prabhu & Ors.

... Petitioners.

V/s.Municipal Corporation of Greater
Mumbai & Ors.

... Respondents.

Ms. Bushra Sayed a/w Mr. Arman Parve i/by Ms. Pragya Mishra for the
Petitioners.

Ms. S.V. Tondwalkar i/by Ms. Komal Punjabi for Respondent No.1-BMC.

Ms. Jaymala Ostwal, Addl. G.P. for the Respondent Nos.2 & 4-State.

Mr. Shrikant S. Dixit for Respondent No.3

Mr. Akash Gupta i/by Mr. Jeet Gandhi for Respondent No.6.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

DATE : 15th April, 2025.

P.C.:-

- 1) Heard learned Advocates for the respective parties and perused record.
- 2) By the present Petition under Article 226 of Constitution of India, the Petitioners, members of Respondent No.3-Society seek direction to BMC and CFO to take action in accordance with law and cancel the CFO NOC dated 29th July, 2020 and part Occupation Certificate dated 17th September, 2021 that was issued based on allegedly forged and fabricated fire compliance report, and to take necessary action against the developer

i.e. Respondent No.5 for submitting allegedly forged and fabricated documents. Additionally, a direction to the Corporation to issue a full Occupation Certificate and for other consequential reliefs after compliance of all the conditions required under the law.

2.1) It is an admitted fact on record that, the Petitioners are members of Respondent No.3-Society and once the Society is formed, they lose their independent rights to prosecute for claiming any remedy in their personal capacity. The constitution Bench of Hon'ble Supreme Court in the case of *Daman Singh & Ors. v/s. State of Punjab & Ors.* reported in (1985) 2 SCC 670, in para No. 11 has held as under:-

“11. The next submission of the learned counsel was that Section 13(8), (9) and (10) did not make express provision for the issue of notice to the members of the concerned cooperative societies and were, therefore, violative of the principles of natural justice. He argued that in the absence of any provision, the rules of natural justice may be read into the provisions and notice to be members of the affected societies was imperative. Otherwise, he argued, members of one society would be formed against their will and without being heard to associate themselves with members of another society. We have no hesitation in rejecting this submission also. Once a person becomes a member of a cooperative society, he loses his individuality qua the society and he has no independent rights except those

given to him by the statute and the by-laws. He must act and speak through the society or rather, the society alone can act and speak for him qua rights or duties of the society as a body. So if the statute which authorises compulsory amalgamation of cooperative societies provides for notice to the societies concerned, the requirement of natural justice is fully satisfied. The notice to the society will be deemed a notice to all its members. That is why Section 13(9) (a) provides for the issue of notice to the societies and not to individual members. Section 13(9) (b), however, provides the members also with an opportunity to be heard if they desire to be heard. Notice to individual members of a cooperative society, in our opinion, is opposed to the very status of a cooperative society as a body corporate and is, therefore, unnecessary. We do not consider it necessary to further elaborate the matter except to point out that a member who objects Section 31(11), the option to walk out, as it were, by withdrawing his share, deposits or loans as the case may be.”

2.2) It is further admitted fact on record that, the Respondent No.3-Society though now, through their independent Advocate, supports the Petitioners, they did not file the Petition for addressing their grievance or for adjudicating their rights. It clearly appears to us that, Respondent No.3-Society prompted the Petitioners to file the present petition for taking a chance before this Court and to save its rights to agitate the same in the

event of an adverse Order.

3) There is another facet to the present case. The present Petition was heard on 8th April, 2025. This Court pointed out the legal position to the learned counsel for the Petitioners who is a junior Advocate, by standing, at the bar. We had also informed both Advocate for Respondent No.3 and her about the correct legal position alongwith the citation and kept the Petition on 9th April, 2025 to enable them to seek necessary instructions from their clients.

4) Pursuant to further deliberation in the Court on 9th April, 2025, learned counsel for the Petitioner had sought an adjournment for today and therefore the Petition was listed under the caption 'for withdrawal'. When the Petition was called out for hearing, learned counsel for Petitioners on instructions submitted that, this Court may pass necessary orders as the Petitioners are not desirous of withdrawing the Petition.

5) On the earlier occasion, we had also suggested to the Petitioners to either withdraw the Petition and asked Respondent No.3 to file another Petition or to transpose Respondent No.3 as Petitioner to espouse the cause of the society who is having 272 members. Despite the suggestion, the Respondent No.3-Society today chooses to adopt a stand that, since the Petitioners are espousing the cause of all the 272 members, it is therefore not necessary to either file an independent Petition or even transpose the Respondent No.3 as the Petitioner.

6) Ms. Sayed submitted that, it is the fundamental right of the Petitioner which is being violated by the developer-Respondent No.4 and therefore the Petitioners in their individual capacity have filed Petition. This Court therefore asked a query to the learned counsel for the Petitioners which is that fundamental right that is being violated, to which she had no answer.

7) After perusing the record, it appears to us that, with a view to pressurize the Respondent No.5 to meet their demands, the present Petition is filed.

8) In view of the above, we are of the clear opinion that, the Petitioners have abused the Court's process by filing the present Petition, being fully aware that the same is contrary to the well settled and well enunciated principles of law laid down by the Constitution Bench of the Supreme Court of India.

9) According to us, present Petition is not maintainable at the behest of Petitioners and deserves to be dismissed in limine.

10) Astounded by the conduct of both Advocates as well as their clients, who as a Society have chosen to willfully and knowingly abetted abusing the process of law. With a view to create a deterrent effect on them for the future, we deem it appropriate to impose costs of Rs.25,000/- on the Petitioners and cost of Rs.3,000/- per member other than Petitioners, of the Respondent No.3-Society. This has to be paid to Advocates Association of

Western India Generation Next Fund, Mumbai, within a period of two weeks from the date of uploading of the present Order on the official website of the High Court of Bombay.

10.1) Details of the bank account for payment of cost are as under:-

Account Name : Advocates Association of Western India
Generation Next.

Account Number : 000110110007807

Bank Name : Bank of India

Branch Name : Mumbai Main

IFSC Code : BKID0000001.

11) Petition is accordingly dismissed in the aforesaid terms.

12) List the Petition on board on 10th June, 2025 under the caption
“for reporting compliance”.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)