

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****INTERIM APPLICATION NO.258 OF 2025****IN****WRIT PETITION NO. 2826 OF 2015**

Raheja Green Co-Operative
Housing Society Ltd.

.....Applicant

Vs.

Municipal Commissioner,
MCGM & Ors.

.....Respondents

Mr. Atul Damle, Senior Advocate a/w. Adv. Neel Paralikar i/by Adv. Aditya Pratap, Law Offices for the Applicant.

Mr. Ranjeet Thorat, Senior Advocate a/w Adv. Ms. R.M. Hajare for the Respondent Nos.1 and 2-BMC.

Mr. Girish Godbole, Senior Advocate i/by Ms. Sangeeta Lanjewar for the Respondent No. 4.

Ms. Madhu Hiraskar for the Respondent No.3.

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

DATE : 25th FEBRUARY, 2025.

PC.:-

1) Present Application is an example of abuse of process of law.

In the Application, following prayers are made:-

“(A) That this Hon’ble Court be pleased to pass orders declaring that the Petitioner Society is entitled to the exclusive use of Access Road A-B-C, as per the architectural submission of Architect SP Kher while

seeking concessions, duly approved by the Director of Engineering and recorded as Annexure-15 by the Deputy Municipal Commissioner (DMC).

- (B) That this Hon'ble Court be pleased to pass orders directing the enforcement of exclusive access rights of the Petitioner's building to the Municipal Road, as confirmed by the Deputy Municipal Commissioner's report (Annexure-15) on Page nos. 461-465 and the Developer's Architect's letter dated 10th March 2003 and on Pages 320 to 322 of the Writ Petition record.*
- (C) That this Hon'ble Court be pleased to further direct all relevant authorities and parties to ensure compliance with the Executive Engineer's report, confirming the Petitioner's building as the sole structure authorized for access from the Municipal Road and preventing any unauthorized encroachment or obstruction of the Petitioner's exclusive ingress and egress rights.*
- (D) That this Hon'ble Court be pleased to pass orders restraining any third party from interfering with or obstructing the Petitioner's exclusive use of Access Road A-B-C, in accordance with the approved plans and permissions granted by the competent authorities.*
- (E) That this Hon'ble Court be pleased to pass orders directing the removal of the bund wall separating the Petitioner's building from the Main Recreational Ground (RG), ensuring direct and unrestricted access in compliance with the Development Control Regulations.*
- (F) That this Hon'ble Court be pleased to pass orders directing the restoration of sizes and use of RG-5a, RG1a,*

RG3 and all other recreational grounds to their original dimensions and layout, as per the Occupancy Certificate plan approved for the Society.

- (G) That this Hon'ble Court be pleased to pass orders restraining the Respondent from reallocating or altering any portion of the FSI allocated to the Petitioner's building, ensuring compliance with legal precedents and safeguarding the Society's redevelopment potential.*
- (H) That this Hon'ble Court be pleased to pass orders prohibiting vehicular access for third-party societies through the limited space surrounding the Petitioner's building, preserving the residents' exclusive rights to common areas in conformity with the Occupancy Certificate layout.*
- (I) That this Hon'ble Court be pleased to pass orders granting such other reliefs as may be deemed just, proper, and equitable to safeguard the rights, interests, and welfare of the Petitioner Society and its members.*
- (J) It is respectfully prayed that this Hon'ble Court may direct Respondent Nos.1 and 2 to provide copies of the Completion Certificate and approved plans from the EETC (Executive Engineer, Traffic and Coordination) for the car parking areas of Building Nos.1, 2, and 3, as per Condition E2 of the IOD.*
- (L) Such other orders as this Hon'ble Court may consider fit to pass in the interests of justice."*

2) We are, to say the least, amazed after reading such prayers. What

is sought from this Court, under Article 226 of the Constitution of India is a declaration of rights/entitlements of Petitioner which require adjudication of issues that can be determined only after leading evidence and cannot be decided only on the basis of pleadings.

3) According to us, the Applicant seeks adjudication of disputed questions of facts by way of present Application. The ratio of the decision in the case of *Shalini Shyam Shetty Vs. Rajendra Shankar Patil reported in (2010) 8 SCC 329* will squarely apply.

4) In view thereof, we are not inclined to entertain the Application and is dismissed *in limine*.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

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