BEFORE THE MAHARASHTRA REAL ESTATE REGULATORY AUTHORITY, BANDRA

COMPLAINT NO. CC12601196

Ashok Gupta ...Complainant

Versus

Sevenfold Construction LLP ...Respondents

ORDERS PASSED IN THE FIRST APPEAL NO. 1117 OF 2018

Sr. No.	Date	Particular	Page Nos.
1.	22.03.2018	**Annexure-"1"** A copy of the ex-parte status quo order passed by the Hon'ble High Court of Bombay in Civil Application No. 1324 of 2018	1-2
2.	21.12.2022	**Annexure-"2"** A copy of the Modified Order passed by the Hon'ble High Court of Bombay in the Interim Application No. 30446 of 2022	3-12
3.	31.01.2023	**Annexure-"3"** A copy of the order passed by the Hon'ble High Court of Bombay in Interim Application No. 329of 2023	13-19
4.	22.02.2023	**Annexure-"4"** A copy of the order as passed by the Hon'ble High Court of Bombay in Interim Application No. 1620 of 2023	20-22
5.	09.05.2023	**Annexure-"5"**	

		A copy of the order as passed by the Hon'ble High Court of Bombay in Interim Application No. 4513 of 2023	23-24
6.	16.02.2024	**Annexure-"6"** A copy of the order passed by the Hon'ble High Court of Bombay in Contempt Petition No. 110 of 2024	25-28
7.	04.07.2025	**Annexure-"7"** A copy of the order as passed by the Hon'ble High Court of Bombay in Interim Application (L) No. 15096 of 2025	29-31
8.	06.10.2025	**Annexure-"8"** A copy of the order as passed by the Hon'ble High Court of Bombay in Interim Application No. 7880 of 2025	32-53

ORDERS PASSED IN THE WRIT PETITION

Sr. No.	Date	Particulars	Page Nos.
1.	12.01.2023	**Annexure-"9"** A copy of the order as passed by the Hon'ble High Court of Bombay in Writ Petition (L) No. 30089 of 2022	54
2.	06.03.2023	**Annexure-"10"** A copy of the order as passed by the Hon'ble High Court of Bombay in Writ Petition (L) No. 30089 of 2022	55

3.	08.03.2023	**Annexure-"11"** A copy of the order as passed by the Hon'ble High Court of Bombay in Writ Petition (L) No. 30089 of 2022	56
4.	13.04.2023	**Annexure-"12"** A copy of the order passed by the Hon'ble High Court of Bombay in the Writ Petition bearing no. 7981 of 2022	57-59

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1323 OF 2018
WITH
CIVIL APPLICATION NO. 1324 OF 2018
IN
FIRST APPEAL (ST.) NO. 7582 OF 2018

Sushma A. Gupta & Anr. .....Applicants

v/s.

Minal Co-operative Housing Society Limited & Ors. .....Respondents

Mr. Darryl P. Barretto for the applicants/appellants.
Mrs. M.R. Bhoir for Respondent No.12 – MCGM.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 22nd MARCH, 2018.

P.C. :-

. Not on board. Upon mentioning, taken on production board.

2. The appellants who are the original defendant nos.6 and 7 have challenged the judgment dated 19th January, 2018 in L.C. Suit No.3067 of 1996 whereby the learned Civil Judge, City Civil Court, Borivali Division, Dindoshi, Mumbai has directed the respondent no.12/original defendant no.13 to take action in respect of the

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construction which is beyond sanctioned plan and further to take necessary action to implement order dated 07th November, 2006.

3. Mr. Darryl P. Barretto, learned counsel for the applicants submits that there is apprehension that the respondent no.12/MCGM will demolish the structure. He submits that the appeal would be rendered infructuous if the execution of the impugned judgment is not stayed.

4. I have perused the impugned judgment as well as the grounds raised in the appeal memo and in my considered view, it is necessary to maintain status-quo. Hence, issue notice to the respondents, returnable on 18th June, 2018. Private service is permitted. Mrs. M.R. Bhoir, learned counsel waives service on behalf of respondent no.12/MCGM. Till the next date, parties are directed to maintain status quo in respect of the suit structure. Stand over to 18th June, 2018.

(SMT. ANUJA PRABHUDESSAI, J.)

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2022:BHC-AS:32470

S. Jadhav

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 30446 OF 2022
IN
FIRST APPEAL NO. 1117 OF 2018

Minal Co-Operative Housing Society Limited ...Applicant/ Original Respondent No.1

Versus

Sushma A. Gupta & Anr. ...Respondent/ Original Appellant

Mr. Uzair Kazi a/w Ankita Sharma i/b YMK Legal, Advocates for Applicant/Original Respondent No.1.

Mr. Mayur Khandeparkar a/w Mr. Rashmin Khandekar a/w Ms. Karishni Khanna i/b Mr. Bishwajeet Mukherjee a/w Mr. Meet Gandhi a/w Ms. Humera Syed a/w Mr. Mandar Joshi a/w Ms. Devanshi Jagad, Advocates for Respondent No.1

Mr. Rajiv Chavan a/w Mr. Om Suryavanshi a/w Santosh Parad, Advocate for Respondent/MCGM.

CORAM : R.I. CHAGLA, J.

DATE : 21ST DECEMBER, 2022.

ORDER :

1. Heard learned Counsel for the parties.

2. By this Interim Application, the Applicant is seeking vacation of status-quo order in respect of the suit structure.

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HIGH COURT OF JUDICATURE AT BOMBAY

3. Mr. Khandeparkar, learned Counsel appearing for the Applicant has submitted that by virtue of the status-quo order passed by this Court on 22nd March, 2018, Paragraph 4 of the operative part of the impugned Judgment and Order dated 19th January, 2018 which had contemplated removing or demolishing the notional connection which the Respondents / Defendant Nos. 4 to 7 had with the Applicant-Society / Plaintiff's building and to shift BSES Sub-station to its original position cannot be given effect to. Further, Paragraph 3 of the operative order of the impugned Judgment and Order dated 19th January, 2018 by which the Defendant No.13/MCGM has been directed to take necessary steps to implement its order dated 7th November, 2006 also cannot be given effect to.

4. Mr. Khandeparkar has referred to the Notice issued by the MCGM on 12th January, 2022 which Notice is under Section 354 of the Bombay Municipal Corporation Act and by which the Applicant-Society has been directed to pull down its structure. He has submitted that the subject structure of the Applicant-Society is connected to the building of the Respondents/Defendant Nos. 4 to 7 by the said notional connection. He has referred to the photographs showing that the notional connection or the Respondents / Defendant

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Nos. 4 to 7 being connected to the subject structure of the Applicant-Society. He has submitted that this notional connection was the subject matter of a regularization application which had been considered by the MCGM. By Order dated 7th November, 2006 MCGM directed that the access from the building of the Defendants and to the portion of the slab near the notional connection to be closed permanently by the Defendants.

5. Mr. Khandeparkar has submitted that the Applicant-Society has by virtue of the status-quo order not been in a position to comply with the Notice of the MCGM. This is despite the notice being issued under Section 354 of the MCGM dated 12th January, 2022 considering the subject structure of the Applicant-Society to be in ruinous and dilapidated condition and likely to collapse and cause damage to the life and property of the persons occupying and residing or passing by the same. In view thereof, the present Application has been taken out for modification of the status-quo order to exclude the said notional connection which may require to be pull down in order for the Applicant-Society to comply with the notice of the MCGM dated 12th January, 2022.

6. Mr. Uzair Kazi, learned Counsel for the Respondents has

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submitted that the status quo order had been passed by this Court dated 22nd March, 2018 was upon considering the impugned Judgment and Order of the City Civil Court as well as ground raised in Appeal Memo. He has submitted that the sole purpose of the modification of the status-quo order as sought for by the Applicant-Society is to enable the Applicant-Society to redevelop their subject structure and that too without disclosing the redevelopment agreement as well as the plans thereto. He has submitted that though the Notice of the MCGM was issued on 12th January, 2022, the present application is being made much belatedly in December, 2022.

