

MHCO120000782025



**THE HON'BLE JUDGE, CO-OPERATIVE COURT NO.2
PUNE.**

(PRESIDED OVER BY Smt. V. A. MAKANDAR)

Dispute No:- 60/2025

**Sind Hindu Cooperative
Housing Society Ltd.**

:-Disputant

V/s

**Mr. Suhel Singh Niranjana Singh
Ghai And Others.**

:-Opponents

ORDER BELOW EXH.5

(Passed on 10/04/2026)

1. The Disputant has filed the present dispute against the Opponents seeking a declaration and permanent injunction in respect of Plot No. 11. By way of the present application, the Disputant seeks to restrain the Opponents from carrying out any construction on the said plot.

2. The ld. advocate for the applicant submitted that the opponents have proposed to commence construction of a commercial and non-residential nature on Plot No. 11, which is in violation of the applicable Bye-laws, policy of the Society, and the terms of the Lease Deed.

3. It is submitted that the Disputant Society had its layout sanctioned by the competent authority and accordingly developed and demarcated various plots for allotment to its members exclusively for the construction of bungalow-type residential structures. Pursuant to such allotment, the Society has from time to time executed registered Lease Deeds for long terms in favour of its members in respect of the respective plots.

4. It is further submitted that members of the Society have constructed bungalows on their respective allotted plots for residential occupation of themselves and their families. Plot No. 11 was originally allotted to Smt. Lilavati Gyanchand Baharani, under the Lease Agreement dated 19/10/1966, who constructed a bungalow on the said plot. Thereafter, the said plot was transferred to Smt. Indumati Prataprai Shah and Shri Mahendrakumar Prataprai Shah, in whose favour a Lease Deed dated 03/04/1975 was executed. Subsequently, the said plot was transferred to Mrs Savita Rasiklal Gandhi, who became a member of the Society and constructed a bungalow comprising ground and upper floors along with a garage on the said plot, pursuant to a Lease Deed dated 18/12/1989 executed in her favour.

5. Thereafter, Mrs. Savita Rasiklal Gandhi gifted Plot No. 11 to Mr. Dilip Rasiklal Gandhi by Gift Deed dated 27/10/2017, pursuant to which he became a member of the Society and held the said plot as lessee/assignee of leasehold rights under the Lease Deed dated 18/12/1989. It is further submitted that Mr Dilip Rasiklal Gandhi thereafter transferred Plot No. 11

along with the existing bungalow by Deed of Assignment dated 25/03/2021 in favour of Opponent Nos. 1 and 7 and Late Shri Harminder Singh Ghai (father of Opponent Nos. 2 to 6), thereby assigning leasehold rights derived under the Lease Deed dated 18/12/1989. The said transfer was effected without obtaining prior consent, permission, or No Objection Certificate (NOC) from the Society, and the Opponents sought membership even prior to completion of due procedural formalities by approaching the Deputy Registrar.

6. It is also submitted that during the relevant period, an Authorised Officer was appointed by the Deputy Registrar to oversee the election process and manage the day-to-day affairs of the Society. The said Authorised Officer functioned from 11/05/2022 to 06/03/2023 and was not empowered to take any policy decisions affecting the rights of members of the Society. During this period, the Opponents were admitted as members pursuant to the order of the Registrar and their names were accordingly entered in the Share Certificate on 18/07/2022 and reflected in the records of the Society.

7. It is further submitted that the Authorised Officer had called upon the Opponents to submit proposed construction plans and comply with the Bye-laws of the Society. However, by letter dated 27/06/2022, the Opponents stated that they would obtain permission at the time of construction and that no undertaking was required. Thereafter, by letter dated 18/07/2022, the Authorised Officer reiterated that the Opponents were bound to comply with the Bye-laws, Rules, and Regulations of the Society and were required to obtain a

No Objection Certificate (NOC) prior to submission of building plans to the Pune Municipal Corporation. The Opponents were also directed to construct only a residential unit and to furnish the prescribed undertaking. By further communication dated 11/07/2022, the Authorised Officer again clarified that obtaining NOC from the Society prior to seeking municipal sanction was mandatory and reiterated that only residential construction was permissible on Plot No. 11. Despite these repeated directions, the Opponents neither applied for the requisite NOC nor submitted the required undertaking.

8. It is submitted that the office bearers of the Disputant Society came to know that the Opponents intended to commence construction on Plot No. 11 after the Opponents submitted building plans to the Pune Municipal Corporation. Upon perusal of the building plans, it is evident that the Opponents intend to construct a multi-storied structure with mixed residential and commercial use.

9. The Managing Committee, in its meeting dated 05/01/2025, resolved to cancel the said NOC, and objected to the building plans. Accordingly, a communication dated 09/01/2025 was issued to the Opponents. The Opponents replied on 21/01/2025. The Society also issued objections to PMC on 06/01/2025 and 10/01/2025, seeking suspension of the plans, and issued notices to the Authorised Officer also.

