

Sayali

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

WRIT PETITION NO.4118 OF 2026

Kalpana Naik

... Petitioner

V/s.

**SAYALI
DEEPAK
UPASANI**

Sai Harchurram Baba D Building Co-
operative Housing Society Ltd, thr. Its
Committee Member U. Rajapure and
Others

... Respondents

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Mr. Shrivallabh S. Panchpor with Mr. Aashay Rabade,
for Petitioner.

Mr. Y. D. Patil, AGP for State, for Respondent no. 2.

Mr. Surel Shah, Senior Advocate with Mr. Chintan
Shah, for Respondent no. 1.

CORAM : AMIT BORKAR, J.

DATED : APRIL 06 , 2026

P.C.:

1. The present petition takes exception to the impugned Judgment and Order dated 13 March 2026 passed by the Appellate Court in Appeal No. 07 of 2026. The factual matrix discloses that Respondent No. 1 instituted Dispute No. 51 of 2025 before the Co-operative Court No. 2 at Pune under Section 91 of the Maharashtra Co-operative Societies Act, 1960. Along with the said dispute, an application was preferred seeking appointment of a Court Receiver and consequential direction for handing over

possession of the premises occupied by the Petitioner to Respondent No. 1 society, for the purpose of demolition in furtherance of the redevelopment project sanctioned in favour of M/s Rahul Constructions. The Co-operative Court, upon consideration of the material placed before it, allowed the said application by its order dated 23 February 2026.

2. Being dissatisfied with the order dated 23 February 2026 passed in Dispute No. 51 of 2025, the Petitioner carried the matter in Appeal No. 07 of 2026 before the Maharashtra Co-operative Appellate Court, Mumbai Bench at Pune. The Appellate Court, by its Judgment and Order dated 13 March 2026, dismissed the said appeal, thereby affirming the order of the Co-operative Court. The dispute, as instituted by the Respondent society against its member, essentially seeks a decree of mandatory injunction directing the opponent to vacate the suit flat, which is presently in his occupation, and to deliver vacant and peaceful possession thereof to the society. In the alternative, a prayer has also been made for appointment of a Court Receiver to take over possession of the said premises.

3. The record further indicates that, by way of an interim application, the disputant society sought immediate relief in the nature of appointment of a Court Receiver for taking possession of the suit flat, or in the alternative, a direction to the opponent to vacate and hand over possession of the said premises. It is the case of the disputant society, as set out in the dispute application

and the application at Exhibit 11, that the opponent is a member of the society. It is asserted that the society obtained conveyance of the property by a registered deed dated 14 July 2023, subsequent to which a structural audit of the building was carried out. Thereafter, the General Body of the society, by a resolution passed with a three-fourths majority on 06 August 2023, resolved to undertake redevelopment of the property. In pursuance thereof, a public notice dated 26 January 2024 was issued in a local newspaper inviting tenders from prospective developers. The redevelopment process was undertaken during the period 2023–2024, and the members of the society, save and except a few, accorded their approval and furnished written consent in August 2023. The society comprises 36 members, and it is asserted that an overwhelming majority consented to the redevelopment. In October 2023, M/s Rahul Constructions came to be selected as the developer, and the members reiterated their consent by communication dated 15 January 2024. It is further alleged that the opponent has consistently obstructed the redevelopment process by raising objections from time to time, necessitating the institution of the present dispute along with the interim application seeking possession of the suit flat.

4. The opponent has filed a reply opposing the interim application and has denied the material averments made therein. It is contended on behalf of the opponent that the disputant society has failed to adhere to the Government Resolution of the year 2019 governing the process of redevelopment. According to

the opponent, the procedure prescribed under the Maharashtra Co-operative Societies Act, 1960, as well as the stages contemplated under the said Government Resolution, have not been duly followed by the society and its office bearers. On this premise, it is urged that the dispute itself is not maintainable and is liable to be dismissed for non-compliance with the mandatory requirements. It is further contended that no cause of action has arisen for filing the present dispute and that the opponent has been kept uninformed of the material developments by the society. The opponent also asserts that the final relief sought by the society cannot be granted at an interim stage under the guise of temporary relief. Upon hearing the parties, the trial Court, however, proceeded to direct the opponent to vacate the premises and appointed a Court Receiver to take possession of the suit flat from the opponent.

5. Mr. Panchpor, learned Advocate appearing for the Petitioner, has submitted that M/s Rahul Constructions had not submitted its quotation to the society prior to 24 September 2023, and consequently, there was no occasion for the members of the society to consider or deliberate upon the said quotation. It is his contention that in the Special General Body Meeting held on 24 September 2023, four quotations were opened in the presence of the members; however, no quotation of M/s Rahul Constructions was placed before the General Body of Respondent No. 1 society. He has further invited attention to the redevelopment agreement placed on record before the Co-

operative Court, wherein a reference is made to a resolution dated 12 January 2025, and has contended that the said resolution has not been produced by the society before the Court to demonstrate that M/s Rahul Constructions was duly appointed by a valid resolution of the General Body. It is further submitted that the Petitioner has already instituted Dispute No. 202 of 2025 challenging all resolutions pertaining to redevelopment, along with an application for interim relief therein, and therefore both the disputes ought to have been adjudicated together by the Co-operative Court.