7. Mr. Kazi has submitted that the issues which were determined by the City Civil Court included the issues with regard to the Agreement dated 2nd December, 1989 and whether the Plaintiffs prove that the said Agreement was illegal, bad in law, contrary and in violation of provision of the Maharashtra Ownership Flats (Ownership, Regulation of Construction, Sale, Management and Transfer) Act, 1963, which was answered in the negative. The issue, as to whether the Plaintiffs prove that they are entitled for declaration that the purported execution of the Agreement dated 2nd December, 1989 is illegal, invalid, null and void and not binding

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upon them was also answered in negative. He has submitted that the said Agreement on the basis of which the construction of the building by the Respondents herein was carried out has been upheld by the lower Court. He has submitted that there was no issue framed in so far as the legality of the said notional connection and despite which the City Civil Court has decided this against the Respondent herein by directing them to remove the notional connection. He has submitted that the relief now sought for would result in the notional connection being pulled down in breach of the status-quo order and that the Applicant-Society would be in a position to develop the land appurtenant to the notional connection, thereby prejudicing the rights of the Respondents/Original Appellants to the subject land.

8. Mr. Rajiv Chavan learned Senior Counsel appearing for the MCGM has submitted that the Notice issued under Section 354 of the Municipal Corporation Act requires to be complied with. He has submitted that the Notice has not been impugned by the Respondents herein. The subject structure is in ruinous and dilapidated condition and likely to collapse and accordingly immediate compliance with the said Notice is required. He has referred to the findings in the impugned Judgment and Order dated 19th January, 2018 and in

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particular Paragraph 59 thereof, wherein it has been held that the Defendant Nos. 4 to 7 did not produce any documentary evidence on record to prove their pleadings that they had shifted BSES Sub-station with the necessary permission of concerned authority as well as to prove that notional connection between the Plaintiff-Society building is made as per approval/sanctioned plan. The contention that there was earlier such notional connection is not sufficient to hold that the notional connection constructed by Defendant Nos. 4 to 7 is legal.

9. Having considered the rival submissions, it is noted that the Applicant-Society is intending to comply within the Notice issued by MCGM on 12th January, 2022 under Section 354 of the Municipal Corporation Act. The Notice is issued on the premise that the subject structure belonging to the Applicant-Society is in a ruinous and in dilapidated condition and likely to cause damage to the life and property of the persons occupying and residing or passing by the same.

10. The status-quo order had been passed by this Court way back on 22nd March, 2018. This Court having perused the impugned Judgment and Order of the Court below as well as the grounds raised

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in the Appeal Memo, had found it necessary to direct maintaining of status-quo. However, the subsequent development i.e. the Notice issued under Section 354 of the Municipal Corporation Act, 1888 had not fallen for consideration before this Court when the status-quo order had been passed.

11. There have been submissions on the merits of the impugned Judgment and Order which this Court at this stage is not required to go into. However, it is necessary to note that there have been the findings in impugned Judgment and Order of the City Civil Court that the Defendant Nos. 4 to 7 failed to prove that the notional connection between Plaintiff-building is made as per approval/sanctioned plan. This would also be the case with regard to the of shifting of the BSES Sub-station, requiring the necessary permission of concerned authority.

12. In the operative part of the Judgment and Order dated 19th January, 2018, the City Civil Court had directed the MCGM to take necessary steps to implement its order dated 7th December, 2006. By that order, the notional connection was considered by the MCGM and the MCGM directed that the access from the building of the Defendants to the portion of the slab near notional connection to be

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HIGH COURT OF JUDICATURE AT BOMBAY

closed permanently by the Defendants. Further, in the operative part of in the impugned Judgment and Order, the Defendant Nos. 4 to 7 have been directed to remove or demolish the notional connection with the Plaintiff's building and shift BSES Sub-station to its original position.

13. Considering that the Applicant-Society is obliged to comply with the Notice issued by the MCGM on 12th January, 2022 under Section 354 of the Municipal Corporation Act and by virtue of which the notional connection between the Building of the Respondents/Original Defendants and the subject structure of the Applicant-Society / Original Plaintiff may be pulled down, the Status-quo order passed by this Court on 22nd March, 2018 requires to be modified. Hence, the following order is passed :

i) The Status-Quo order dated 22nd March, 2018 passed by this Court shall not include status-quo to be maintained in respect of the notional connection between the subject structure belonging to the Applicant-Society and the building of the Respondents herein as shown in the photograph at Exhibit-P, Page 41 of the present Interim Application.

ii) It is clarified that the Applicant-Society by demolishing

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the subject structure in compliance with the Notice issued by the MCGM on 12th January, 2022 under Section 354 of the Municipal Corporation Act will not be in breach the status-quo order in the event the notional connection between the subject structure and the building of the Respondents is pulled down.

iii) This order is without prejudice to the rights and contentions of the Respondent / Original Appellants including that they have a legal right to the land appurtenant to the said notional connection between the subject structure and the building of the Respondents as well as their contention that the construction beyond FSI of 6550 sq. ft. is authorized.

iv) The status-quo in so far as the reminder of the operative part of the impugned Judgment and Order dated 19th January, 2018 shall be maintained.

v) The Interim Application is accordingly disposed of in above terms.

vi) The First Appeal had been permitted to be heard at the admission stage and accordingly the First Appeal shall be

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listed on 19th January, 2023 at 2.30 p.m.

Mentioned at 2.30 p.m.

13. Mr. Kazi, learned Counsel appearing for the Appellants has sought stay of this order.

14. Considering the findings of this order as well as the observations with regard to the compliance of the Notice issued by the MCGM under Section 354 of the Municipal Corporation Act, 1888, the Application for stay of this order, is rejected.

[R.I. CHAGLA, J.]

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.329 OF 2023

IN

FIRST APPEAL NO.1117 OF 2018

Sushma A Gupta & Anr. ...Appellants

Versus

Minal CHS Ltd. ...Respondents

Mr. Uzair Z. Kazi, i/b. YMK Legal for the Appellants.

Mr. C.M. Lokesh, for the Applicant.

Mr. Mayur Khandeparkar with Mr. Rashmin Khandekar and Karishni Khanna i/b Mr. Bishwajeet Mukherjee and Ms. Humera Syed for Respondent No.1.

Mr. Rajiv Chavan with Priyanka Chavan and Sweta Ghose i/b. Santosh Parad for MCGM.

CORAM : R.I. CHAGLA J.
DATE : 31 January 2023.

ORDER :

1. By this Interim Application, the Applicant No.1 / Original Defendant No.6 and Applicant No.2 have sought recall of the order dated 21st December, 2022 passed in the Interim Application (L) No.30446 of 2022 in First Appeal No.1117 of 2018 and to pass modified order in this Interim Application.

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2. Having considered the submissions of the parties and in particular taking note that in the order dated 21st December, 2022, it was clarified in Paragraph 11, that there had been submissions on the merits of the impugned judgment and order which is not required to be go into. It is further relevant to note and had been noted in the said order that the observation of the City Civil Court in the impugned judgment and order was that the Defendant Nos.4 to 7 had failed to prove that the notional connection between Plaintiff – building was made as per approved / sanctioned plan. This observation was also with regard to shifting of the BSES Sub-Station, requiring the necessary permission of the concerned authority.

3. The sole purpose of filing the Interim Application (L) No.30446 of 2022 by the Respondent No.1 Society and which was under consideration in the order dated 21st December, 2022 was to seek clarification / modification with regard to the status quo order passed by this Court which was coming in the way of compliance with the notice issued by the MCGM under Section 354 of the MMC Act dated 12th January, 2022. The said notice had considered the subject structure of the Respondent No.1 society to be in a ruinous and in dilapidated condition and likely to cause damage to the life

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and property of the persons occupying and residing or passing by the same. The modification sought by the Respondent No.1 Society of the status quo order dated 22nd March, 2018 passed by this Court was for excluding the applicability of the status quo order to the notional connection which was required to be pulled down for the Applicant – Society to comply with the Notice of the MCGM dated 12th January, 2022.

4. Accordingly, the order dated 21st December, 2022 was passed clarifying that the status quo order dated 22nd March, 2018 passed by this Court shall exclude status quo to be maintained in respect of the notional connection between the subject structure belonging to the original Respondent No.1 Society and the building of the Appellants. It was clarified that the Respondent No.1 Society by demolishing the subject structure in compliance with the notice issued by the Mumbai Municipal Corporation ("MMC") on 12th January, 2022 under Section 354 of the MMC Act will not be in breach of the status quo order in the event the notional connection between the subject structure and building of the Respondents is pulled down. It was further clarified in the paragraph 13(iii) of the operative part that the said order is without prejudice to the rights

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and contentions of the original Appellants, including that they have a legal right to the land appurtenant to the said notional connection between subject structure and building of the Appellants as well as their contention that the construction is beyond FSI of 6550 Sq.ft is authorized.

5. The said order dated 21st December, 2022 has thereafter been acted upon and the Respondent No.1-Society has demolished the subject structure in compliance with the notice issued by the MCGM dated 12th January, 2022 under Section 354 of the MMC Act.