10. The Opponents are attempting to bypass the Society's mandatory procedures and restrictions. As construction has not yet commenced, it is necessary to restrain them to prevent irreversible change of user. Their actions are contrary to the

Act, Rules, Bye-laws, and Lease Deed, and are mala fide in nature.

11. The ld. advocate for the opponent filed its say vide exhibit 11. It is submitted that the dispute filed by the Disputant Society is not maintainable in law and is liable to be dismissed with costs. The Disputant Society has filed the present dispute with mala fide intention to harass the Opponents and has suppressed material facts necessary for adjudication.

12. It is submitted that Plot No. 11 was originally allotted to Mrs. Lilawati Gyanchand Baharani under an agreement dated 19/10/1966. Thereafter, she agreed to transfer the said plot to Mrs Indumati Prataprai Shah and Mr Mahendrakumar Prataprai Shah, who were admitted as members vide resolution dated 27/03/1975, and lease surrender and assignment deeds were executed and registered on 03/04/1975. Subsequently, Mrs Savita Rasiklal Gandhi acquired leasehold rights in 1989 under a registered deed dated 18/12/1989, and her name was mutated in the property records and share certificate issued in her favour. Thereafter, she transferred her rights along with the structure to her son, Mr Dilip Rasiklal Gandhi, by registered gift deed dated 27/10/2017, and his name was accordingly mutated with issuance of share certificate.

13. It is further submitted that in the year of 2020, Mr Dilip Gandhi proposed the transfer of the said plot to Mr Suhel Singh Ghai, Mr Harminder Singh Ghai and Mr Harbhajan Singh Ghai. The Society initially declined NOC, citing multiple

ownership concerns and suggesting a single-member holding. Despite objections, the Opponents proceeded with the acquisition and a registered assignment deed dated 25/03/2021 was executed in their favour. However, the Society refused to process membership on the grounds of non-submission of an undertaking restricting use to residential purposes, compelling the Opponents to approach the Deputy District Registrar, Pune. During pendency, the Society again rejected cheques and delayed admission, leading to proceedings under Section 23 of the Maharashtra Co-operative Societies Act. Ultimately, by order dated 13/06/2022, the Registrar directed admission of Opponents as members and issuance of share certificates, which was accordingly complied with on 18/07/2022 by the Administrator/Authorised Officer.

14. It is submitted that the Society's requirement of undertaking restricting usage to residential purposes is contrary to Bye-law 19(a)(4), and no such restriction is legally enforceable. The Opponents have always intended to use the plot for residential as well as commercial purposes, particularly as it is road-facing and similarly situated plots are already being commercially used. It is further submitted that thereafter, the Opponents obtained NOC for demarcation and mutation, and submitted building plans to PMC seeking NOC for the construction of residential-cum-commercial structure. After due scrutiny, the Administrator/Authorised Officer issued an NOC dated 13/01/2023 permitting submission of such plans.

15. The Opponents contend that the Society's objections are arbitrary, discriminatory, and mala fide, particularly when other road-facing plots such as Plot No. 12B and Plot No. 35B are being used for commercial purposes without objection. The Society has selectively targeted the Opponents despite permitting similar usage elsewhere, thereby acting inconsistently and estopped from objecting.

16. It is submitted that on bare perusal of the clauses of the Lease Deed dated 18/12/1989, it is evident that the Opponents are in compliance with all the relevant conditions. Further, the NOC and building permissions are in consonance with the prevailing rules, regulations, and statutory provisions in force, and therefore there are no impediments arising under the Lease Deed. It is further submitted that on perusal of Bye-law No. 75(d), there is no absolute restriction on use of the plot, and any change of user is permissible with prior written permission of the Managing Committee. In the present case, such permission has been granted by the Society/Authorised Officer for construction of residential-cum-commercial building, and therefore enforcement of Bye-laws in the present facts does not arise.

17. It is further submitted that as per the settled legal position, once an Administrator/Authorised Officer is appointed by the Registrar, he steps into the shoes of the Managing Committee and is empowered to exercise all administrative powers, including the issuance of NOC. It is a matter of record that a similar NOC has also been issued in respect of Plot No. 30A, thereby establishing consistency in the

exercise of such authority. It is further submitted that the present dispute and application suffer from delay and laches and are therefore not maintainable.

18. It is further submitted that the appointment and acts of the Administrator/Authorised Officer are valid and binding under Section 77A of the MCS Act, and have never been challenged. Therefore, the NOC issued by him is lawful and cannot be questioned at this stage. The Opponents further submit that the Society's present dispute is an afterthought, filed with mala fide intent to extract money, as evidenced by demands for monetary deposits for issuance of NOC. The conduct of the Society demonstrates arbitrariness, suppression of facts, and selective enforcement of rules. The opponents have invested substantial amounts, followed due process, and acquired legal rights in the said plot. Balance of convenience lies in their favour, and irreparable injury will be caused if construction is restrained, whereas no prejudice will be caused to the Society.

