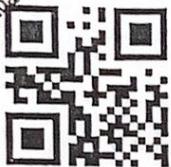


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co-operative court
Mumbai

Maharashtra State Co-op Appellate Court, Mumbai
Vijay House, 6th Floor, Near K.C. College,
J.V. Road, Churchgate, Mumbai - 400 020



Filed on	:	14.06.2023
Registered on	:	20.06.2023
Decided on	:	18.07.2023
Duration	:	Y M D 00 00 28

CNR No.MHCA010000942023

Exh.No.14

THE MAHARASHTRA STATE CO-OPERATIVE APPELLATE COURT,
MUMBAI
(Before K.R. Pethkar, President)

A.O. NO.32 OF 2023

(Arising out of order dated 01/06/2023 passed by Ld I/C Judge, Co-operative Court Raigad/Ratnagiri at Alibag below Exh.5 in Dispute No.CC/Alibag/53/2023)

Panvel City Centre Co-operative Housing Society Limited, Through Secretary,
Address at- Plot No.197,
Babasaheb Ambedkar Marg,
Panvel, Dist. Raigad.

... Appellant
(Orig. Opponent No.1)

VERSUS



1. Mr. Shivraj Sudhakar Sakhare
Adult, R/a- Flat No.D-4,
2. Mrs. Meenakshi Dinesh Bhagat
Adult, R/a- Flat No.B/8,
3. Mr. Sanjay Kashinath Pote
Adult, R/a- Flat No.B/4,
4. Mrs. Bhanumati Laxmikant Jethvi
Adult, R/a- Flat No.B/7,
5. Mr. Vijay Pandurang Patil
Adult, R/a- Flat No.D/3,
6. Mrs. Nilofar Salim Mulji
Adult, Shop No.05,
7. Mrs. Vishranti Tandel
Adult, Shop No.13,

K.R.Pethkar
18.7.2023

8. Mr. Jagdish Govind Shirke
Adult, Shop No.23A,
9. Mr. Vinayak Balaram Sakhare
Adult, Shop No.33A,
All are having address at-
Panvel City Centre Co-operative Housing
Society Limited, Plot No.197,
Babasaheb Ambedkar Marg,
Panvel, Dist. Raigad.
10. M/s. Bahinabai Constructions,
LLP (Dudhe Bros),
Sector-1, New Panvel,
Tal. Panvel, Dist. Raigad.
- ... Respondents
(Orig. Disputant Nos.1
to 9)
- ... Respondent
(Orig. Opponent No.2)

Shri R.D. Joshi, Advocate for Appellant.

Shri Harish Pawar i/b Shri D.B. Khamkar, Advocate for Respondent
Nos.1 to 9.

Shri V.A. Patil, Advocate for Respondent No.10.

J U D G M E N T

(18th July, 2023)



The appellant/opponent No.1 society has challenged the order dated 01/06/2023 passed by the Incharge Court of Co-operative Judge, Raigad/Ratnagiri at Alibag, allowing the ad-interim prayer (d) of the disputants in application for interim relief in Dispute No.CC/Alibag/53/2023. The parties are hereinafter referred to as the Disputants and the Opponents, as they stand in the dispute, carried in this appeal.

2) The disputants state that they are the members of the opponent No.1 society. The opponent No.1 society has appointed the opponent No.2 as

K.R.Sethuram
18.7.2023

builder for redevelopment since its building is in dilapidated condition. The opponent No.1 society consists of in all 74 members.

3) The opponent No.1 society in its annual general body meeting dated 01/04/2015 decided to go for redevelopment of its property. In the Special General Body meeting dated 19/04/2016 the opponent No.1 society appointed the opponent No.2 as builder in presence of Assistant Registrar, Co-operative Societies. In the said meeting out of 74 members, 60 members were present and out of it 45 members voted for the appointment of the opponent No.2 as developer for redevelopment.

