IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4250 OF 2026

Kolte Patil Developers Limited ..Petitioner
A Public Limited Company registered under
the provisions of Indian Companies Act,
1956,
having its registered office at 2nd Floor,
City Point, Dhole Patil Road,
Pune – 411 001.

Versus

1. Omprakash Jainarayan Sharma
Age: 67 Years, Occ: Service,

2. Sunil Omprakash Sharma
Age: 39 Years, Occ: Service.

3. Dropadi Omprakash Sharma
Age: 64 Years, Occ: Housewife.
Respondent Nos. 1 to 3 Residing At:
Flat No. 603, 6th Floor, Block A,
Aleria, S.No. 42/3/2, Kharadi,
Pune 411 014.

4. Kanifnath Paraji Changulpai
Age: 74 Years, Occ: Business

5. Vimal Kanifnath Changulpai
Age: 65 Years, Occ: Housewife

6. Sachin Kanifnath Changulpai
Age: 43 Years, Occ: Business

7. Savita Kanifnath Changulpai
@ Savita Pravin Rahatwad
Age: 47 Years, Occ: Service.

8. Surekha Kanifnath Changulpai
@ Surekha Dilip Dane,

Age: 45 Years, Occ: Housewife
Respondent Nos. 4 to 8 residing at
Sai Chhaya, Opp: Ganga Puram,
Viman Nagar, Pune: 411 014.
Through their duly Constituted Attorneys
Power of Attorneys Defendant No.1 Directors
Viz Rajesh Aniruddha Patil and Milind
Digambar Kolte

9. Pune Municipal Corporation
Through Commissioner PMC,
Having its Office at PMC Building,
Shivajinagar, Pune 411 005.

10. The City Engineer,
Pune Municipal Corporation
Shivajinagar, Pune 411 005. …Respondents

Mr. Nikhil Sakhardande, Senior Advocate, with Amrut Joshi, Ziyad Madon, M.A. Kamdar, Hersh Choksi and Deshna Gala, i/b Kanga and Company, for the Petitioner.
Mr. S.P. Deo, a/w Mr. A.S. Bhosale, Mr. Pritesh Chandge, for the Respondents.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 06th MAY 2026
PRONOUNCED ON : 17th JUNE 2026

JUDGMENT:

1. Rule. Rule made returnable forthwith, and, with the consent of the learned Counsel for the parties, heard finally.

2. By this Petition under Article 227 of the Constitution of India, the Petitioner takes exception to a judgment and order dated 27th January 2026 passed by the learned District Judge, Pune in MCA No. 374 of 2025, whereby the Appeal preferred by the Petitioner against an order dated 25th November 2025, passed by the learned Civil Judge, Senior Division, Pune, on an Application for temporary injunction (Exhibit "5") in SCS No. 1248 of 2025, thereby directing Respondent Nos. 9 and 10 (Defendant Nos. 7 and 8) to issue stop-work order and restraining Respondent No. 9 from issuing any further permission, approvals, no objection certificate, occupation certificate, commencement certificate or any other sanction or approval of whatever nature to the Petitioner (D1) without the consent of Respondent Nos. 1 to 3 (the Plaintiffs) and other unit purchasers of 'A' Block in the project "Aleria", developed by the Petitioner and also restraining the Petitioner from carrying on construction as per the revised sanctioned plan of 2023, came to be dismissed.

3. Shorn of unnecessary details the background facts leading to this Petition can be stated as under:

3.1 The Petitioner (D1) is a public limited company. D1 is engaged in the business of real estate development. D1 undertook the development of the project, "Alerai" at Kharadi, Pune in two phases, i.e., Block 'A' and Block 'B'.

3.2 The plan was sanctioned by the Pune Municipal Corporation ("PMC-R9/D7) on 4th September 2017 for construction of Block 'A', in the first phase. Plaintiffs (R1 to R3) purchased residential units in Block 'A'; which was fully developed and the apartment owners were put in possession of all the units therein in the year 2011.