6. Learned counsel has further drawn attention to page 64 of the compilation and submitted that the communication therein is founded on misrepresentation, inasmuch as reference is made to a 7th floor which, according to the Petitioner, is non-existent. It is urged that in the absence of a duly sanctioned building plan, any act of demolition of the existing structure is impermissible in law. On this basis, it is contended that the possession of the Petitioner warrants protection.

7. Per contra, Mr. Surel Shah, learned Senior Advocate appearing on behalf of Respondent No. 1, has submitted that all 36 members of the society have accorded their written consent and have executed the redevelopment consent document. It is contended that the resolution passed in August 2023 unequivocally records the approval of all 36 members for undertaking redevelopment of the property. It is further

submitted that Smt. Kalpana Naik had herself signed the redevelopment consent resolution passed by the society. In addition, she had voluntarily entered into correspondence with the selected developer regarding the flat number to be allotted to her as well as the carpet area required. She had also addressed a communication to the Managing Committee expressing her willingness to deposit an amount of Rs. 1,00,000/- towards parking charges in the society's account. It is submitted that in view of the inconsistent and contradictory stand adopted by her thereafter, the Managing Committee deemed it appropriate to place the matter before the General Body by convening an urgent meeting in August 2024. Though due communication was issued to her, she failed to attend the said meeting and did not respond to the Committee.

8. It is further submitted that thereafter, a Show Cause Notice dated 27 August 2024 was issued to her by the Committee, which she refused to accept. A subsequent notice issued in September 2024 was also returned unclaimed. In these circumstances, the Committee, in its meeting held on 24 October 2024, resolved to initiate appropriate legal proceedings in accordance with the provisions of the Maharashtra Co-operative Societies Act, 1960. It is emphasised that 35 out of 36 members have already acted upon the decision of redevelopment and have vacated their respective premises by handing over possession.

9. I have given my thoughtful consideration to the rival submissions and to the material placed on record. The present petition is directed against the order passed by the Co-operative Court, which has been confirmed by the Appellate Court. The basic issue is a narrow one. It is whether, at this stage, the society was justified in seeking possession of the suit flat of the Petitioner for the purpose of redevelopment, and whether the orders passed by the courts below call for interference. On the material shown before me, I am of the view that no such interference is called for.

10. The first difficulty in the case of the Petitioner is that the present proceedings are not for final determination of the entire redevelopment dispute. What was before the courts below was only a request for interim protection. The society had approached the Court saying that its redevelopment work is being obstructed by one member and therefore temporary relief is required so that the project does not come to a standstill. In such type of proceedings, the Court is not expected to examine every small issue in full detail as if it is writing a final judgment after trial. The Court only looks at whether there is some basic material showing that the society has a case worth considering, and whether more harm will be caused if relief is refused than if it is granted. This is what is understood as prima facie case and balance of convenience. When the record is seen from that angle, the society has placed enough documents to show that redevelopment was decided and steps were taken. On the other hand the objections raised by the Petitioner regarding quotation,

appointment of developer, and non filing of one resolution, may require deeper examination. These objections do not show immediate illegality of such nature that the possession order must be set aside.

11. The material on record further shows that all 36 members had given written consent and signed the redevelopment proposal. A resolution dated August 2023 is relied upon to show that the General Body itself approved the redevelopment. The society has also pointed out that a structural audit of the building was carried out which generally is done when the condition of the building requires redevelopment. After this, the tender process was initiated. It is stated that M/s Rahul Constructions was selected in October 2023 and thereafter again members confirmed their consent in January 2024. At this stage there is no strong material placed by the Petitioner to show that these facts are false or fabricated. The Petitioner has disputed them, but mere denial without supporting material cannot displace the record placed by the society. The Court has to see where the weight of the record lies, and presently it leans in favour of the society.

12. The Petitioner has strongly argued that the quotation of M/s Rahul Constructions was not placed before the General Body on 24 September 2023. This argument appears to raise a doubt about the selection process. However when the matter is examined more carefully, it becomes clear that even if this one

circumstance is accepted, it does not automatically render the entire redevelopment process illegal. The material indicates that redevelopment was not a one day decision but a continuous process. Quotations were invited, meetings were held, members were informed, and thereafter further consents were taken. The redevelopment agreement also refers to appointment of the developer, and the society has explained that final selection and confirmation happened subsequently. In such a situation the Court cannot isolate one step and on that basis stop the entire project, unless that step goes to the root and makes the whole process invalid.