4) The Assistant Registrar, Co-operative Societies vide his letter dated 04/06/2015 confirmed the appointment of the opponent No.2 as a developer. On 01/07/2015 the opponent No.1 society issued appointment letter to the opponent No.2 as its developer for redevelopment of its property. Sixty one members along with the disputants have given their individual consent letter to the developer. Thirty seven members had entered into an agreement with the opponent No.2 and he has paid rent to the said members to the tune of an amount of Rs.65,10,000/-.

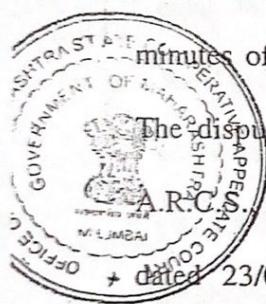
5) The opponent No.1 society in its SGBM dated 30/03/2022 called upon the opponent No.2 developer to deposit an amount of Rs.10 lakhs towards society funds. On 06/07/2022 the opponent No.1 society issued letter to the opponent No.2 developer for execution of development

KR/CL/2022
18.7.2022

agreement. On 14/07/2022 the opponent No.1 society through its office bearers executed and notarized memorandum of understanding cum redevelopment agreement with the opponent No.2 builder.

6) The opponent No.1 society issued an agenda of notice on 12/03/2022 and called a Special general body meeting on 23/02/2023. The subject of removal and cancellation of the opponent No.2 as developer was not in the agenda of the said meeting. The office bearers of the opponent No.1 society manipulated the minutes of the meeting by making bogus signatures of the members who were not present in the meeting. There is no proposer or seconder for removal of the opponent No.2 from appointment as developer.

The office bearer of the opponent No.1 society has made forgery in the minutes of SGBM dated 23/02/2023 and created sham and bogus minutes.



The disputants by their letter dated 16/03/2023 brought to the notice of A.R.C.S. Panvel about the manipulation done in the minutes of the meeting dated 23/02/2023. The opponent No.1 society without circulating and finalizing minutes of SGBM dated 12/03/2023 has issued a notice of agenda dated 25/05/2022 for calling SGBM of the society to be held on 04/06/2023.

The agenda in the said notice states about removal of the opponent No.2 as developer and for appointment of new developer.

7) The office bearers of the opponent No.1 society be restrained from implementing or enforcing resolution No.3 passed in the SGBM dated

K.N. Rathod
18.7.2023

12/03/2022. The office bearers and the society be restrained from taking any decision on the agenda No.4, 5, 7 and 8 in the notice dated 23/05/2023 in its SGBM dated 04/06/2023. Hence, the disputants are constrained to seek ad-interim relief from the hands of the Court.

8) Heard Ld Advocate for the opponent society and the Ld Advocate for the disputants. Considering the grounds of the appeal, following points arise for my determination and I record my findings against each of them for the reasons to follow :-

	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the disputants have established prima facie case ?	... In the Negative
2.	Whether the disputants will suffer irreparable loss if injunction is not granted in their favour ?	... Does not survive.
3.	In whose favour balance of convenience lies ?	... Does not survive.
4.	Whether the impugned order dated 31/05/2022 passed by the Ld Trial Judge below application for interim relief needs interference from the hands of this Court ?	... In the Affirmative
5.	What order ?	... As per final order

REASONS

As to Point Nos.1 & 2 :-

KRISHNA
18.7.2023
9) Ld Advocate for the opponent No.1 society has submitted that the disputants had filed dispute after lapse of 79 days from the date of passing

resolution dated 12/03/2023 and there was no extreme urgency for ad-interim relief. The opponent No.1 society did not get sufficient time to appear before the incharge Court at Mumbai as the notice was served in the morning at 9.30 on 01/06/2023 on the office bearers of the opponent No.1 society. The disputants had filed the dispute on the behest of the opponent No.2 builder. The resolution dated 12/03/2023 was passed in majority in the Special General Body meeting of the opponent No.1 society and the same is legal in the eyes of the law. The byelaws No.175(b) will not be applicable to the opponent No.1 society as it never executed any registered agreement with the opponent No.2. The notarized memorandum of understanding dated 14/07/2022 is not binding upon the opponent No.1 society and its members