6. Mr. Kazi, the learned Counsel appearing for the Appellants / Applicants in the present Interim Application has submitted that the learned Senior Counsel for MCGM had erroneously placed reliance upon the impugned judgment and order dated 19th January, 2018, wherein it has been held that Defendant Nos.4 to 7 did not produce any documentary evidence on record to prove their pleadings that they have shifted BSES Sub-Station with the necessary permission of concerned authority as well as to prove that notional connection between the Appellants building and the Respondent No.1 Society building is made as per approved / sanctioned plan. He has submitted that the view expressed by the

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City Civil Court in the impugned judgment and order that there was earlier such notional connection is not sufficient to hold that the notional connection constructed by the original Defendant Nos.4 to 7 is legal is erroneous and requires to be tested in the First Appeal.

7. There is an Affidavit in Reply filed by the Respondent No.12 MCGM dated 27th January, 2023 which is as per the directions of this Court by the said order dated 16th January, 2023 which had directed the MCGM to clarify as to whether the said notional connection was approved by the MCGM as well as the fact of the notional connection being in existence prior to 1984. It is not necessary to go into the averments in the Affidavit in Reply as the rights and contentions of the parties including the Appellants have been expressly kept open to be considered at the hearing of the First Appeal.

8. In my considered view, the learned Senior Counsel for MCGM was merely referring to the aforementioned observation of the City Civil Court in the impugned judgment and order. The present Affidavit in Reply filed by the MCGM shall be taken into consideration at the hearing of the First Appeal.

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9. There are submissions made by Mr. Kazi as to the notional connection being sanctioned by the MCGM and the MCGM have issued prior notice dated 2nd July, 2022 mentioning that the notional connection between the building under reference and Minal CHS Ltd. shall be done before asking for occupation certificate. Further, the notice issued on 28th March, 2003 by MCGM wherein the plan submitted by the Architect included the notional connection and it is further mentioned that the notional connection had been constructed as per the approved plans as the same was in existence prior to 1984.

10. These submissions of the learned Counsel for the Appellants / Applicants have been recorded in the order dated 16th January, 2023 as well as notice taken of documents relied upon. These documents can be considered by this Court at the hearing of the First Appeal.

11. In my view the present Interim Application is misconceived considering that it seeks to recall the order dated 21st December, 2022 in Interim Application (L) No.30446 of 2022 in First Appeal No.1117 of 2018 when the order has infact kept the rights and contentions of the Appellants in the First Appeal expressly open

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including the contentions on the legal rights of the Appellants / Applicants to the land appurtenant to the notional connection as well as to their contention that the construction beyond FSI of 6550 Sq.ft. is authorized.

12. In view thereof, the relief sought for in the Interim Application is not granted. Interim Application is accordingly disposed of.

[R.I. CHAGLA J.]

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1117 OF 2018

Sushama A Gupta and Anr ... Appellants

V/s.

Minal Co-operative Housing Society Limited ... Respondent

WITH

INTERIM APPLICATION NO.1620 OF 2023

Sushama A Gupta and Anr ... Applicants

V/s.

Minal Co-operative Housing Society Limited ... Respondent

WITH

INTERIM APPLICATION NO.329 OF 2023
WITH
CIVIL APPLICATION NO.1324 OF 2018
IN
FIRST APPEAL NO.1117 OF 2018

Sushama A Gupta and Anr ... Applicants

V/s.

Minal Co-operative Housing Society Limited ... Respondent

WITH

INTERIM APPLICATION NO.19475 OF 2022
IN
FIRST APPEAL NO.1117 OF 2018

Shivkumar Gupta ... Applicant

V/s.

Minal Co-operative Housing Society Limited ... Respondent

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WITH
INTERIM APPLICATION NO.19474 OF 2022

Sushama A Gupta and Anr ... Applicants
V/s.
Minal Co-operative Housing Society Limited ... Respondent

WITH
INTERIM APPLICATION NO.20252 OF 2022
IN
FIRST APPEAL NO.1117 OF 2018

Urmila S. Gupta ... Applicant
V/s.
Sushma A. Gupta ... Respondent

Mr. Uzair Kazi a/w Ankita Sharma i/b YMK Legal for the applicants.

Mr. Mayur Khandeparkar a/w Bishwajeet Mukherjee, H. Syed, Meet Gandhi for respondent No.1.

Mr. Aseep Naphade for respondent No.13.

Mr. Santosh Parad for respondent/MCGM.

Mr. C.M. Lokesh for applicant in IA No.20252 of 2022.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 22, 2023

P.C.:

INTERIM APPLICATION NO.1620 OF 2023

1. According to the applicant, the conditions imposed while granting permission under Section 354 of Bombay Municipal Corporation Act, 1888 have been violated by respondent No.12. In my opinion, said event having occurred during the pendency of the appeal, being independent cause of action. Allowing such

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application would be beyond purview of scope of the appeal which is pending before the Court. The applicants will have the liberty to adopt appropriate proceedings for enforcement of their alleged rights before appropriate forum.

2. The application is, therefore, disposed of with liberty to applicant to file appropriate proceeding before appropriate forum for ventilation of rights.

3. The Interim Application stands disposed of in the above terms. No costs.

4. List the First Appeal on **21st March, 2023 "For Admission".**

(AMIT BORKAR, J.)

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Chaitali Ekke

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1117 OF 2018
WITH
INTERIM APPLICATION NO. 4513 OF 2013
IN
FIRST APPEAL NO. 1117 OF 2018
WITH
CIVIL APPLICATION NO. 1324 OF 2018
IN
FIRST APPEAL NO. 1117 OF 2018

Smt. Sushama A Gupta And Anr. — Appellants / ...Org. Plaintiff

Versus

Minal Co-Operative Housing Society Limited — Respondents / ...Org. Defendants

WITH
INTERIM APPLICATION NO. 20252 OF 2012
IN
FIRST APPEAL NO. 1117 OF 2018

Urmila S. Gupta — ...Applicant

Versus

Sushma A. Gupta — ...Respondent

WITH
INTERIM APPLICATION NO. 19474 OF 2022
IN
FIRST APPEAL NO. 1117 OF 2018

Sushma A Gupta and Anr. — ...Applicants

Versus

Minal Co-Operative Housing Society Limited — ...Respondents

WITH
INTERIM APPLICATION NO. 19475 OF 2022
IN
FIRST APPEAL NO. 1117 OF 2018

Shivkumar Gupta — ...Applicant

Versus

Minal Co-Operative Housing Society Limited and Ors. — ...Respondents

....

Mr. Pankaj Kawli a/w Ms. Ankita Sharma i/b YMK Legal, for Appellants.
Mr. Rashmin Khandekar i/b Mr. Bishwajieet Mukherjee a/w Ms. Humera Syed for Respondent No.1.
Mr. Santosh Parad, for Respondent No.12-MCGM.

....

CORAM : RAJESH S. PATIL, J.
VACATION COURT
DATED : 9th MAY 2023

P.C.:

1 This Interim Application is filed by Original Defendant Nos. 6 and 7.

2 Advocate for the Corporation seeks some time as their Senior Counsel who is briefed in this matter is not available in summer vacation. Mr. Khandekar for Original Plaintiff-Society states that there is suppression of certain orders passed by this court earlier. For that purpose he states that Plaintiff will file an Affidavit-in-reply by Saturday 13.05.2023 and serve a copy of the same on Advocate for Appellant. Matter to come up on board on 15.05.2023

3 Parties claim that since CC is already issued by Corporation, therefore if at all Respondent / Plaintiff does any kind of construction on the subject plot, he will not claim any equities for the same.

(RAJESH S. PATIL, J.)

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO.110 OF 2024
IN
FIRST APPEAL NO.1117 OF 2018

Sushma A. Gupta & Anr. : Petitioner/Org. Deft.
Vs.
Mr. Dinesh Parikh & Ors. : Respondents

Adv. Dr. Dhanalaxmi Iyer a/w C. M. Lokesh i/by C. J. Kambli, for the Petitioner.
Adv. Rajeev Chavan, Sr. Advocate a/w Mr. Santosh Parad, for the MCGM.
Adv. Mayur Khandeparkar i/by Adv. Bhwajeet Mukherjee a/w Adv. Humera Syed, for the Respondent Nos.1 to 3.

CORAM : KISHORE C. SANT, J.
RESERVED ON : 8TH FEBRUARY, 2024
PRONOUNCED ON : 16TH FEBRUARY, 2024

P.C. :

1. This Contempt Petition is filed praying for initiating an action against the Respondents for committing contempt of this Court by disobeying orders dated 22nd March, 2018, 11th October, 2022 and 21st December, 2022 passed by this Court in First Appeal No.1117 of 2018.