3.3 In the year 2021, Defendant No.1 obtained revised sanctioned plan for Phase-2 development, i.e., Block 'B' comprising of ground plus thirteen floors. In view of the objections raised by the apartment holders in Block 'A' and pursuant to negotiations on 7^{th} August 2023, Defendant No.1 obtained revised sanctioned plan for Block 'B' thereby scaling down the floors to ground plus nine floors like Block 'A'.

3.4 After Defendant No.1 commenced the construction in accordance with the re-revised sanctioned plan, the Plaintiffs, instituted the suit being SCS No. 1248 of 2025, seeking diverse reliefs. It was, *inter alia,* alleged that there was significant deviation from the sanctioned plan 2007 and Defendant No.1 professed to illegally deprive the apartment owners in Block 'A' of many amenities which they were enjoying and substantially altered the plans and specifications without informed consent of the apartment owners in Block 'A', in gross violation of the provisions contained in the Maharashtra Ownership Flats (Regulation Of The Promotion of Construction, Sale, Management And Transfer) Act, 1963 (" MOFA 1963"). Various acts of omission and commission were attributed to Defendant No.1-Promoter.

3.5 The Application was resisted by Defendant No.1.

3.6 After appraisal of the pleadings and material on record, the learned Civil Judge recorded a finding that *prima facie* the promoter got the re-revised sanctioned plan approved from PMC (D7) without the consent of the Plaintiffs and other apartment owners. The proposed development materially affected the facilities and amenities provided to the Plaintiffs. The implementation of the re-revised sanctioned plan would deprive the Plaintiffs and other apartment owners of many facilities and amenities which were provided under the original sanctioned plan-2007. Thus, the learned Civil Judge was persuaded to grant interim relief in the manner indicated above.

3.7 Being aggrieved Defendant No.1 preferred an Appeal before the District Court.

3.8 By the impugned judgment and order, the learned District Judge dismissed the Appeal finding no fault with the exercise of discretion by the trial Court. The learned Civil Judge compared and contrasted the facilities and amenities agreed to be provided under the sanctioned plan-2007 with the provisions made in the re-revised plan-2023 and returned a finding that there was no informed consent of all the apartment owners as envisaged by the provisions of Section 7 of MOFA 1963.

3.9 Being further aggrieved Defendant No.1 has preferred this Petition.

4. I have heard Mr. Nikhil Sakhardande, the learned Senior Advocate for the Petitioner, and Mr. Deo, the learned Counsel for Respondent Nos. 1 to 3 at some length. With the assistance of the learned Counsel for the parties, I have perused the material on record.

5. Mr. Sakhardande, the learned Senior Advocate for the Petitioner submitted that the Courts below have committed gross error in law in not appreciating the consequences of the broad terms in which the injunction order has been passed. The trial Court was clearly in error in directing the PMC (D7) to issue stop-work notice and also restraining the PMC (D7) from granting further approvals and permissions, which the Planning Authority has been statutorily empowered to grant. Secondly, the Courts below have not correctly appreciated the nature of the alleged violations and passed a blanket injunction order bringing the entire project to a stand-still. Thirdly, the element of balance of convenience, especially the injury to the persons who have booked the apartments in Block ‘B’ which is almost complete, in the event grant of injunction was not at all considered. Nonetheless, Mr. Sakhardande would submit that the Promoter (D1) undertakes to maintain most of the facilities and amenities; as they stand, till the final disposal of the suit. However, the restraint on further development, which causes grave prejudice and irreparable loss not only to the Promoter (D1) but to the allottees of the apartment in Block ‘B’ deserves to be quashed and set aside.

6. Two Additional Affidavits were filed on behalf of the Petitioner to place on record the undertakings on behalf of the Promoter (D1).