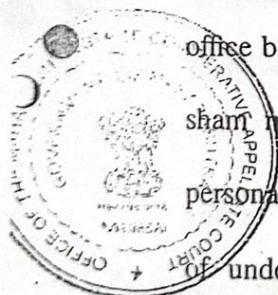
as the same is unstamped and not registered. The opponent No.2 developer has an influence on the members of the opponent No.1 society, so he got executed individual agreements and consent letters from them. The opponent No.2 builder has filed the suit for specific performance against the members and the opponent No.1 society in the Court of Civil Judge, Senior Division, Panvel and the same is pending for adjudication. The disputants have not made out any prima-facie case.

- 10) He has submitted that the Ld Trial Judge wrongly observed that decision taken in general body meeting of the opponent No.1 society are biased and the same are illegal. Ld Trial Judge wrongly observed that if the

KR Chidambar
18/7/2023

opponent No.1 succeeds to appoint new developer, then it will cause multiplicity of proceeding. Ld Trial Judge wrongly observed that appointment of new developer will cause loss to the members and the opponent No.2 developer. He has submitted that the findings given by the Ld Trial Judge are not correct and proper in his ad-interim order and the appeal of the opponent No.1 society may kindly be allowed.

11) Ld Advocate for the disputants has submitted that in the agenda notice dated 12/03/2022 there was no subject matter regarding cancellation of appointment of the opponent No.2 as developer. The office bearers of the opponent society have manipulated the minutes of the SGBM dated 23/02/2023 by subsequently inserting two lines in the minutes of said meeting that the opponent No.1 society has terminated/removed the opponent No.2 as developer for its redevelopment of the property. The office bearer of the opponent No.1 society with an ulterior motive prepared sham minutes of SGBM dated 12/03/2023 by manipulating it for their personal profit/gain from the opponent No.2 developer. The memorandum of understanding is executed by the opponent No.1 society with the opponent No.2 developer as it bears the signatures of the Chairman and Treasurer of the opponent No.1 society. The members of the opponent No.1 society have given their individual consent and also executed individual agreements with the opponent No.2 builder. The urgency of the disputants



KR/Att/10
18.7.2023

to knock door of the Court of law was that the opponent No.1 society had issued an agenda on 23/05/2023 stating that SGBM is called on 04/06/2023 for removal of the opponent No.2 as developer and for appointment of new developer in his place. The act of the opponent No.1 society is totally illegal as per byelaw No.173. The disputants have made out prima-facie case for ad-interim relief as per prayer clause (e) of their dispute.

12) He has submitted that the Ld Trial Judge after considering the pleadings and documents on record has rightly come to the conclusion that the disputants have made out prima-facie case for ad-interim relief. He has



submitted that there is no necessity for this Court to modify or interfere into the order of the Ld Trial Judge and the disputants are ready to go before the Ld Trial Judge for hearing application for interim relief. He has prayed that the appeal of the opponent No.1 society may kindly be dismissed.

13) Ld Advocate for the opponent No.2 developer has filed reply at Exh.13 to strike out the allegations made by the opponent No.1 society in its appeal memo and I have considered the same.

14) In view of the above submissions of the Ld Advocates of the opponent No.1 society, the disputants and the opponent No.2 builder, now let me consider the pleading, affidavit and the documents on record to come to the conclusion whether the Ld Trial Judge has properly considered the facts on record.

K.M. Khan
18/7/2023

15) The settled law is that the dispute should be between the member and his society which relates to the business and the management of the society.