2. The Petitioners in this Contempt Petition are the Appellants in the First Appeal original defendants in LC Suit No.3067 of 1996.

3. It is a case of the Petitioner that this Court vide order dated 22nd March, 2018 passed in Civil Application No.1323 of 2018 with Civil

Application No.1324 of 2018 in the First Appeal had directed the parities to maintain *status-quo*. The same was continued by order dated 11th November, 2022. Respondent No.3 thereafter filed Interim Application No.30446 of 2022 in the Appeal when for vacating *status-quo* order granting by the Court in First Appeal. The Application was filed for the reasons that the society-present Respondent No.3 wanted to demolish the structure of the building of the society as the structure was in dilapidated condition & was likely to collapse. In view of the order of *status-quo* the society was not in position to carry out demolition and reconstruction of the building. As there is a notional connection between the suit premises and the building of the society it was necessary to demolish the notional connection. This Court therefore by the order dated 21st December, 2022 vacated the *status-quo* only to the extent of demolishing notional connection. In the said order it was observed that, the said order was without prejudice to the rights and contentions of the parties. The operative part except above was maintained.

4. The society i.e. Respondent No.3 to this Petition thereafter razed the construction of notional connection and started construction work. It is the case of the Petitioner that this Act amount to contempt of the order passed by this Court. The Respondents have violated the *status-*

quo order passed by this Court.

5. The learned Advocate vehemently argued that the Respondents are guilty of committing the contempt an action needs to be initiated for committing the contempt. This Court has ample powers under article 215 of the Constitution to take an action.

6. Learned Advocate shree Khandeparkar and senior Advocate shree Rajeev Chavan argued for the parties submit that there is no contempt at all of the order passed by this Court. Only the notional connection was required to be demolished because of the situation of the suit premises and the building of the society. No construction of the building of the society was possible without demolishing the notional structure. The Respondents being law abiding citizens approached this Court and filed an Application seeking vacation of status-quo order. This Court by considering all the material aspects granted permission. This Court specifically vacated status-quo only to the extent of demolishing notional connection. The society has thereafter made construction only as per the order passed by this Court. There is no question of contempt.

7. Mr. Rajeev Chavan, senior counsel also submits that the corporation is not concerned with the alleged act of contempt. Respondent Nos.7, 8 & 9 are unnecessarily joined as respondents in Contempt Petition.

8. This Court has gone through the orders passed by this Court. The first order was passed on 22nd March, 2018 directing the parties to maintain the *status-quo.* The Petitioner has failed to show before the Court as to what was the status as on the date of passing of the order. It appears from the order the Court wanted only the stay implementation of the order passed by the City Civil Court. As there was apprehension of demolition of structure at the hands of the Municipal Corporation. This Court finds that, it was necessary for the Petitioner to specifically demonstrate as to exactly in what manner contempt is committed. The alleged action is taken by the Respondent No.3-Society only after passing of an interim order by this Court dated 21st December, 2022. Further Petitioner had filed both Civil Applications seeking stay of the construction of the building of the society. However no order was passed on that application.

9. This Court finds that no case is made out to initiate action under the Contempt of Courts Act, 1971.

10. Contempt Petition therefore stands dismissed.

(KISHORE C. SANT, J.)

VARSHA VIJAY RAJGURU
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1117 OF 2018

WITH

INTERIM APPLICATION NO. 19474 OF 2022

WITH

INTERIM APPLICATION NO. 7662 OF 2024

WITH

INTERIM APPLICATION(ST) NO. 15096 OF 2025

WITH

INTERIM APPLICATION NO. 4513 OF 2023

WITH

CIVIL APPLICATION NO. 1324 OF 2018

Smt. Sushama A. Gupta and Anr ... Appellant/Applicant

vs.

Minal Co-operative Housing Society Ltd And Ors ... Respondents

WITH

INTERIM APPLICATION NO. 7880 OF 2025

IN

FIRST APPEAL NO. 1117 OF 2018

Minal Co-operative Housing Society Ltd ... Applicant

IN THE MATTER BETWEEN

Smt. Sushama A. Gupta and Anr ... Appellant/Applicant

vs.

Minal Co-operative Housing Society Ltd ... Respondent

WITH

INTERIM APPLICATION NO. 20252 OF 2022

IN

FIRST APPEAL NO. 1117 OF 2018

Urmila S. Gupta ... Applicant

IN THE MATTER BETWEEN

Smt. Sushama A. Gupta and Anr ... Appellant/Applicant

vs.

Minal Co-operative Housing Society Ltd ... Respondent

WITH

INTERIM APPLICATION NO. 19475 OF 2022

IN

FIRST APPEAL NO. 1117 OF 2018

Shivkumar Gupta ... Applicant

IN THE MATTER BETWEEN

Smt. Sushama A. Gupta and Anr ... Appellant/Applicant

vs.

Minal Co-operative Housing Society Ltd ... Respondent

Mr. J.A Udaipuri i/b. Mr. Kambli for Appellant.

Mr. Biwajeet Mukherjee for Respondent No.1.

Mr. Pradeep Patil i/b. Ms. Komal Punjabi for Respondent No. 12-BMC.

CORAM : GAURI GODSE, J.
DATED : 4th JULY 2025

ORDER:

INTERIM APPLICATION(ST) NO. 15096 OF 2025

1. This application is filed seeking following relief:

"a. This Hon'ble Court be pleased to declare the decree passed by Hon'ble City Civil Court Dindoshi dt. 19/01/18. As nullity/void ab initiao, and remand back the suit no. 3067 of

1996 to be decided a fresh after making necessary amendments by impleading legal heirs of Deft. No. 1 & 2 along with legal heirs of Shri S M Jalan, deceased in the year 1994.

b. That pending the hearing and final disposal of the present Interim Application, the operation and implementation of the decree passed by Dindoshi Court be stayed in totality."

2. Learned counsel for the applicants submits that the first appeal is admitted and by way of interim relief, order of status quo is passed. The record of the first appeal shows that Interim Application No. 7662 of 2024 for interim relief is still pending. During the pendency of the first appeal, which is to be heard for final hearing, in which interim order is already passed, the prayers made in the application are misconceived.

3. Hence, Interim Application is dismissed.

(GAURI GODSE, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1324 OF 2018
WITH
INTERIM APPLICATION NO. 4513 OF 2023
WITH
INTERIM APPLICATION NO. 7662 OF 2024
IN
FIRST APPEAL NO. 1117 OF 2018

SNEHA NITIN CHAVAN

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Sushma A. Gupta and Anr. ...Applicants / Appellants

Versus

Minal Co-operative Housing Society Limited and Ors. ...Respondents

WITH

INTERIM APPLICATION NO. 7880 OF 2025
IN
FIRST APPEAL NO. 1117 OF 2018

Minal Co-operative Housing Society Limited ...Applicant / Ori. Respondent

In the matter between:

Sushama A. Gupta and Anr.

...Appellants

Versus

Minal Co-operative Housing Society Limited and Ors. ...Respondents

****

Appearances on 22.08.2025 :

Mr. Ashok Gupta, Appellant No.2 in person present for the Applicants in CAF/1324/2018, IA/7662/2024, IA/4513/2023.

Mr. Rubin Vakil a/w Adv. Humera Syed i/b Bishwajeet Mukherjee for the Applicant in IA/7880/2025.

Mr. Rajiv Chavan, Senior Advocate a/w Ms. Asmi Desai, Ms. Sonam Pandey, Ms. Pallavi Khale i/b Ms. Komal Punjabi for the Respondent No.12/MCGM.

Mr. A.R. Patil, Addl. GP for the Respondent No.14/State.

Appearances on 06.10.2025 :
None for Applicants in CAF/1324/2018, IA/7662/2024, IA/4513/2023.
Mr. Rubin Vakil i/b Bishwajeet Mukherjee for the Applicant in IA/7880/2025.
Ms. Pallavi Khale i/b Ms. Komal Punjabi for the Respondent No.12/MCGM.

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CORAM : M.M. SATHAYE, J.
RESERVED ON : 22ND AUGUST, 2025
PRONOUNCED ON : 6TH OCTOBER 2025.

ORDER :

1. Heard learned Counsel for the parties. All the above interim applications are connected to each other and therefore are being taken up for consideration together.

2. Civil Application No. 1324 of 2018 is filed by the Appellants in the above First Appeal (Sushma Ashok Gupta and Ashok Gupta) seeking stay of impugned Judgment and Decree dated 19.01.2018 passed in L.C. Suit No. 3067 of 1996 by the City Civil Court, Dindoshi, Mumbai. By order dated 22.03.2018, an *ex-parte* ad-interim status quo was granted in this application, in absence of Respondent No.1-Housing Society.