7. Refuting the submissions canvassed on behalf of the Petitioner, Mr. Deo, the learned Counsel for the respondents, laid emphasis on the statutory obligations of the promoter and the rights of the apartment owners under Section 7 of the MOFA, 1963. It was urged with a degree of vehemence that, without even seeking the consent of the apartment owners in Block ‘A’, the promoter brazenly went ahead and obtained the permission initially for construction of a 13 storey building depriving the owners of apartment in Block ‘A’ of the amenities and facilities. Such a development in flagrant violation of the statutory mandate contained in Section 7 could not have at all being carried out without obtaining the informed consent of the owners of the apartments in Block 'A'. The Courts below were, therefore, wholly justified in directing the Planning Authority to issue stop-work notice and in restraining the defendant promoter from carrying out further development. If the injunction were not to be granted, the owners of the apartment in Block 'A' would have been presented with a fate accompli.

8. Mr. Deo further submitted that, the petitioner cannot take mileage from the fact that, the third parties have booked apartments in Block 'B'. The illegality committed by the promoter cannot be allowed to be perpetuated on the count that, the third parties have booked apartments in Block 'A'. At any rate, in view of the concurrent findings of facts and exercise of discretion by the Courts below, this Court may not interfere with the impugned order in exercise of the limited supervisory jurisdiction. Dealing with the undertakings given in the additional affidavit, Mr. Deo would urge, the promoter has not undertaken to discharge all his statutory obligations. The compliance with the undertakings given by the promoter would not restore the position to conform with the original Sanction Plan 2007, completely.

9. I have given careful consideration to the pleadings, material on record and the submissions canvassed across the bar. Indeed, the jurisdiction of the High Court under Article 227 of the Constitution of India is supervisory in nature. This jurisdiction cannot be converted into an appellate jurisdiction to re-assess, re-evaluate and re-weigh the material/evidence and take a different view of the matter. The High Court can intervene if the Courts/Tribunals have passed the orders in disregard of the settled principles of law, there is a patent error of law, the order appears perverse or the discretion has been exercised in such fashion that no court or tribunal could have exercised such discretion.

10. A profitable reference in this context can be made to a Constitution Bench judgment of the Supreme Court in the case of ***Rajendra Diwan Vs. Pradeep Kumar Ranibala & anr.***[1], wherein the contours of the supervisory jurisdiction were expounded as under :-

> "85. The power of superintendence conferred by Article 227 is, however, supervisory and not appellate. It is settled law that this power of judicial superintendence must be exercised sparingly, to keep subordinate courts and tribunals within the limits of their authority. When a Tribunal has acted

1 2019 SCC Online SC 1586

within its jurisdiction, the High Court does not interfere in exercise of its extraordinary writ jurisdiction unless there is grave miscarriage of justice or flagrant violation of law. Jurisdiction under Article 227 cannot be exercised "in the cloak of an appeal in disguise".

86. In exercise of its extraordinary power of superintendence and/or judicial review under Article 226 and 227 of the Constitution of India, the High Courts restrict interference to cases of patent error of law which go to the root of the decision; perversity; arbitrariness and/or unreasonableness; violation of principles of natural justice, lack of jurisdiction and usurpation of powers. The High Court does not re-assess or re-analyze the evidence and/or materials on record. Whether the High Court would exercise its writ jurisdiction to test a decision of the Rent Control Tribunal would depend on the facts and circumstances of the case. The writ jurisdiction of the High Court cannot be converted into an alternative appellate forum, just because there is no other provision of appeal in the eye of the law."

11. Keeping in view the aforesaid jurisdictional perspective, reverting to the case at hand, evidently, the core question that arises for consideration is whether the proposed development is in contravention of the statutory obligations of the promoter under Section 7 of the MOFA, 1963. In plain terms, Section 7(1)

(ii) ordains that after the plans and specifications of the building approved by the Planning Authority are disclosed or furnished to the persons who agreed to purchase the apartments/units, the promoter shall not make any alterations or addition in the structure of the building without the previous consent of all the persons who have agreed to take the flats in such building.

12. In the case at hand, it is not in contest that, the Sanction Plan 2007 did disclose that, the project would comprise two wings Block 'A', which was fully developed by 2011, and Block 'B', which was to be developed purportedly in the second phase. The controversy between the parties revolves around the alterations which were professed to be made under the re-revised Sanction Plan, 2023.

