



| | | |
|---------------|---|-------------------|
| Presented on | : | 23/07/2025 |
| Registered on | : | 29/07/2025 |
| Decided on | : | 29/04/2026 |
| Duration | : | Y M D 00 09 06 |

CNR No.MHCA010001042025

Exh.27

THE MAHARASHTRA STATE CO-OPERATIVE APPELLATE COURT,
MUMBAI
(Before A. S. Wanve, Member-2)

A.O. No.45 of 2025

(Arising out of order dated 09/05/2025 passed by Ld. I/c. Judge, Co-operative Court No.II, Mumbai below Exh.5 in dispute No. CC/II/178/2025)

**Behram Sudhar Committee Co-operative
Housing Society Ltd.**

Survey No.427, Ahmed Zakariya Nagar,
Anant Kanerkar Marg, Bandra East,
Mumbai-400 051.

... Appellant
(Org. Opponent)

VERSUS

- 1. Asgar Ali Shaikh**
Age: 67 yrs., Occ.: Retired
- 2. Mansoor Mahmood Khan**
Age: 49 yrs., Occ.: Business
- 3. Shaikh Mohammad Afzal**
Age: 56 yrs., Occ.: Business
- 4. Shaheen Hanif Shaikh**
Age: 48 yrs., Occ.: Household
- 5. Momin Hussain Abdul Mohammad Bakkar**
Age: 75 yrs., Occ.: Business
- 6. Mariyam B. Mahmood**
Age: 69 yrs., Occ.: Household

7. Nizamuddin Abdul Hakim

Age: Adult, Occ.: Business

8. Habiba Kudarat Ali Sayyad

Age: 82 yrs., Occ.: Household

All R/at Survey No.427, Ahmed Zakariya ... Respondents
Nagar, Anant Kanerkar Marg, Bandra East, (Org. Disputants)
Mumbai-400 051.

Appearance :

Ld. Advocate Shri. Nikhil S. Rajeshirke for Appellant.

Ld. Advocate Smt. Sana Khan i/b. SNG Partners for respondents.

J U D G M E N T

(Dictated and Pronounced on 29th April, 2026)

1) The appellant/original opponent society has challenged the order dated 09/05/2025 passed by Ld. I/c. Judge, Co-operative Court No.II, Mumbai below Exh.5 in dispute No. CC/II/178/2025 wherein, the Ld. Trial Court has allowed the interim relief application filed below Exh.5. (The parties are hereinafter referred to as Disputants and Opponent, as they stand before the Ld. Trial Court).

2) Facts as pleaded by the disputants in the dispute application in nutshell are that:

The disputants are the members of the opponent society which is a co-operative housing society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960 (M.C.S. Act). Present dispute is filed for declaration and injunction that General Body Meeting dated 08/10/2024 is illegal, arbitrary and against the provisions of MCS Act, Rules and approved Byelaws and same is liable to be set

aside. Also, to declare Notice calling Special General Body Meeting (SGBM) dated 08/10/2024 is illegal and bad-in-law. Disputants further prayed to stay the effect, operation, implementation and execution of resolution dated 08/10/2024 and society be restrained from obtaining / applying for a Letter of Intent in pursuance to its appointment as a developer of the opponent society.

3) Disputants submitted that a slum scheme came to be declared on land bearing CTS No.608 (pt) & 668 (pt), ad-measuring 15256.92 sq.mtrs. situated in Village Bandra (East) in 1984/85. M/s. Shapoorji Pallonji & Co. Ltd. was initially appointed as developer and later M/s. Solanki & Associates joined hands to undertake the SR Scheme. Since, the SR Scheme was not proceeding and reached a standstill. Therefore, the Chief Executive Officer (C.E.O.) had suo moto initiated proceedings u/sec. 13 (2) of the Slum Rehabilitation Act, 1971 for termination of Developer. The CEO by order dated 14/10/2021 dropped proceedings so initiated against the erstwhile developers. Opponent society being aggrieved and dissatisfied by the said order filed application No.177/2021 before the Grievance Redressal Committee and said authority was pleased to pass order dated 18/03/2024 and terminated the erstwhile developers viz. M/s.Shapoorji Pallonji & Co. Ltd. and M/s.Solanki & Associates.