3. Interim Application No. 7880 of 2025 is filed by Respondent No.1 in the Appeal - Minal Co-operative Housing Society ('CHS') praying to vacate above status quo order dated 22.03.2018, or take up the appeal for final hearing.

4. Interim Application No. 4513 of 2023 is filed by Appellants (Sushma and Ashok Gupta), praying for appointment of Court Receiver in respect of area underneath and appurtenant to the notional

connection and direction to MCGM to revoke and/or cancel all permission and sanctions granted towards construction, development, redevelopment thereon and also directions to the MCGM to 'make sure' that no construction activities are carried out underneath and appurtenant to the notional connection.

5. Interim Application No. 7662 of 2024 is filed by the Appellants (Sushma Gupta and Ashok Gupta) again praying for appointment of Court Receiver over the suit property, for direction to Respondent No.12/Municipal Corporation of Greater Mumbai ('MCGM') to revoke and/or cancel of permission and sanctions granted towards constructions on the suit property, on the land underneath and appurtenant to the notional connection between two Society buildings and to reinstate solid waste drainage line as per approved plan issued by MCGM in 2008. This application also seeks direction to MCGM to 'make sure' that no construction activities are carried out on land underneath and appurtenant to notional connection and solid waste drainage line on suit property.

6. This litigation has a checkered history which will be adverted to in the subsequent paragraphs. This first appeal is of the year 2018, admitted on 20.10.2023 and considering large pendency of first appeals of earlier years, it is not possible to take up the first appeal for final hearing.

7. Before taking any decision on the pending applications and prayers made therein, it is necessary to consider *prima facie* merit in the challenge raised by the Appellants to impugned Judgment and Decree. Appellants are Defendant Nos. 6 & 7 only. No other defendants have

challenged the decree. Respondent No. 1 is sole Plaintiff - Co-operative Housing Society. Other Respondents are co-defendants. Parties are referred to in their original capacity in the Trial Court for the sake of convenience and better understanding. Name of Defendant No. 6 is stated as Smt. Shusheela A. Gupta in Trial Court, but it is asserted by the Appellants in the appeal memo that it is in fact Smt. Sushma Gupta.

8. **CASE OF Plaintiff-Society :**

8.1) The suit is filed by Plaintiff-Society representing about 31 flat owners, seeking declaration that the agreement dated 02.12.1989 executed by father of Defendant No.3 (Shivkumar M. Jalan) in favour of Defendant Nos. 4 to 6 as illegal and contrary to provisions of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (hereinafter referred to as 'MOFA Act' for short). Declaration is sought that construction of building/structure made by Defendant Nos. 4 to 7 ('Ramanuj' Society) is in breach of statutory requirements of Bombay Municipal Corporation Act, 1888 (hereinafter referred to as 'BMC Act' as short) read with Applicable Development Control (DC) Rules. A relief of permanent injunction to restrain Defendant Nos. 4 to 7 from using, occupying or enjoying the remaining portion and open spaces, parking spaces, recreational grounds on subject matter property is also sought. Further injunction is sought from causing obstruction to the Plaintiff-Society's use, occupation and enjoyment of the suit plot along with compulsory open spaces.

8.2) Other reliefs in the nature of mandatory injunction to remove the dividing wall and filling made by Defendant Nos. 4 to 7 to make entire property at one single level and to demolish construction made by Defendant Nos. 4 to 7 as well as direction to MCGM to remove the drainage line put up by Defendant Nos. 4 to 7, adjacent to the water storage tank of the Plaintiff-Society is also sought. Further relief of permanent injunction is also sought to restrain Defendant Nos. 4 to 7 from consuming 'TDR' and carrying out any construction. Perpetual injunction is sought against the Defendant Nos. 4 to 7 from obtaining conveyance and title in respect of property or any part thereof from legal heirs and representatives of Defendant No.1 and Mr. Shivkumar Jalan.

8.3) There are 31 flats in the Plaintiff-Society. During pendency of suit, the plot of land is transferred in the name of Plaintiff-Society by registered Deed of Conveyance dated 20.03.1998 executed by Defendant Nos. 1 to 3 i.e. Podar Family and Mr. Jalan.

8.4) Defendant No.1 and her husband Ghanshyamdas Podar (father of Defendant No.2) were original owners of the suit plot having tenements/chawls on land admeasuring 2552.13 sq. meters (excluding a structure called 'Madhav Kunj' admeasuring about 750 sq. meters) and its appurtenant land, which is suit plot bearing OP No. 188, now final plot No. 185 under TPS-II bearing City Survey No. 1611 and 1611/1 to 15 situated at Vile Parle (East), Mumbai- 400 057.

8.5) One Mr. Shivkumar Jalan (Father of Defendant No.3) acquired the development rights for construction of building of Plaintiff-Society and suit plot under agreement of sale dated 08.08.1979 from the Defendant No.1. The said Mr. Shivkumar Jalan constructed the Plaintiff-Society (Minal CHS) after getting necessary sanctions from MCGM as per sanction plan dated 28.01.1981.

8.6) The original owners have not sold 'Madhav Kunj' structure under Agreement dated 08.08.1979 to Shri. Jalan.

8.7) On rest of the portion, there was a structure occupied by tenants. Since Mr. Jalan was unable to negotiate with few tenants, he demolished only portion of existing building and constructed the Plaintiff-Society after removing part of the old structure. The said Mr. Jalan did not convey the suit plot with the building to Plaintiff-Society as required under MOFA Act. The Plaintiff-Society got itself registered in the year 1987-88.

8.8) In Annual General Meeting of the year 1993-1994, the Plaintiff-Society was given to understand that construction on the remaining portion of land will be carried out after showing sanction plan and other documents, however original Defendant Nos. 4 to 7 (including present Appellants) started construction immediately. They claimed right of construction on remaining property as per agreement dated 02.12.1989 executed by Mr. Shivkumar Jalan.

8.9) It is the case of the Plaintiff-Society that Mr. Shivkumar Jalan did not have any right to sell the remaining portion to Defendant Nos. 4 to 7 when he had agreed to transfer the property to Plaintiff-Society. Therefore, it is claimed that agreement dated 02.12.1989 is not binding on the Society. It is the case of the Plaintiff-Society that as per agreement dated 08.08.1979, Mr. Jalan was not in a position to develop remaining property admeasuring about 607.76 sq. meters which translates into balance FSI of 6550 sq. ft. and this right of development to the extent of FSI consumption of 6550 sq. ft. only is transferred by Mr. Jalan to Defendant Nos. 4 to 7 vide their agreement dated 02.12.1989.

8.10) According to the Plaintiff-Society under agreement dated 02.12.1989, the Defendant Nos. 4 to 7 are only entitled to develop balance FSI to the extent of 6550 sq. ft. and those flat purchasers should become members of Plaintiff-Society. It is also the case of Plaintiff-Society that Defendant Nos. 4 to 7 were not allowed to use 'TDR' and Development rights in the property required to be shared by the Plaintiff-Society. It is contended that Defendant Nos. 4 to 7 (including Appellants) have made construction of more than 8000 sq. ft. and have constructed palatial bungalow for their family in contravention of their entitlement as well as applicable DC Rules.

8.11) This use of additional FSI by Defendant Nos. 4 to 7 is without permission of the Plaintiff-Society and its flat purchasers. It is further case of Plaintiff-Society that BSES sub-

station has been illegally shifted by Defendant Nos. 4 to 7 behind the Plaintiff-Society's building and unauthorized construction of notional connection to join new building i.e. 'Ramanuj' to the Plaintiff-Society's building has also been constructed and drainage pipeline has been laid near water tank of the Plaintiff-Society. It is contended that despite several complaints to MCGM, no action was taken to demolish the unauthorized construction by Defendant Nos. 4 to 7 and there is collusion between officers of MCGM and Defendant Nos. 4 to 7.

DEFENCE OF APPELLANTS

9. Since the impugned decree is challenged only by Defendant Nos. 6 and 7 (Sushma and Ashok Gupta), as on today there is no challenge to the impugned decree by Defendant Nos. 4 and 5 who are family members of present Appellants.

10. The suit is contested by Defendant Nos. 4 to 7 and MCGM only. No other Defendant has filed written statement.

11. The present Appellants have filed written statement contending *inter alia* as under.

11.1) Ownership of Defendant No.1 and her husband over the suit plot and agreement of sale dated 08.08.1979 executed by them in favour of Mr. Jalan and construction of Plaintiff-Society by Mr. Jalan on part of the property is admitted.

