

ORDER BELOW APPLICATION FOR STAY

- 1) Heard Ld Advocates for the disputant and opponent. Perused application, say and the correspondence between the member, disputant, society, MCGM and Deputy Registrar.
- 2) Disputant contended that present application is being filed for challenging resolution passed in the SGBM dated 06/03/2022 passed by the society. Initially, the disputant has made complaint in regard to the construction activity of the toilet started by Chairman and Secretary of the society just below flat No.103 of the society. The present disputant compelled to make complaints to the Municipal Corporation of Greater Mumbai on 05/07/2021.
- 3) The MCGM issued show cause notice dated 11/08/2021 to the Chairman and Secretary of the society. They failed to respond by giving reply to the MCGM. Neither they appeared before the MCGM. Hence the designated officer of MCGM passed order No.126399 dated 07/09/2021 declaring the said illegally constructed toilets as unauthorised work and directed the Chairman and Secretary to remove the said illegal structure within 7 days from the order. However, said illegal structure was not removed for almost 5 months from the date of passing of order. The act of construction of toilet was illegal, without permission of MCGM and it was wastage of society funds for an illegal and unauthorised structure and as per the whims and fancies of society officials, the funds collected by the members are wasted. In AGM dated 23/09/2021 the Managing Committee had given approval of construction.
- 4) On failure of the society, the MCGM has taken suo-moto action and demolished said toilet on 09/02/2022. After that the society called SGM

on 06/03/2022 and discussed the subject and demolition of toilets on account of complaint of the disputant. It was discussed in the meeting that the disputant is responsible for the demolition of toilet and is liable to bear cost of construction of the said illegal toilet. At the last SGM illegally decided to recover all the expenses of illegal construction of said toilet from the disputant by adding cost of compensation to the society maintenance bill to be generated for the quarter April, 2022 to June, 2022. The Managing Committee officials further threatened the disputant to expel from the membership of the society and cancelled their share of the society.

5) The society filed replies at Exh.12 and contended that the present disputant without raising issue with the society has made complaint to the MCGM directly and also to the Deputy Registrar of the societies. It is not correct that society did not respond to the show cause notice and other notices issued by MCGM officers. The society replied to notice on 17/09/2021. As per the IOD permission issued by MCGM, it was responsibility of the MCGM and Developer to provide temporary sanitary accommodation for the society household workers, visitors, Drivers and Security Guards. The society has not carried out any illegal construction. It was temporary sanitation facility for urinal by putting tiles, water taps, doors to one of the ducts of building. On the complaint of the disputant the MCGM official without verifying factual and legal position and also reply of the society demolished the structure of the society which caused heavy financial loss to the society.

6) After considering rival submissions of the parties following three points are framed by me and answered with the following discussion.

: 3 :

Dispute No.CC/II/285/2022
Kundan Arvind Raithatha & Ors.

Vs.

Neelam Nagar 11-D CHS Ltd. & Ors.

Sr. No.	Points	Findings
1.	Does the disputant prove prima-facie : ... Yes. case in his favour?	
2.	Does the balance of convenience lies : ... Yes. in favour of the disputant?	
3.	Does disputant suffer irreparable loss : ... Yes. if the application is rejected?	
4.	What order ?	:Application is Allowed.

REASONS

AS TO POINT NOS.1 TO 3:

7) I have gone through various correspondence, letters, submissions of the society and the photographs filed by the society on record. Admittedly, there has been no valid sanction for the construction of toilet in the duct of the society building. The society is supporting construction of toilet on the rise of resolution passed in AGM dated 22/05/2021. It is stated by the society that in the said meeting disputant raised objection for making temporary arrangements for toilet in the society. However, said resolution has been unanimously passed by the members of the society who were present in the meeting and importantly the disputant did not cast his vote against said resolution. Hence it cannot be said that said toilet was illegal and without permission, approval of the society members.

8) The society is blaming the disputant because disputant without any letter or communication to the society directly made complaint to the Deputy Registrar and also to the officers of MCGM.

9) The thing which is illegal cannot be legalized by the approval of members of the society. There has been a specific procedure for construction of any structure within the jurisdiction of MCGM. If the permission of MCGM is not obtained for any construction, it amounts to illegal construction. Unless and until this construction is ratified by due procedure of law it will become as illegal structure. Even though disputant has made direct complaint there will be no change in non following the procedure provided by law. As per the disputant, this temporary toilet causes sanitary problems in the premises of the society. The disputant stated that the dirty water of said toilet is flowing and logging which is below the disputant's flat. Because of this hygiene issues were arisen on the family of the disputant consisting senior citizen and small children would cause serious illness. Due to the unhygienic condition this would cause irreparable loss to the disputant.

10) It was incumbent on the part of the society to obtain proper permission from the respective department of MCGM before rising the construction in the duct of the society building. The resolution passed by the society though it is majority decision can be treated as an arbitrary and unreasonable. The disputant cannot be blamed for putting or not putting against vote for that resolution. He has not willfully approved of the passing of resolution though resolution is illegal and arbitrary. The society official had adopted wrongful method for construction of toilet which is illegal activity and cannot be tolerated. The society should think before taking such illegal activity and presume consequences of such. There is no prima-facie case and balance of convenience in favour of the society. On the contrary nuisance is caused to the disputant due to such

: 5 :

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construction of toilet. In view of this discussion, I answer point nos.1 to 3 in the affirmative and in answer to point no.4, I pass the following order:-

ORDER

1. Application is Allowed.
2. The impugned resolution passed in the SGBM dated 06/03/2022 passed by the society is stayed till disposal of the dispute.

Sd/-

Mumbai
Date : 19/08/2022

(D. S. Pisal)
Judge,
Co-operative Court No.2, Mumbai.

: 6 :

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CERTIFICATE

I affirm that the contents of PDF file order are same word for word as per original order.

Name of the Steno

Smt. A. S. Sawant
(Lower Grade Stenographer)

Court Name

Shri. D. S. Pisal, Judge,
Co-operative Court No. 2, Mumbai.

Order dictated on

05/08/2022

Order transcribed on

08/08/2022

Order checked and signed by PO

26/08/2022

Order uploaded on

26/08/2022