

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1043 OF 2026

1. Sou. Sumitra Babgonda Patil,
Age: 57 years, Occu: Household,
R/o: Flat No. B-1-4, Ratnoday Co-op Housing
Society Ltd, Nagala Park, Kolhapur.
2. Smt. Madhuri Vidhyadhar Shinde,
Age: 50 years, Occu: Household,
R/o: Flat No. B-1-1, Ratnoday Co-op Housing
Society Ltd, Nagala Park, Kolhapur.

...Petitioners

Versus

1. Ratnoday Co-operative Housing Society Ltd,
Office at: 246, E ward, Nagala Park, Kolhapur.
2. Shri. Kiran Anantrao Shinde,
Chairman, Ratnoday Co-op Housing Society
Ltd, Nagala Park, Kolhapur
3. Shri. Anil Rangnath Deshpande,
Secretary,
Ratnoday Co-op Housing Society Ltd,
Nagala Park, Kolhapur
4. Deputy Registrar, Co-operative societies,
Kolhapur City.
5. Shri V. M. Todkar,
Authorised Officer,
Ratnoday Co-operative Housing
Society Ltd., Nagala Park, Kolhapur,
And Head Clerk in the office of
Dy. Reg. Kolhapur City
6. Shri Sudhir Shankar Savant,
Age – 84, Occup. Nil,

7. Shri Pradip Kadam,
Age – Adult, Occup. Nil,
8. Shri Prashant Khodbole,
Age – Adult, Occup. Engineer,
9. Shri Ajay Sharad Vardakar,
Age – Adult, Occup. Education,
Respondent No. 6 to 9
R/o. Flat No. 3-4, Ratnoday Co-operative
Housing Society Ltd., Nagala Park,
246 A, E ward, Kolhapur.

...Respondents

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Mr. Shrikrishna Ganbavale i/by Mr. Sangramsingh Yadav, Advocate
for the Petitioner.

Mr. Chetan G. Patil a/w Mr. Prathmesh P. Magdum a/w Mr.
Siddheshwari R. Chavan for the Respondent Nos.1 to 3 and 6 to 9.

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CORAM : SACHIN S. DESHMUKH, J.

DATE : 11th MARCH, 2026.

ORAL JUDGMENT :

1. The Petitioners raise an exception to the order rendered by the Co-operative Appellate Court endorsing the order of the Co-operative Court No.1. The Petitioners and the contesting Respondents are members of the co-operative society, the construction whereof is of the year 1975. After considering the structural condition of the building, the society proposed redevelopment in its General Body Meeting dated 24.09.2022.

Accordingly, a Special General Body Meeting was convened wherein redevelopment and the selection process of a developer were also undertaken.

2. The Petitioners instituted Dispute bearing C.C.S. No.334 of 2024 before the Co-operative Court, raising an exception to the redevelopment process in the light of the Government Resolution dated 04.07.2019 issued under Section 79(A) of the Maharashtra Co-operative Societies Act, 1960. It was contended that it was obligatory for the society to take decisions in consonance with the said Government Resolution.

3. It was further asserted that there was total apathy on the part of the society in ensuring strict compliance with the said Government Resolution, which culminated in the appointment of the developer. Although the Petitioners were aware of the appointment of the developer, however, they chose not to implead the said developer as a party respondent.

4. The contesting Respondents resisted the claim of the Petitioners before the Co-operative Court. After considering the rival submissions, the Co-operative Court, by its order dated 25.08.2025,

declined to exercise discretion in favour of the Petitioners. As such, prayed for dismissal of the Petition.

5. Aggrieved thereby, the Petitioners approached the Maharashtra State Co-operative Appellate Court Mumbai, Bench at Pune, which dismissed the proceedings endorsing the order of the Co-operative Court. In the aforesaid backdrop, the Petitioners have approached this Court.

6. The learned counsel for the Petitioners submits that essentially the Petitioners are not against the decision of redevelopment; however, the process and decision-making in respect of redevelopment is vitiated on account of non-compliance with the Government Resolution dated 04.07.2019.

7. It is further submitted that the appointment of an architect or project management consultant was not ensured before initiating the tender process, and no feasibility report was prepared and placed before the General Body Meeting, as such, the same is rendered unsustainable.

8. In the aforesaid backdrop, it is submitted that the Petitioners have made out a *prima facie* case, and that the balance of

convenience lies in ensuring compliance with these mandatory procedural requirements, failing which irreparable loss would be caused to the society as a whole. It is, therefore, prayed that the Petition ought to be allowed by setting aside the orders rendered by the Co-operative Court and the Co-operative Appellate Court.

9. *Per contra*, learned counsel for the Respondent Nos.1 to 3 and 6 to 9 has supported the impugned orders, submitting that the redevelopment proposal has been approved by the majority and does not warrant interference.

10. It is further submitted that the Petitioners have failed to demonstrate any specific or quantified loss or prejudice arising from the redevelopment process, and that early redevelopment is in the interest of the society and its members. It is contended that the attempt of the Petitioners is either to stall or defer the redevelopment process. These aspects have been considered in its entirety by the Courts below while declining to exercise discretion in favour of the Petitioners, which does not warrant interference. Accordingly, the Petition deserves to be dismissed.