11.2) That Mr. Jalan has executed agreement for sale

dated 02.12.1989 in their favour. That they have challenged the deed of conveyance dated 20.03.1998 executed by Defendant Nos.1 to 3 in favour of the Plaintiff-Society by filing a suit. That when Mr. Jalan assigned all his right, title and interest in favour of Defendant Nos. 4 to 6 by deed of assignment dated 02.12.1989, Defendant No.3 (son of Mr. Jalan) has no right, title and interest to execute conveyance in favour of the Plaintiff-Society. It is contended that the Plaintiff-Society has not challenged the sanctioned plan and amended plan in favour of the Appellants and therefore relief of demolition of building cannot be granted.

11.3) They contended that since Mr. Jalan could not negotiate with some of the tenants, he demolished partially and constructed Plaintiff-Society's building. That Mr. Jalan has assigned his right and interest in respect of remaining undeveloped property to the Appellants by agreement dated 02.12.1989. It is contended that there is no unauthorized construction of notional connection made by them. That remaining structure which is not developed by Mr. Jalan was dilapidated chawl which was declared unsafe and was therefore demolished. That since all the tenants agreed for redevelopment, they submitted plan for construction which was sanctioned by MCGM and construction was completed in 1994. It is contended that BSES sub-station was shifted as per sanctioned plan.

11.4) It is contended that the agreement dated 02.12.1989 is binding on the Plaintiff-Society. It is contended that relief of

cancellation of said agreement is time barred. It is contended that they have constructed the building and laid drainage and water line as per the sanctioned plans for which consent of the Plaintiff is not necessary. Consumption of higher FSI is denied. It is contended that Mr. Jalan was entitled to develop remaining portion of the building by evicting remaining tenants. That the power and authority of Mr. Jalan to construct new building had been given to the Appellants under the agreement dated 02.12.1989. The case of collusion between them and MCGM is denied. It is contended that the notional connection between two structures was sanctioned by MCGM in the beginning. That as per the agreement dated 02.12.1989, the developer is entitled to develop the same as per his sweet will and the Plaintiff-Society has no right on the remaining FSI.

STAND OF THE MUNICIPAL CORPORATION

12. MCGM has filed written statement contending *inter-alia* that plans submitted for construction by the Appellants were granted and building of ground part plus stilt part plus three upper floors with notional connection with the Plaintiff-Society building was approved in May 1994. Thereafter, amended plan was approved in January 1995. After issuance of notice under Section 354A of the BMC Act, a proposal for regularization was given, which was approved. After complaints of the Plaintiff-Society, meetings were held and an order has been passed on 07.11.2006, as per order of Court dated 09.08.2006 passed in N.M. No.2185 of 1996. That MCGM issued Occupation Certificate upto third floor.

DECREE BY TRIAL COURT

13. The Trial Court after considering rival contentions and on appreciation of evidence has decreed the suit only partly, directing the MCGM to take action against the constructed building which is beyond sanctioned plan and which is more than permitted FSI worth 6550 sq. ft. constructed by Defendant Nos.4 to 7 (including the Appellants) on suit property. Direction is issued to MCGM to implement its order dated 07.11.2006. The Appellants are directed to remove or demolish the notional connection and to shift BSES sub-station to original position and to remove/demolish unauthorized construction beyond 6550 sq. ft. Direction is issued that if the Appellants fail to demolish as directed, MCGM to demolish the same. The Appellants are permanently restrained from obstructing members of the Plaintiff-Society from enjoying recreational ground at site. The Court has also directed inquiry as to how plans were sanctioned without any benefit to MCGM in the redevelopment/new construction even when MCGM was one of the occupants of old premises having area of 716 sq. ft.

CONSIDERATION BY THIS COURT

14. Mr. Vakil, learned Advocate appearing for the Plaintiff-Society, relying upon the averments made in IA/7880/2025 contended that the Plaintiff – Society has been embroiled in the present litigation for last about 30 years and is currently undergoing re-development. Relying on the latest Concession Report dated 28/11/2024 issued by MCGM, it is contented that the Plaintiff – Society is forced to keep the FSI consumption in abeyance on account of present litigation. It is pointed out that the Plaintiff-Society had received commencement certificate up to 8th floor, copy of which is produced on record. He submitted that since the Appellants (Mr. and Mrs. Gupta) have consumed FSI over and

above permitted to them, it is directly affecting the Plaintiff-Society in its re-development. It is submitted that if the order of status quo is not vacated, the Plaintiff – Society will suffer irreparable loss, harm and prejudice in as much as the re-development shall remain stalled.

15. Perusal of the record shows that IA/7662/2024 filed by the Appellants has been pending since April 2024. Applicants have remained absent in March 2025, sought adjournment in April 2025 and when the Society being Applicant in IA/7880/2025 pressed for its prayer for vacating the status quo, pending Applications were taken together. On 13/08/2025, Appellants again sought adjournment. However, Appellant No. 2 assured the Court that on the next date all the Applications which are on board will be proceeded on merits either through an Advocate or by himself as party in-person and no adjournment will be sought. Records further indicates that thereafter affidavit-in-reply is filed by the Appellant No. 1 through Appellant No. 2 on 20/08/2025. On 22/08/2025, Mr. Ashok Gupta, party in-person tendered notarized affidavit sworn by Appellant No. 1 in IA/7880/2025 and since the pagination was incorrect, the matter was kept back and in the afternoon session it was found that he had also filed another affidavit-in-reply, which was sent by the Registry. For the reasons best known to Appellants, two affidavits-in-reply are filed, one in the Registry and another is tendered in the Court, contending same things.

16. Mr. Ashok Gupta appeared in person and submitted on behalf of the Appellants. In view of peculiar contentions raised by him through his affdavit in reply, I am considering the same one by one below.

17. Appellant No. 1 – Sushma Gupta has filed affidavit-in-reply

opposing IA/7880/2025 in which it is contended that Appellants' earlier IA/7662/2024 is pending and without waiting for hearing and adjudication of the said Interim Application, the Society has filed IA/7880/2025 seeking modification of the status quo order, which is unjustified and causing serious prejudice to the Appellants. Appellant No. 2 -Ashok Gupta (Party in Person) has made submissions in support of the Appellant's case.

18. In the affidavit-in-reply, it is contended that the decree is passed against the dead Defendant Nos. 1 and 2 i.e. members of the Podar family, who were owners of the suit property and who had transferred it in favour of the Developer-Mr. Jalan. It is contended that the Defendant Nos. 2 and 3 (members of the Podar Family & Mr. Jalan) had declared that the new conveyance is made by them in the year 2015 in favour of 'Ramanuj' Society to bring an end to long pending dispute. Perusal of the so called declaration annexed by the Appellants at 'Exh-B' indicates that it was an Application for adjournment filed by the Defendant Nos. 2 and 3 before the Metropolitan Magistrate in a criminal case, stating that conveyance is being finalized by legal experts and it will be executed in the next few days. This adjournment Application can hardly be called as 'declaration' of new conveyance made as claimed by Mr. Gupta. What was that criminal case, what happened to it, nothing is informed.

19. The affidavit-in-reply goes on to contend that developer on the suit property appointed by the Plaintiff-Society has filed affidavit of plot area, though he is not owner of suit property. It is stated that owner and the first Developer-Mr. Jalan had played fraud for which criminal complaint was filed and therefore they are the necessary party in the

Appeal and their legal heirs must be impleaded. It is material to note that Appeal is filed by the Appellants themselves and they can take appropriate steps for bringing those legal heirs, if they want. It is also material to note that Appellants have not made the Plaintiff-Society's developer party to this appeal and it is their choice. Making allegations against a non-party can have no material bearing.

20. An omnibus statement is then made in the affidavit that the Respondents have played fraud on judiciary by misrepresenting and securing order of modification of the status quo. Certain earlier directions and communication of 2002 and 2005 are referred. In this respect, it is material to note that after hearing both sides, this Court has modified the order of the status quo on 21.12.2022 by a detailed order and the said order is not varied or set aside. This is nothing but an attempt to rake up contentions as to why the first order of status quo should not have been modified by this Court. This Court cannot sit in appeal over its own earlier order.

21. One letter purportedly issued by the Plaintiff-Society on 08/11/2022 is relied upon. Perusal of the said letter indicates that it is issued on behalf of the Plaintiff-Society about membership of Urmila Shivkumar Gupta, who is Appellant. Membership issue is not involved in present appeal.