13. Before adverting to the thickest of facts in controversy, it may be apposite to note, the legal import of the provisions contained in Section 7 of MOFA, 1963, in the light of its interplay with Section 7A which was inserted by Maharashtra Act No. 36 of 1986. Section 7 of MOFA, 1963 incorporates the rights of a purchaser and also the obligations of the promoter. Section 7 of MOFA, as its stood prior to its amendment by the Amending Act No. 36 of 1986, restricted the promoter's rights to make the specified alternations once the plans and specifications of buildings as approved by the Planning Authority were disclosed or furnished to any person who agreed to take one or more flats in the building. Clause (ii) of Sub-Section (1) of Section 7 was amended by substituting the words, "or construct any additional structures", with, "additions in the structure of the building". By way of abundant caution, Section 7A came to be inserted in MOFA, 1963 to provide that the deleted words, "or construct any additional structures" shall be deemed never to apply in respect of construction of any other additional buildings/structures constructed or to be constructed under a scheme or project of development in the layout after obtaining the approval of a local authority in accordance with the building rules or the building by-laws or development control regulations, by way of a non obstante clause.

14. In the case of ***Jayantilal Investments Vs. Madhuvihar Coop. Housing Society & ors.***[2]***,*** the Supreme Court clarified that, notwithstanding the insertion of Section 7A, the obligation remains unfettered because the concept of developability has to be harmoniously read with the concept of registration of society and conveyance of title. Once the entire project is placed before

2 (2007) 9 SCC 220

the flat takers at the time of agreement, then the promoter is not required to obtain prior consent of the flat takers as long as the builder puts up additional construction in accordance with the layout plan, building rules and Development Control Regulations, etc.

15. With the aforesaid enunciation of law, in the case of ***Jayantilal Investments (supra),*** which has been followed in a body of decisions, the legal position seems to have been crystallized to the effect that, the promoter ought to make complete disclosure to the flat purchaser at the time of placing the scheme before the flat purchaser. If the entire project is placed before the flat purchaser at the time of entering into an agreement for sale, then the promoter is not required to obtain the prior consent of the flat purchaser. However, if the promoter desires to make additional construction not part of the plan originally placed before the flat purchasers at the time of entering into the agreement for sale, then consent as envisaged under Section 7 of MOFA, 1963, would be necessary. Moreover, such consent under Section 7 of MOFA, 1963 cannot be, 'blanket consent', but must be an 'informed consent' meaning thereby the flat purchasers were made fully cognizant of the proposed future development and, yet, gave consent. To put in other words, the consent as contemplated under Section 7 of MOFA, 1963 has to be an "informed consent", which is obtained upon full and fair disclosure of entire project by the promoter and that a blanket consent or authority at the time of entering into an agreement for sale would not serve the purpose.

16. In the light of the aforesaid position in law, it has to be seen the alterations and infringements which were found to be in breach of the statutory obligations of the promoter. In Paragraph No. 31 of the order passed by the learned Civil Judge, the alterations/changes which purportedly fall foul of the obligation under Section 7 have been encapsulated as under :-

> "31] The plaintiffs have categorically claimed that the defendant No.1 got construction plan of 2007 changed by getting revised construction plan in 2023 which would affect the amenities and facilities assured to the plaintiffs and other flat purchasers of 'A' building. If the revised construction plan of 2023 is taken into consideration, it appears that thee is no place for children play area in it. It also appears that pathway is removed from it. It also appears that two wheeler parking slots are shown in space where the generator and garbage pit are installed currently but no space for the generator and garbage pit is shown in the revised construction plan of 2023. If the construction plan of 2007 and revised construction plan of 2023 are compared, it appears that the present parking spaces are in horizontal directions

behind 'A' and 'B' buildings but the same is shown in vertical direction behind 'A' and 'B' buildings in the revised construction plan of 2023. It would surely decrease the size of pathway. So, though the children play area, generator, pathway are visible on the premises of said buildings a present from the photographs produced by the parties, but, it is quite certain that the revised construction plan of 2023 would bring changes in the facilities and amenities provided to the flat purchasers of 'A' building if the same is implemented or materialized. So, the apprehension of the plaintiffs in this regard seems to be reasonable."