11. Having heard the submissions from both sides and upon

perusal of the record, *prima facie* it appears that the decision of redevelopment has been taken by a majority. The proposal for redevelopment, considering the structural condition of the building, was approved in the General Body Meeting and further endorsed in the Special General Body Meeting by the majority of the members.

12. Although the Petitioners were parties to the said decision, as such, it is not open for the Petitioners to approbate and reprobate, which would not be in the interest of the society as a whole.

13. As regards the contention of the Petitioners that the redevelopment process is in violation of the Government Resolution dated 04.07.2019, the said Government Resolution *prima facie* is directory in nature and in any case except bare assertion it is not demonstrated the non compliance of it. Once it is established that the proposal for redevelopment has been accepted and approved by the majority of the members, which has culminated in a redevelopment agreement, and the Petitioners, conscious thereof, have not impleaded the developer, these aspects have been duly considered by the Co-operative Court while applying the settled principles of law governing the grant of interim relief.

14. At this stage, this Court deems it appropriate to refer to the principles laid down by the Hon'ble Supreme Court in *Dalpat Kumar & Anr. vs. Prahlad Singh & Ors., reported in (1992) 1 SCC 719*, with regard to the grant of temporary injunctions. The relevant observations are reproduced hereinbelow:

“4. Order XXXIX Rule 1(c) provides that a temporary injunction may be granted where, in any suit, it is proved by affidavit or otherwise that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit. The Court may, by order, grant a temporary injunction to restrain such act or make such other order as may be necessary for the purpose of staying and preventing dispossession or injury to the plaintiff in relation to the property in dispute, until the disposal of the suit or until further orders.

The provision primarily concerns the preservation of the property in dispute until the legal rights of the parties are adjudicated. An injunction is a judicial process by which a party is required either to do or to refrain from doing a particular act. It is preventive in nature and intended to avert future injury. The grant of an injunction is a discretionary relief and is governed by well-settled principles, namely:

- (1) the existence of a serious question to be tried and a probability of the applicant being entitled to the relief claimed;
- (2) the necessity to protect the applicant from irreparable injury; and
- (3) that the balance of convenience lies in favour of granting the injunction.

5. The burden lies on the plaintiff to establish, by affidavit or otherwise, that a prima facie case exists in his favour which requires adjudication at trial. A prima facie case does not mean a case proved to the hilt, but a substantial question raised bona fide, warranting investigation and decision on merits. Mere existence of a prima facie case is not sufficient; the Court must also be satisfied that non-interference would result in

irreparable injury, that is, injury which cannot be adequately compensated by damages.

Further, the Court must consider the balance of convenience, i.e., whether the comparative mischief, hardship, or inconvenience likely to result from withholding the injunction would be greater than that which would result from granting it. The Court must weigh the competing probabilities of injury and exercise sound judicial discretion to maintain the status quo where necessary, pending final adjudication.”

15. Applying aforestated settled principles, the Court has rightly declined to entertain the application below Exhibit-5 filed by the Petitioners.

16. Aggrieved by the rejection, the Petitioners approached the Appellate Court, which is essentially an appeal against the exercise of discretion has suffered dismissal. Ordinarily, a prayer for grant of an interlocutory intervention arises at a stage when the existence of the legal right asserted by the plaintiff and its alleged violation are contested and remain uncertain until established at trial. At such stage, the Court acts on well-settled principles governing the grant of interlocutory relief, which is temporary and discretionary in nature.

17. The object of an interlocutory injunction is to protect the plaintiff against injury to a legal right, which the Petitioners have

utterly failed to demonstrate. In the absence thereof, the Courts below have rightly declined to exercise discretion in favour of the Petitioners. I am not inclined to accept the contentions of the Petitioners or to substitute the discretion exercised by the Courts below.

18. In the absence of satisfying the trinity of principles for grant of injunction, i.e. *prima facie* case, balance of convenience, and irreparable loss, the Petitioners are not entitled to relief. The said position is no longer *res integra* in view of the authoritative pronouncement of the *Hon'ble Apex Court in Wander Ltd. and Another vs. Antox India Pvt. Ltd., 1990 Supp (1) SCC 727*, which reiterates that appellate interference with the exercise of discretion is limited at an appellate stage.

19. The aforesaid principles have also been reiterated by the *Hon'ble Apex Court in Mohd. Mehtab Khan & Ors. vs. Khushnuma Ibrahim Khan & Ors., (2013) 9 SCC 221*, wherein it has been held that the appellate Court ought not to interfere with the exercise of discretion by the Court of first instance unless such discretion is shown to have been exercised arbitrarily, capriciously, or perversely.

20. Apart from the aforesaid aspects, the development agreement has already been executed and rights have been created in favour of the developer, who has not been impleaded as a party respondent, despite the Petitioners being aware thereof, also disentitles the Petitioners from claiming relief in the absence of a necessary party. The Petitioners have failed to demonstrate any specific loss or prejudice. The approach adopted by the Courts below is judicious and does not warrant reconsideration by this Court under Article 227 of the Constitution of India.

21. Resultantly, the Writ Petition stands dismissed.

[SACHIN S. DESHMUKH, J.]