22. Then the order passed in the Contempt Petition dated 16/02/2024 is relied upon. Perusal of the said order shows that after considering the orders about which contempt was alleged by the Appellants, their Contempt Petition has been dismissed by this Court.

23. In short, affidavit-in-reply filed by the Appellant No. 1 and

arguments advanced by the Appellant No. 2 party in-person are far from being relevant to the issue at hand, and orders which have attained finality are being complained about, over and over again. It is their choice that they are arguing their case through party-in-person (Appellant No. 2).

24. Perusal of the record and orders passed by this Court earlier, shows following **conduct of the Appellants :**

i) On 24.10.2018, Appellant No.2 - Ashok Gupta appeared in-person and submitted that he has applied to Committee of the Registry for permission to appear in person.

ii) On 21.02.2019, one Advocate Raman appeared and undertook to file Vakalatnama on behalf of the both the Appellants.

iii) On 04.06.2019, after hearing the Advocate for the parties, this Court expressed that attempt will be made to dispose of the appeal finally at admission stage. On this day, some different advocate Ms. Sovani appeared for Appellants.

iv) Appellant No.2 was found fit by the Committee to appear as party in-person which is recorded in order dated 26.06.2019.

v) On 27.01.2020, one Advocate D'Souza sought time to file Vakalatnama on behalf of the Appellants.

vi) On 02.03.2020, one Advocate Kazi appeared who stated that YMK Legal will be filing Vakalatnama for the Appellants.

vii) On 26.07.2022, this Court found that Vakalatnama was filed only on behalf of Appellant No.1, and Appellant No.2 continued as party in-person and this Court recorded that individual Appellants cannot be heard separately as there may be conflict of interest. Faced with this situation, Advocate for Appellant No.1 stated that Vakalatnama will be filed for Appellant No.2 also.

(viii) In the past also, the Society was required to move this Court by IA/30446/2022 for modification of the status quo order in view of the emergency situation for demolition of the notional connection joining Plaintiff–Society and the building constructed by the Appellants. It is seen that after hearing both sides on 21/12/2022, this Court passed an order allowing the MCGM to demolish the notional connection. It was clarified that the order is without prejudice to the rights and contention of the parties.

ix) Appellants had filed IA/329/2023 for recalling above order dated 21/12/2022 which was eventually rejected as misconceived on 31.01.2023

(x) One more Application being

IA/1620/2023 was filed by the Applicants seeking directions to prevent alleged encroachment of land beneath and appurtenant to notional connection, which was also disposed of by this Court on 22/02/2023, finding that the application was beyond the scope of this appeal.

(xi) In the meantime, the Appellants obtained order of deemed conveyance from the concerned competent Court on 02.08.2021 without joining the Plaintiff-Society as party. This order of the deemed conveyance has been stayed by this Court on 13.04.2023 in WP/7981/2022 filed by the Plaintiff-Society.

(xii) Appellants then filed Contempt Petition No. 110 of 2024 alleging contempt against the Plaintiff – Society for action pursuant to the order dated 21/12/2022. This Contempt Petition has been dismissed on 16/02/2024, after hearing the Appellants.

(xiii) One more Application was filed by the Appellants being IA(L)/15096/2025 seeking declaration that present impugned judgment and decree in the very same subject suit (from which the present Appeal is arising) as null and *void ab initio* and seeking remand of the matter for fresh decision on merits. The said Application has been dismissed on 04/07/2025 as being misconceived.

25. It is therefore clear that the Appellants have filed multiple applications to add to the burden of proceedings, for same reliefs again and again, after securing an *ex-parte* status quo order to prolong the hearing of main interim Application for stay one way or the other. Considering the conduct of the Appellants as highlighted above, it is seen that the Appellants have tried every trick in the book, to prolong the hearing on interim relief, thereby trying to perpetuate the ex-party ad-interim status quo secured way back in 2018. Aforesaid various Applications filed by the Appellants and orders passed therein are clear indication of the fact that the Appellants simply want to postpone the hearing of main Interim Application in which they have secured ex-party ad-interim status quo.

26. It is also clear from the submissions of the Appellant No. 2-party in-person that Appellants wish to continue blanket status quo order which was obtained by way of ex-party ad-interim relief. Mr. Ashok Gupta has gone to the extent of pointing out from the order of ex-party ad-interim status quo dated 22/03/2018 that in para no. 4 of the said order, this Court has stated that

> "4. I have perused the impugned judgment as well as the grounds raised in the appeal memo and in my considered view, it is necessary to maintain status quo."

27. According to Mr. Gupta even though this order is ex-party order passed without hearing the Respondent-Society, once this Court says that the impugned judgment is perused and grounds in the Appeal are perused and it is necessary to maintain status quo, it means that no further order can be passed after hearing the contesting Respondents. This is preposterous. If a party-in-person insists that the Court should

throw all settled principles of procedure to wind, then the Court has to deal with it sternly, and let the necessary consequences follow.

28. At the cost of repetition, it must be noted that it is Appellants' choice that they are arguing their case through party-in-person (Appellant No. 2). Court cannot keep adjourning interim applications.

29. The whole case of the Appellants is based on the agreement/document in their favour dated 02.12.1989. Their rights flow from this document. I have perused the agreement dated 02.12.1989, by which the Appellants have received development rights in 607.76 sq. mtrs. i.e. remaining area after constructing Plaintiff-Society. There is clear recital that the Appellants are aware of the available FSI for development of the remaining property and which is only to the extent of 6550 sq. ft. and no additional FSI is available to them. The said document also clearly spells out that the Appellants shall not be entitled to disturb the possession of various flats already purchased in Respondent – Society (Minal CHS). It is also specifically agreed that the purchasers of flat/shop in construction to be erected by the Appellants shall become members of Minal CHS and conveyance will also be executed in favour of Minal CHS. The Appellants have purchased the development rights on 'as is where is' basis. The Appellants have expressly agreed that they shall be entitled to develop the remaining property only to the extent of 6550 sq. ft. and nothing more. The Appellants have also agreed expressly that they are aware that it is not possible to sub-divide the entire property into three sub-plots namely 'Madhav Kunj' portion, Plaintiff's portion and remaining property. When the Appellants have purchased development rights with such limitation and fetters, in my view, they cannot seek substantial

relief against the Plaintiff-Society and its members, in the form of an injunction, not to construct on the land below the notional connection of the land and appurtenant thereto. If such substantive prayers are entertained, it will amount to entertaining independent proceedings directly at appellate stage, which is not permissible in law.

30. The Appellants have not filed the present suit and they are only defending the prayers made by the Plaintiff-Society. Admittedly, substantive suit filed by the Appellants (Suit No. 9134/2000 – old HC Suit No. 4525/2000), challenging the title of the Plaintiff-Society to the entire land, was dismissed by City Civil Court, Dindoshi on 19.10.2013. The Appellants' Notice of Motion No. 4645/2015 for its restoration has also been dismissed on 26.11.2018. Its copy is produced on record with affidavit of the Respondent Society to IA/4513/2023. As such, title of the Plaintiff-Society is undisputed.

31. It is also important to note that, as on today, out of three purchasers of the development rights under document dated 02.12.1989, only Sushma Gupta is contesting and the other two persons Lata Gupta and Urmila Gupta have not even filed appeal challenging the impugned judgment and decree. Thus Mr. Ashok Gupta – Appellant No. 2 is not even purchaser under the document dated 02.12.1989.

32. So far as the Appellants' prayer of appointment of Court Receiver is concerned, it is settled position of law that appointment of Court Receiver is within the judicious discretion of the Court based on facts and circumstances of each case. The impugned decree is only about removal / demolition of the construction made by the Appellants beyond permissible 6550 sq.ft. worth of FSI. There are no rival claims

on extra constructed portion. Plaintiff-Society does not want to occupy extra construction made by the Appellants. There are rival claims on FSI use beyond permitted limit under the Appellants' document dated 02.12.1989. Court receiver cannot take FSI in custody. For this reason, coupled with all the aforesaid facts and circumstances, in my view this is not a fit case to exercise discretion for appointment of Court Receiver.

33. So far as the prayer of reinstatement of solid waste drainage line is concerned, the prayer is opposed by the Respondent–Society by contending in their affidavit-in-reply that the Respondent-Society has not in any manner disturbed the drainage line of the Appellant and one of the member of the Gupta family (Respondent No. 11) made application in respect of drainage line. Copy of such Application and reply of MCGM are produced at page nos. 369 and 370 of the reply. Said copies indicate that request was not made on behalf of the Respondent – Society. In that view of the matter, there is nothing to indicate that the drainage line is damaged by the Respondent No. 1. In any case, as noted earlier, this prayer is also in the nature of making a substantive claim, which cannot be entertained first time at Appellate stage without proper evidence to verify rival claims. In that view of the matter, the said prayer also deserves to be rejected.