4) Disputants further submitted that the term of the managing committee has come to an end in 2023-24 and no fresh elections were

being conducted therefore, authorised officer came to be appointed to look after and manage the day-to-day affairs of the opponent society. Meanwhile, M/s.DLH Stelmac Developers Limited (M/s.Dev Land and Housing Pvt. Ltd.) vide Letter of Interest dated 29/03/2024 approached the opponent society portraying its interest in the redevelopment of the society.

5) On 20/08/2024 an Authorised Officer was appointed to conduct the General Body meeting to be scheduled on 05/09/2024. Some of members of opponent society had issued a fraudulent communication dated 29/08/2024 on the letterhead of the opponent society. On the day of General Body Meeting dated 05/09/2024 the meeting was not attended by the majority of members of society and the same was adjourned to 08/10/2024. In the General Body Meeting dated 08/10/2024 the director of M/s.DLH Stelmac Developers Limited announced that they would not be moving forward with redevelopment and will be replaced by new developer i.e. M/s.Vashist Infra Reality LLP. Members of opponent society were unaware of the details of new developer and had no opportunity to cross verify their credentials. But to the disputants' surprise new developer's offer was put to vote, which is contrary to the provisions of MCS Act. The signatures of the members are conventionally obtained via bio-metrics, but the standard procedure of conducting voting was not followed in spirit. Some of the members being illiterate and laymen had no knowledge about the procedure of

General Body meeting thus signed under misleading and fraudulent information. The legal heirs of deceased members have signed on behalf of such deceased members. The legal heirs of the deceased members have no right to sign on behalf of the deceased members as there is no resolution thereby transferring the membership to the legal heirs of deceased members.

6) The new developer namely M/s.Vashist Infra Reality LLP. did not have the majority. But Administrator has fraudulently undertaken the act of obtaining 51% vote for appointment of developer. The meeting is attended by the non-members and these non-members appears to have voted for resolution dated 08/10/2024. The Assistant Registrar Slum Rehabilitation Authority issued a communication dated 14/10/2024 and stated that in the general meeting dated 08/10/2024 developer M/s.Vashist Infra Reality LLP and Architect M/s.Rajesh Kadam Associates have been appointed vide resolution passed in the General Body Meeting dated 08/10/2024. The resolution dated 08/10/2024 is illegal therefore, communication dated 14/10/2024 is not binding upon the members of society. The Executive Engineer, Engineering Department, SRA Mumbai had issued communication dated 25/10/2024 in consonance to communication dated 08/10/2024 thereby directing to substitute the Architect as per the resolution. The disputants have issued several applications to the CEO, SRA, Executive Engineer and Assistant Registrar for implementation of order passed by

Ld. Apex Grievance Redressal Committee (AGRC) dated 14/10/2021. But no action is taken by them. The minutes of SGBM dated 08/10/2024 are manipulated. It shows 243 members have attended the meeting. Another set of meeting dated 08/10/2024 which shows that 266 members have attended the meeting. Therefore, it is necessary to scrutinize the records of SGBM dated 08/10/2024. The disputants have made allegations against the quasi-judicial authorities and officers of SRA and Co-operative Department and against the newly appointed developer.

7) Replacement of developer and appointment of new developer M/s. Vashist Infra Reality LLP is illegal. M/s. Vashist Infra Reality LLP does not have requisite experience to carry out the redevelopment.

8) After meeting dated 08/10/2024 employees of Assistant Registrar's office called upon some members to sign the minutes of the meeting after meeting on 09/10/2024.

9) Disputants were not present during the General Body Meeting and thus were called upon by the employees of Assistant Registrar's office to sign the minutes.

10) The developer namely M/s. Vashist Infra Reality LLP issued an updated communication in favour of one Mr. Mohammad Asif Ansari and 16 others stating that in the resolution dated 08/10/2024 the Architects name has been wrongly mentioned as M/s. Rajesh Kadam Associates whereas the right name to be appointed as Architect is M/s.

Aspire Architect and Consultant. The alleged resolution is having lot of controversy from 08/10/2024 and it will continue in future hence, resolution needs to be stayed.

11) The disputants have summarize the objections on the SGBM dated 08/10/2024 in para 25 of the dispute application. These objections are that

(a) The general body dated 05/09/2024 was cancelled hence, could not have been called on 08/10/2024, it ought to have been called after six months from 05/09/2024

(b) The General Body Meeting dated 08/10/2024 was not called by the authorized officer appointed by the Assistant Registrar SRA.