13. Another submission of the Petitioner is that the redevelopment agreement mentions a resolution dated 12 January 2025, but that resolution has not been placed before the Court. This submission does raise a point that documents referred to should normally be produced. The society has not based its entire case only on that one resolution. It has relied on earlier resolutions, written consents of members, structural audit, tender process, and subsequent conduct of members in accepting redevelopment. A single missing document does not make the entire action without authority. At the highest, it may require explanation in the main dispute. It cannot be treated as a ground to deny interim relief, especially when the larger material indicates that the society was acting with approval of majority members.

14. The grievance raised by the Petitioner regarding the communication at page 64 also does not materially advance the case. It is argued that the communication refers to a 7th floor which does not exist and therefore it is based on misrepresentation. Even if this contention is assumed to be correct for the sake of argument, the Court cannot lose sight of the real issue involved. The present question is whether redevelopment, which has been approved by most of the members should be allowed to proceed or should be halted because of such discrepancy. A reference to a non existent floor may show some error in communication but it does not by itself show that the entire redevelopment decision is illegal or fraudulent. The larger facts still remain that the society has taken steps towards redevelopment and most members have acted upon it.

15. The submission regarding absence of sanctioned plan also requires careful understanding. The Petitioner contends that without sanction, demolition cannot take place and therefore possession should not be disturbed. This argument appears attractive, but it mixes two separate issues. One issue is about the internal rights and obligations between the society and its member regarding redevelopment. The other issue relates to permissions from municipal or planning authorities. The present proceedings are concerned mainly with the first aspect. There is no clear material to show that any authority has restrained the redevelopment on the ground of lack of sanction. In absence of

such material, a general allegation about sanction cannot be used by a member to refuse to vacate, especially when the society has otherwise proceeded in accordance with its internal decisions.

16. The conduct of the Petitioner also cannot be ignored. The society has placed documents to show that the concerned member had initially agreed to redevelopment. She had signed the consent resolution. She had communicated with the developer regarding her flat and carpet area. She had even expressed readiness to pay parking charges. Thereafter, a different stand was taken and objections were raised. Because of this, the society had to call an urgent General Body Meeting. Notice was given but she did not attend. Later notices were issued, including a show cause notice, which was refused or remained unclaimed. Ultimately the Committee resolved to take legal action. This sequence shows that the society attempted to follow due process and gave opportunity, but the Petitioner did not cooperate. Such conduct is relevant when the Court considers interim relief.

17. A very important factor is that 35 out of 36 members have already accepted the redevelopment and have vacated their premises. A co-operative society works on collective will of its members. When almost all members have agreed and have acted upon that agreement, it would not be proper to allow one member to hold up the entire project unless there is very strong illegality shown. No such strong case is made out here. The

objections raised by the Petitioner are more in the nature of disputes about procedure, which can be examined later. But at this stage, the inconvenience and prejudice that would be caused to the large number of members if redevelopment is stopped is much greater than the inconvenience to the Petitioner.

18. Lastly the pendency of Dispute No. 202 of 2025 does not change the position. It is true that the Petitioner has challenged the redevelopment resolutions in another proceeding. However, merely because such a dispute is pending, it does not mean that all other proceedings must come to a halt. Each case has to be decided on its own facts and on the relief sought. There is no automatic stay operating against the society. The Court dealing with the present matter has to see the material before it and decide whether interim relief was rightly granted. The existence of another dispute does not wipe out the effect of the documents and conduct already placed on record in support of redevelopment.

19. The courts below have considered the material, applied the correct approach, and exercised discretion in favour of the society. The order of appointment of Court Receiver and the direction to hand over possession cannot be said to be perverse or without basis. On the contrary, the record shows that the society had a prima facie case, the redevelopment had been approved by a large majority, the Petitioner was not cooperating, and the society was facing obstruction in carrying out a collective

decision. In such circumstances, the court below was justified in protecting the redevelopment process by directing the Petitioner to hand over possession.

20. I do not find any reason to interfere with the concurrent orders passed by the Co-operative Court and the Appellate Court. The Petitioner has not shown any patent illegality, jurisdictional error, or perversity in the impugned orders. The objections raised are matters which may be looked into in the main dispute, but they are not sufficient to unsettle the interim order at this stage. The petition, therefore, deserves to be dismissed.

21. Accordingly, the petition is dismissed. No order as to costs.

22. The Petitioner is granted a period of two weeks to vacate the subject premises. This indulgence is made subject to the condition that the Petitioner shall, within a period of three days from today, file a written undertaking before this Court stating clearly that she shall vacate and hand over peaceful possession of the premises within the aforesaid period of two weeks. In the event the Petitioner fails to file the undertaking within the period of three days, it shall be open for the Court Receiver, without any further reference to the Court, to forthwith take possession of the suit premises in accordance with law.

(AMIT BORKAR, J.)