17. On a bare perusal of the aforesaid observations, albeit *prima facie*, it becomes abundantly clear that, the learned Civil Judge was of the view that, the facilities and amenities promised and then enjoyed by the owners of the apartments in Block 'A' would be materially affected, if the development is carried out in accordance with the Re-revised Sanction Plan 2023. It is not the case that, the structure that was being erected as Block 'B' violated the plans and specifications disclosed by the promoter. The fulcrum of the grievance was that the implementation of the Re-revised Sanction Plan, 2023, according to the plaintiffs, would affect the facilities and amenities which were provided and available to the occupants of

Block 'A'. In the backdrop of aforesaid nature of the violations complained of, the question whether the Courts below could have granted the injunction in blanket terms directing the Planning Authority to issue stop-work notice and completely restraining the plaintiffs from carrying out the development of whatsoever nature, wrenches to the fore.

18. It is trite, in a situation of present nature, the Courts were called upon to balance the rights of the promoter to make alterations or additions in the structure in accordance with the sanctioned plan, on the one hand, and the statutory obligations of the promoter to not to alter the amenities and facilities, agreed to be provided to the owners of the apartments in Block 'B', in terms of the Sanction Plan 2007, on the other hand. The element of the balance of convenience and the extent of the interim measure to protect the rights of the apartment owners, were not kept in view by the Courts below. A blanket order of injunction stalling the entire project on the premise that few of the features of development, if implemented, would materially affect the amenities and facilities provided to the owners of the apartment in Block 'A', in the considered view of this Court, amounted to exercise of discretion in complete disregard of equitable consideration.

19. It is well recognized mere existence of *prima facie* case is not by itself sufficient to grant injunction. Apart from the consideration as to whether the refusal to grant injunction would result in "irreparable injury", the scale of "balance of convenience" must tilt in favour of the party seeking injunction. The balance of convenience is an important consideration even if there is a serious question or *prima facie* case in support of grant of injunction.

20. In the case of ***Ramakant Ambalal Choksi Vs. Harish Ambalal Choksi***[3], the Supreme Court exposited the elements of the, "irreparable loss" and "balance of convenience" which ought to weigh with the Court, while exercising sound judicial discretion in granting or refusing to grant injunction. The observations in Paragraph No. 34 read as under :-

> "**34.** The burden is on the plaintiff, by evidence aliunde by affidavit or otherwise, to prove that there is "a prima facie case" in his favour which needs adjudication at the trial. The existence of the prima facie right and infraction of the enjoyment of his property or the right is a condition precedent for the grant of temporary injunction. Prima facie case is not to be confused with prima facie title which has to be established on evidence at the trial. Only prima facie case is a substantial question raise, bona fide, which needs investigation and a decision

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3 AIR 2024 SC (supp) 2379

on merits. Satisfaction that there is a prima facie case by itself is not sufficient to grant injunction. The Court further has to satisfy that non-interference by the court would result in "irreparable injury" to the party seeking relief and that there is no other remedy available to the party except one to grant injunction and he needs protection from the consequences of apprehended injury or dispossession. Irreparable injury, however, does not mean that there must be no physical possibility of repairing the injury, but means only that the injury must be a material one, namely one that cannot be adequately compensated by way of damages. The third condition also is that "the balance of convenience" must be in favour of granting injunction. The Court while granting or refusing to grant injunction should exercise sound judicial discretion to find the amount of substantial mischief or injury which is likely to be caused to the parties, if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted. If on weighing competing possibilities or probabilities of likelihood of injury and if the Court considers that pending the suit, the subject matter should be maintained in status quo, an injunction would be issued. Thus, the Court has to exercise its sound judicial discretion in granting or refusing the relief of ad interim injunction pending the suit. (See : Dalpat Kumar v. Prahlad Singh reported in (1992) 1 SCC 719 : **(AIR 1993 SC 276).**)