(c) The required quorum was not present in the General Body Meeting dated 08/10/2024.

(d) The meeting was attended by non-members.

(e) The details of meeting/facts were not circulated to the members prior to meeting dated 08/10/2024.

(f) The record of General Body Meeting dated 08/10/2024 shows the colorable exercise of power by the authorities and manipulation of the record.

12) Along with dispute application disputants have filed interim relief application below Exh.5 and prayed to grant interim relief to stay the

effect, operation and/or implementation of resolution dated 08/10/2024 and consequent action in pursuance to the said resolution.

13) Record shows that show cause notice issued by the Ld. Trial Court is served to the opponent society and opponent society appeared through advocate and denied the contention made by the disputants. The defense of the opponent society as pleaded in the written statement in nutshell is that:

The opponent society is under the administration of Authorised Officer Mr. Suresh R. Gaikwad. The Administrator is appointed by Assistant Registrar, Co-operative Societies (C.S.), SRA by order dated 16/08/2024.

14) The opponent society is having total 850 members on the date of taking the charge by the Administrator. Notice for General Body Meeting was issued on 23/09/2024 and General Body Meeting was held on 08/10/2024 by following due procedure of law and Bye-laws of the opponent society. The General Body Meeting dated 08/10/2024 was not called and attended by the Administrator appointed by order dated 16/08/2024. The Co-operative Officer Grade-I was appointed to call and convey General Body Meeting dated 08/10/2024. The SRA project was delayed hence, SGBM dated 08/10/2024 was called in the interest of all members. The disputants have not attended the General Body Meeting dated 08/10/2024 therefore, they cannot comment upon the conduct of General Body Meeting dated 08/10/2024.

15) Considering the pleading, documentary evidence produced on record and after hearing both the parties, the Ld. I/c. Judge, Co-operative Court No.II, Mumbai has allowed the interim relief application filed below Exh.5.

16) Aggrieved by the said order, the present appeal has been filed by the appellant/original opponent society, on the grounds more specifically mentioned in the appeal memo, mainly on the ground that the order passed by the Ld. Trial Court is not legal and valid and it suffers from serious infirmity and therefore, interference of this Court is required.

17) Appellant submitted that the dispute is in respect of rehabilitation of slum dwellers. Therefore, the Co-operative Court has no jurisdiction to try and decide the dispute. SGBM was held as per order passed by AGRC which is the appellate authority u/sec. 35(1A) of the Slum Act. Therefore, the said SGBM held in pursuant to circular No.169 issued by CEO, SRA, the provision of Slum Act is applicable, and it cannot be stated that SGBM held on 08/10/2024 is touching to the business of society. Hence, dispute is not maintainable. The disputants have not challenged the orders passed by the Assistant Registrar, C.S., SRA. The SGBM was held for appointment of new developer as per direction of Hon'ble AGRC who has passed the order u/sec.35(1A) of Slum Act. Disputants cannot challenge the SGBM dated 08/10/2024 or

resolutions passed by society and the only relief they can claim is permanent rehabilitation in the SRA Scheme on the said property.

18) The disputants are the persons who have been put up by vested interest persons and the previous developer who has been legally removed. The disputants have filed Writ Petition No.7444 of 2025 wherein, the documents filed along with this dispute were filed along with the Writ Petition.

19) The dispute is filed only with the intention to delay the development scheme which is for rehabilitation for around 1000 slum dwellers. Some of the slum dweller's structures have been demolished. The disputants are trying to safeguard the interest of previous developers and trying to fight the proxy war to delay the SRA scheme. The SGBM dated 08/10/2024 and resolutions passed therein is legal and does not suffer from any illegality or irregularity.

20) In response to the summons/notice issued by this Court, respondents/original disputants appeared through advocate and objected to the grounds raised in the appeal memo by filing reply at Exh.19 and submitted that present appeal is frivolous and has no any merit. The impugned order passed by Ld. Trial Court is correct and legal and hence, appeal be dismissed.

21) The respondents have filed application at Exh.22 and prayed for direction against the society to produce on record the copy of Bye-laws of the opponent society. This application was allowed by order dated

09/03/2026 and the appellant has filed on record the copy of Byelaws along with list Exh.23 dated 13/04/2026.

22) Heard Ld. Advocate Shri. Nikhil S. Rajeshirke for appellant and Ld. Advocate Smt. Sana Khan i/b. SNG Partners for respondents, at length.