34. Considering all the aforesaid facts and circumstances, in my view, there is no enough strong *prima facie* case to grant blanket status quo. There is no enough strong *prima facie* case to delay re-development of Respondent-Society for 31 members and such other persons from Appellants' building who wish to join the Respondent-Society, if any. Overall picture emerging in the opinion of this Court is that Appellants (2 persons) are stalling the development of all others

involved by filing multiple applications and keeping the real consideration from reaching its logical end.

35. In view of all the above considerations, at least at this stage, the Trial Court seems to have considered all the aspects of the matter in proper perspective.

36. Therefore, all the above interim applications **are disposed of** by passing following order :

(A) IA No. 4513 of 2023 and IA No. 7662 of 2024 are rejected.

(B) Civil Application No. 1324 of 2018 is rejected and IA No. 7880/2025 is allowed. *Ex-parte* status quo order dated 22.03.2018 is vacated.

(C) It is clarified that further development on the suit plot at the instance of Respondent No. 1 Society, will be subject to final outcome of appeal.

(M. M. SATHAYE, J.)

Anand

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 30089 OF 2022

Ramnuj Co-operative Housing Society .Petitioner

Vs.

The Municipal Corporation of Greater Mumbai & ors. .Respondents

Mr. Pramod Bhosale i/b. Ms Devika Nigade, Advocate, for the Petitioner
Mr. Kunal Waghmare i/b. Mr. S. K. Sonawane, Advocate, for the Respondents – MCGM

CORAM : S. B. SHUKRE AND
M. W. CHANDWANI, JJ.

DATE : 12 JANUARY 2023

P. C.

. Issue notice for final disposal at the admission stage to the Respondents returnable on 02.02.2023. Mr. Waghmare, Advocate waives service of notice on behalf of the MCGM. The Respondents are permitted to file their affidavit-in-reply on or before the next date.

2. Leave to file Deemed Conveyance Certificate is granted to the Petitioner.

(M. W. CHANDWANI, J.) **(S. B. SHUKRE, J.)**

PRAJAKTA SAGAR VARTAK
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Date: 2023.03.06 18:04:19 +0530
Prajakta Vartak

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L.) NO. 30089 OF 2022

Ramanuj Co-op. Hsg. Soc. .Petitioner
Vs.
The Municipal Corporation of Gr. Mumbai & Ors. .Respondents

Mr. Pramod Bhosle i/b. Devika Nigade for the Petitioner.
Mr. Kunal Waghmare i/b. Mr. Sunil Sonawane for BMC.
Mr. Mayur Khandeparkar with Mr. Meet Gandhi for Respondent Nos.6 & 7.
Mr. Rashmin Khandekar with Mr. Bishwajeet Mukherjee for Respondent No.8.
Mr. Avinash Pandge, SE (BP) K/E.

CORAM : G. S. KULKARNI &
R. N. LADDHA, JJ.
DATE : MARCH 06, 2023

P.C.:

1. Stand over to **08 March, 2023** to enable Mr. Khandeparkar to furnish copy of the sanctioned plan and IOD to Mr. Bhosle, learned counsel for the petitioner.

[R. N. LADDHA, J.] **[G. S. KULKARNI, J.]**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 30089 OF 2022

Ramanuj Co-operative Housing Society ... Petitioner
Versus
The Municipal Corporation of Greater Mumbai & Ors. ... Respondents

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Mr. Pramod Bhosle a/w Praful Valvi i/by Devika Nigade for the Petitioner.
Sukanta Karmakar, AGP for the Respondent No.1.
Mr. Bishwajeet Mukharjee a/w Ms. Humera Syed for Respondent Nos. 6 and 7.
Rashmin Khandekar a/w Meet Gandhi for the Respondent No.8.

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CORAM: G. S. KULKARNI &
R. N. LADDHA, JJ.

DATE : 8th MARCH, 2023

P.C. :-

. Learned counsel for the respondent nos. 6 to 8 seeks time to file reply affidavit. Let the same be filed before the adjourned date of hearing. The respondent-Municipal Corporation also shall file its reply of affidavit.

2. Stand over to 21st March, 2023.

3. In the meantime, any construction undertaken by the respondent nos.6 and 7, shall be subject to further orders to be passed on this petition.

[R. N. LADDHA, J.] **[G. S. KULKARNI, J.]**

BIPIN DHARMENDER PRITHIANI
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Date: 2023.03.11 11:27:56 +0530

SWAROOP SHARAD PHADKE Digitally signed by SWAROOP SHARAD PHADKE Date: 2023.04.17 18:25:59 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7981 OF 2022

Minal Co-operative Housing Society Ltd. ... Petitioner
versus
State of Maharashtra and Ors. ... Respondents

Mr. Mayur Khandeparkar with Mr. Rashmin Khandekar, Mr Bishwajeet Mukherjee, Mr. Humera Syed, Mr Meet Gandhi for Petitioner.
Mr. PP.Pujari, AGP for State.
Mr. Pramod Bhosle with Mr. Uzair Z. Kazi, Ms. Ankita Sharma i/by YMK Legal for Respondent No.3.

CORAM: N.J.JAMADAR, J.

DATE : 13 APRIL 2023

P.C.

1. Heard the learned Counsel for the parties.

2. At the outset, the learned Counsel for the Petitioner seeks leave to amend the Petition so as to incorporate the prayer for interim relief.

3. Leave granted.

4. Necessary amendment be carried out forthwith.

5. The challenge in this Petition is to an order dated 2 August 2021 passed by the Deputy Registrar, Co-operative Societies, granting deemed conveyance in favour of Respondent No.3 Society in respect of an area admeasuring 607.76 sq. mtrs. out of CTS No.1611, TPS III, Final Plot no.185, Dixit Road, Vile Parle, Mumbai.

6. The principal challenge in the Petition is that the Petitioner in whose

favour the original vendor executed the conveyance, was not made party to the application before the Deputy Registrar. The Petitioner has also assailed the impugned order on the ground that the agreement dated 2 December 1989 which formed the basis of the deemed conveyance is not an agreement within the meaning of Section 4 of the Maharashtra Ownership Flats (Regulations of the Promotion of the Construction, Sale, Management and Transfer) Act, 1963.

7. I have heard Mr. Khandeparkar, learned Counsel for the Petitioner and Mr. Bhosle, learned Counsel for Respondent No.3 and the learned AGP appearing for Respondent Nos.1 and 2.

8. The property bearing CTS No.1611, 1611/1 to 1611/15 bearing Final Plot No.185 admeasuring 2555.18 sq. mtrs., excluding the building known as 'Madhav Kunj' along with the land underneath the said building and the land appurtenant in aggregate admeasuring 750 sq.mtrs., was conveyed by the original holders Ratnibai G. Potdar and Kailash G. Potdar, under an Indenture dated 22 March 1998.

9. The application for grant of conveyance was preferred by the Respondent No.3 on the strength of the Agreement dated 2 December 1989, whereby Mr. Shivkumar Motilal Jalan, the developer who had developed the Petitioner's Society professed to convey FSI admeasuring 6550 sq.ft., to the Respondent No.3. Evidently, the conveyance in favour of the Petitioner Society by the original holders of the property namely Ratnibai G. Potdar and Kailash G. Potdar does not exclude the

portion of the property in respect of which deemed conveyance has been granted.

10. In the aforesaid view of the matter, the proceedings before the Deputy Registrar for deemed conveyance could not have been initiated without impleding the Petitioner in whom the title to the entire CTS No.1611, 1611/1 to 1611/15, Final Plot No.185, excluding the building Madhav Kunj and the appurtenant land admeasuring 750 sq. mtrs., vests. It is not the case that the Respondent No.3 was unaware of the conveyance. There have been a number of proceedings between the Petitioner and the Respondent No.3 in respect of the suit property and, in fact, the suit instituted by the Respondent No.3 assailing the conveyance in favour of the Petitioner by Poddars came to be dismissed, aliebt for want of prosecution.

11. In the circumstances, as there is a substantial defect in procedure in as much as deemed conveyance came to be granted, without hearing a party in whom the title to the subject property, prima facie, vests, it is necessary to stay the effect and operation of the impugned order.

13. Hence, there shall be an ad-interim relief in terms of prayer clause (b) (i) of the Petition.

14. The Petition be posted for hearing on 21 June 2023.

(N.J.JAMADAR, J.)