(emphasis supplied)

21. In the facts of the case at hand, a complete restraint on the development, when the construction of Block ‘B’ had reached an advance stage, in the context of the nature of deviations adverted to by the trial Court in Paragraph No.31 of the impugned order, without fully appreciating the elements of the loss that would occasion to Defendant No.1 in the event of grant of injunction and that would cause to the plaintiff, if the injunction were to be refused in the terms it has been granted, appeared to be unwarranted and inequitable. In the circumstances of the case, the Courts below could have moulded the relief and granted injunction to the extent absolutely warranted to protect the interest of the plaintiffs and the owners of the apartments in Block ‘A’.

22. It is in the aforesaid context, the further affidavits filed on behalf of the petitioner with a view to address the purported alterations/changes which violate obligations of the promoter, deserve to be noted. The petitioner undertakes, i) to maintain the width of driveway at the West side of the plot as per the Sanction Plan 2007 i.e. total available width of 7.50 mtrs., ii) not to remove the children play area (though it allegedly does not form of Sanction Plan 2007 or 2023), iii) to retain the generator wet and dry garbage spaces and garden as existed on the suit premises and iv) not to disturb the bicycle parking as was in use on site. The petitioner has further made a statement that, the capacity of the underground water tank has been increased to 84,500 liters from 47,000 liters, the underground water tank has been at the current location since at least 2011 and, thus, it cannot be removed at this stage.

23. In the further additional affidavit dated 05th May, 2026, filed on behalf of the petitioner, the petitioner has undertaken i) to make an attempt to remove the septic stand or alter its location, in accordance with law, and provide for parking spaces thereon, ii) not to provide, "fabricated bicycle stand" pending the hearing and final disposal of the suit, and iii) that there is no proposal or provision for erection of mechanized parking on site and that the petitioner will not construct any mechanized parking on site.

24. The aforesaid statements and undertakings in the additional affidavit and further additional affidavit substantially address the purported violations of the Sanction Plan 2007 and ensure continuance of the facilities and amenities currently enjoyed by the owners of the apartments in Block 'A', which were highlighted by the learned Civil Judge in Paragraph No.31 (extracted above). In view of the aforesaid undertakings on affidavit, continuation of restraint on further development of Block ‘B’ appears unwarranted and inequitable. Instead, the petitioner (D1) can be permitted to carry out development in accordance with sanctioned plan subject to scrupulous compliance with the aforesaid undertakings. Such a course would strike a balance between the rights of the owners of the apartments in Block ‘A’ to use and enjoy the amenities and facilities, and the right of the promoter to carry out further development in a layout which was placed before the apartment purchasers in 2007.

25. For the foregoing reasons, the Writ Petition deserves to be allowed by accepting the undertakings given by the petitioner as the undertakings to the Court.

26. Hence, the following order:

: O R D E R :

(i) The Petition stands allowed.

(ii) The impugned order dated 27th January 2026 in MCA No. 374 of 2025 and order dated 25th November 2025 passed by the learned Civil Judge on the Application (Exhibit “5”) in SCS No. 1248 of 2025, stand quashed and set aside.

(iii) The consequential orders passed by PMC respondent No.9 also stand quashed and set aside.

(iv) The undertakings contained in paragraph 2 clauses (a) to (e) of the additional affidavit dated 1st May, 2026 and the statements and undertakings contained in paragraph 2 clauses (a) to (c) of further additional affidavit dated 5th May, 2026, filed on behalf of the petitioner, are accepted as undertakings to the Court. The petitioner – Defendant No.1 shall scrupulously comply with the aforesaid undertakings.

(v) The petitioner – Defendant No.1 is permitted to carry out the construction in accordance with the sanctioned plan and the Building Rules, By Laws and Development Control Regulations, subject to compliance of the abovesaid undertakings.

(vi) The undertakings shall operate till the final disposal of the suit.

(vii) Rule made absolute in the aforesaid terms.

(viii) In the circumstances, there shall be no order as to costs.

[N. J. JAMADAR, J.]