23) Ld. Advocate for the appellant relied upon case laws as per list Exh.21.

24) Ld. Advocate for the respondents relied upon case laws as per list Exh.25.

25) I have gone through the case laws relied upon by Ld. Advocate for Appellant and Ld. Advocate for Respondents.

26) Considering the pleadings, documentary evidence produced on record, the reasons assigned by the Ld. Trial Judge, the grounds raised by the appellant in the appeal memo and after hearing both sides, following points arose for my determination and I give my findings thereon supported with reasons recorded below :-

| | <u>POINTS</u> | <u>FINDINGS</u> |
|----|--|------------------------|
| 1. | Whether prima-facie case lies in favour of disputants? | ... In the negative |
| 2. | Whether balance of convenience lies in favour of disputants? | ... In the negative |
| 3. | Whether an irreparable loss would cause to disputants, if injunction as prayed for is not granted? | ... In the negative |
| 4. | Whether the impugned order passed by the Ld. Trial Court is in accordance with | ... In the negative |

| | | |
|----|--|------------------------|
| | law ? | |
| 5. | Whether interference of this Court is required in the impugned order ? | ... In the affirmative |
| 6. | What order ? | ... As per final order |

REASONS

As to Point Nos.1 to 5:

27) In the Appeal memo Ld. Advocate for the appellant has objected the jurisdiction of the Co-operative Court in the light of Section 42 of the Maharashtra Slum Area (Improvement, Clearance and Redevelopment) Act, 1971. Ld. Advocate for the appellant and Ld. Advocate for the respondents argued on the point of jurisdiction. During the course of argument it transpired that the application under Order 7 Rule 11 (d) of the Code of Civil Procedure (CPC) is pending before the Ld. Trial Court and the appellant/original opponent society prayed for rejection of the dispute application on the ground of bar of jurisdiction of the Co-operative Court. The issue of jurisdiction is pending before the Ld. Trial Court and Ld. Trial Court has not decided application filed by the opponent society under Order 7 Rule 11 (d) of the CPC. In this situation, in my view, it is not proper to this Court to comment on the point of jurisdiction as the Ld. Trial Court is seized with the issue of jurisdiction. Let the Ld. Trial Court decide the point of jurisdiction.

28) It is admitted fact that appellant is a co-operative housing society of the slum dwellers. The property of the appellant society is declared as

slum under the Slums Act and the provisions of Slums Act is applicable to the property of appellant society and its members. It is also admitted fact that initially for the development of property of appellant society, the developer was appointed. Said developer was removed. The Apex Grievance Redressal Committee in Application No.177/2021 by order dated 18/03/2024 has permitted the appellant society to appoint new developer of its choice as per Rules, Regulations and Policy of SRA. Copy of this order is filed on record at page No.287.

29) From perusal of Circular No.169 issued by CEO, SRA dated 31/12/2015, as per clause (e) of the circular it is specifically mentioned that the General Meetings called by SRA should be conducted as per procedure mentioned in Annexure-C of the circular. In Annexure-C point No.1 is in respect of appointment of Authorised Officer to conduct the General Body Meeting. The General Body Meeting should be called by the Authorised Officer. The Assistant Registrar, C.S., SRA has appointed Shri. H. R. Gawade, Co-operative Officer, Grade-II, SRA, Mumbai as Authorised Officer to conduct the General Body Meeting of the appellant society. In the said order, it is specifically mentioned that the General Body Meeting is to be conducted for appointment of new developer and Architect. This General Body Meeting is ordered to be called to ascertain the consent of eligible slum dwellers. As per this order dated 20/08/2024, the Authorised Officer has issued the notice dated 23/09/2024 and the General Body Meeting is conducted on

08/10/2024. The Authorised Officer has submitted the report of the meeting. From perusal of the copy of proceeding of this meeting filed on record at page 81, it is seen that the total slum dwellers are 677. The 167 slum dwellers have allotted the tenements and now remaining 510 eligible slum dwellers out of which total 266 eligible slum dwellers have attended the meeting and by majority of 265 slum dwellers, M/s.Vashist Infra Reality LLP has been appointed as new developer and M/s.Rajesh Kadam Associates has been appointed as Architect by majority of 266 eligible slum dwellers.

30) As per section 47 of the SRA Act, the provisions of SRA Act will prevail upon other laws.