The undisputed fact is that the member of the society has every right to challenge the agenda which is kept in the proposed general/special body meeting and also the resolution passed by his society in its general/special body meeting before the Co-operative Court to declare it illegal and bad in law u/s 91 of the MCS Act. The question is whether the Model Byelaws of the opponent No.1 society state that its purpose and business is of redevelopment. The question is whether resolution dated 23/03/2023 which was passed in the meeting of the opponent No.1 society will come within the definition of the opponent No.1 society so as to challenge before the Co-operative Court. The question is whether the agenda No.4 and 5 in the notice dated 23/05/2023 issued by opponent No.1 society for removal of the

opponent No.2 and appointment of new developer will come within the definition of business and management of the opponent No.1 society so as to challenge it before the Co-operative Court.

16) It is pertinent to note that the Government Circular dated 04/07/2019 under Section 79A of the MCS Act is directory and not mandatory. The important fact is that there is no amendment in Section 91 of the MCS Act which include the subject of redevelopment of the society as its business. In this background the question comes into mind whether it was proper on the

K.R.Rajkumar
18.7.2023

part of Ld Trial Judge to observe that the opponent society has no right to cancel agreement executed between the individual members and developer and it has no right to appoint new developer. The Ld Trial Judge failed to consider that the opponent No.1 society can appoint new builder after following due process of law. The question is whether the consent letters and individual agreements executed by the members in favour of the opponent No.2 developer will be binding upon the opponent No.1 society which is legal entity.

17) No doubt, in the notice of agenda dated 12/03/2023 there was no subject with respect to the removal/termination of the opponent No.2 as



builder from his appointment by the opponent No.1 society for its redevelopment. But the agenda No.1 of the notice dated 23/03/2023 was to discuss and to take decision about the suit filed by the opponent No.2 against the members of the society in individual capacity in the Court of law. In this background one cannot predict the behaviour of individual when members together for general body meeting and at that time mob psychology of the members comes into play if it is not controlled by the office bearers. The disputants will have to prove by leading evidence in the Court about the manipulation done in the minutes of SGBM dated 12/03/2023 by subsequently inserting two lines in it and making bogus signatures of the members who were not present in the meeting. The

K.P. Patil
14-7-2023

disputants will have to prove by leading evidence that the minutes of the SGBM dated 12/03/2023 is false, fraudulent, sham and bogus.

18) The opponent society has right to call upon its Special general body meeting. No doubt, the developer opponent No.2 has filed a suit against opponent No.1 society and its individual member, that does not mean that the Special general body meeting of the opponent society has no right to take any decision within four-corners of law

19) It is pertinent to note that the opponent No.1 society did not give any explanation as to why the Chairman and Treasurer had signed and notarized the memorandum of agreement along with some other members. It is pertinent to note that out of 79 members only 9 members of the opponent society have only come before this Court. From the record it appears that something fishy is going in the opponent No.1 society with respect to redevelopment of its property which is against the interest of all the members of the opponent No.1 society.



In view of the above discussion, I come to the conclusion that the prayer clause (d) from the application for interim relief of the disputants needs to be rejected. The findings given by the Ld. Trial Judge with respect to stay the resolution passed in SGBM dated 12/03/2023 passed by the opponent No.1 society are not correct and proper. The interference is required from the hands of this Court into the order passed by the Ld Trial

K.R.Patel
18.7.2023

Court. Hence, I answer points No.1 to 4 accordingly and proceed to pass the following order :-

O R D E R

1. Appeal is hereby allowed.
2. The ad-interim order dated 01/06/2023 passed by Incharge Ld

Judge, Co-operative Court Raigad/Ratnagiri at Alibag, below

Exh.5 in Dispute No.CC/Alibag/53/2023 is hereby set aside.

Parties to bear their own costs.



Mumbai

18th July, 2023

(K.R. Pethkar)

President,

Mh.State Co-operative Appellate Court,
Mumbai

K.R.Pethkar
18.7.2023

Application made on 18/7/23
Copy ready on 19/7/23
Copy delivered on 19/7/23
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On 18/7/2023
Registrar
Maharashtra State Co-operative
Appellate Court, Mumbai