31) The Assistant Registrar, C.S., SRA has submitted report to the Executive Engineer, SRA dated 14/10/2024 wherein it is informed that the developer and Architect is appointed by majority of 51.96% and 52.12% eligible slum dwellers.

32) From perusal of the copy of Byelaws particularly Bye-law No.103 it is seen that the quorum for SGBM is 2/3rd or 20 members whichever is less.

33) The notice for SGBM dated 08/10/2024 issued by the Authorised Officer as per order passed by Assistant Registrar, C.S., SRA. The SGBM dated 08/10/2024 is attended by 266 members. As such, it is prima facie seen that the notice to the meeting dated 08/10/2024 is legally issued by the Authorised Officer and the quorum for meeting

dated 08/10/2024 is fulfilled in the light of Bye-law No.103 of the Bye-laws of the appellant society and there is requisite quorum for the meeting. In the SRA Act, there is no any bar to convey the SGBM within six months from the date of adjournment. It is prima facie seen that the meeting dated 08/10/2024 is legally conveyed by the appellant society as per Circular No.169 dated 31/12/2015 issued by the CEO, SRA and it is also prima facie seen that the resolution passed in the meeting dated 08/10/2024 is passed by overwhelming majority of the members who are present to the meeting and by more than 51% total eligible slum dwellers. As such, it is prima facie seen that resolution passed in meeting dated 08/10/2024 is legal.

34) Ld. Trial Court has lost the sight of the matter and relied upon guidelines issued by the Department of Co-operation, Marketing and Textile, Maharashtra State dated 04/07/2019 under section 79A of the MCS Act, 1960 and failed to see that the development of the property of appellant society is governed by the Slum Act and not by the MCS Act. Therefore, Guidelines/Circular dated 04/07/2019 is not applicable to the case in hand. Hence, the impugned order passed by the Ld. Trial Court is not legal and proper and if this order is not set aside then the development of the property of appellant society will stand still and this will amount to irreparable loss to all members of the appellant society and all eligible slum dwellers who are rigorously waiting for allotment of their new tenements.

35) Therefore, it is held that prima facie case and balance of convenience is not in favour of the disputants and interim injunction as prayed for is not granted then the disputants will not suffer from any loss. Ld. Trial Court has not considered all these aspects in their proper prospective and came to the wrong conclusion. Hence, interference in the impugned order by this court is required.

36) In view of above discussion, I answer point Nos.1 to 4 in the negative, point No.5 in the affirmative and in answer to Point No.6, I proceed to pass the following order.

ORDER

1. A.O. No.45 of 2025 is allowed.
2. The impugned order dated 09/05/2025 passed by Ld. I/c. Judge, Co-operative Court No.II, Mumbai below Exh.5 in dispute No. CC/II/178/2025, is set aside.
3. Application Exh.5 filed by the disputants in dispute No.CC/II/178/2025, is hereby rejected.
4. Parties to bear their own cost.

Mumbai
29th April, 2026

(A.S. Wanve)
Member-2,
Mh.State Co-operative Appellate Court,
Mumbai

After pronouncement of the order, Ld. Advocate for the respondents requested for stay to this order passed in A.O. till next date fixed by the Ld. Trial Court in dispute No.CC/II/178/2025. The Ld.

Advocate for the respondents submitted that next date in the dispute is 06/07/2026.

By this order A.O. No.45 of 2025 is finally disposed of and it is held that the disputants have no prima facie case and balance of convenience in their favour and if the interim injunction is not granted, then they will not suffer any irreparable loss. On the contrary, if any order is passed against the opponent society, then that will amount to irreparable loss to all the members of the society and eligible slum dwellers including these disputants. Hence, request for stay of order passed in A.O. No.45 of 2025, is rejected.

Mumbai
29th April, 2026

(A.S. Wanve)
Member-2,
Mh.State Co-operative Appellate Court,
Mumbai

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT /ORDER.”

29/04/2026
UPLOAD DATE

(A. S. SAWANT)
NAME OF STENOGRAPHER

| | |
|---|--|
| Name of the Judge (with Court Room No.) | Shri. A. S. Wanve (C.R. No.2) Member-2 |
| Date of pronouncement of Judgment/Order | 29/04/2026 |
| Order signed by P.O. on | 29/04/2026 |
| Order uploaded on | 29/04/2026 |