19. In view of the above, the Opponents submit that the Disputant Society has failed to make out any prima facie case. The present application suffers from delay, laches, and estoppel. The Society is not entitled to any equitable or injunctive relief, and the application deserves to be dismissed with costs.

20. Perused record and proceeding, on-going through the contentions and submissions of the disputant and opponent the following points arise for my determination, and I record my findings thereon with reasons as under.

Sr. No.	POINTS	FINDINGS
1.	Whether the applicant proves a prima facie case in its favour?	Affirmative
2.	Whether the applicant proves a balance of convenience in its favour?	Affirmative
3.	Whether applicants will suffer irreparable loss if a stay is not granted?	Affirmative
4.	What order?	As per the final order.

REASONS

21. As points nos. 1 to 4 are correlated and interlinked with each other, for the sake of convenience and to ensure brevity, these are taken up together summarily to avoid repetition.

22. I have narrated the case of the disputant and opponent therefore no need to repeat the same. Ld. Counsel for the disputant argued as per the pleadings.

23. For the grant of a temporary injunction, the applicant must satisfy the Court that:

- (i) there exists a prima facie case;
- (ii) the balance of convenience lies in his favour; and
- (iii) he is likely to suffer irreparable loss.

PRIMA FACIE CASE

24. On perusal of the dispute and the material placed on record, it transpires that it is the case of the disputant that the disputant Society is a tenant-ownership bungalow-type housing society wherein all plots are allotted and used exclusively for residential purposes and are not permissible for commercial use, as is evident from the Lease Deed. However, the Opponents have obtained sanction of building plans for both residential and commercial use, which is prima facie illegal, arbitrary, and contrary to the Bye-laws of the Society.

25. It is further submitted that the Administrator of the Society, Mr. Vikram Dongre, has acted without authority in issuing the purported No Objection Certificate (NOC), as the said Administrator, appointed by the Deputy Registrar only to manage the day-to-day affairs of the Society, is not empowered to take policy decisions affecting the rights of members. Hence, any such NOC issued in favour of the Opponents is illegal, void, and unenforceable in law. The learned Advocate for the Opponents has denied these contentions. Therefore, for the purpose of determining whether a prima facie case is made out, the following aspects require consideration. (i) the terms of the Lease Deed; (ii) the Bye-laws of the Society governing transfer and permissible use of plots; and (iii) the legality and validity of the decision taken by the Administrator, Mr Vikram Dongre, in issuing the impugned NOC.

(i) Terms of the Lease Deed

26. On a careful perusal of the Lease Deed dated

03/04/1975 executed in respect of Plot No. 11, it transpires that Clause 6 provides the lessee with a right to construct, demolish, or repair structures on the plot without requiring prior permission from the Society. The Opponents upon this clause to contend that, in the absence of an express restriction on user and in the absence of a specific prohibition against commercial construction, they are entitled to undertake mixed-use development subject to sanction from the Pune Municipal Corporation

27. However, such a contention cannot be accepted prima facie. The Lease Deed cannot be read in isolation, particularly on that word only. It must be construed in light of the object and purpose of the disputant Society, which is a tenant-ownership bungalow-type housing society, the society is the owner of the said plots, where plots have been allotted exclusively for residential use. The material placed on record like undertakings given by the members to the society, letter issued by the administrator of the society to the members and clauses mentioned in the lease deed prima facie establishes that the allotment was a residential occupation alone. In this context, the sentence construed in the lease deed i. e. "right to construct a building" as appearing in Clause 6 cannot be directly permitted to undertake commercial construction.

28. It is further contended by the ld. advocate of the opponent that from the agenda of the Annual General Meeting dated 25/06/2023 (Agenda Item No. 4), it is evident that the Society itself has resolved to charge additional maintenance of Rs. 15,000 per month for commercial plots, thereby indicating acceptance of commercial use. It is also submitted that various

other plot holders in the Society are allegedly using their plots for commercial purposes to the knowledge of the Society, and that even charges have been levied in respect of such usage, thereby amounting to acceptance and ratification of commercial activity within the Society. It is further contended that no action has been taken by the Society against such users, and on the contrary, higher maintenance charges are being recovered, which, according to the Opponents, demonstrates implied permission for commercial use. The Id. Advocate for the opponent also placed his Reliance on the AGM draft dated 25/09/2022 (Agenda Subject No. 4), wherein it is stated that to the levy of Rs. 15,000 per month for non-residential use, to contend that commercial or non-residential usage is recognised within the Society.

29. However, on a perusal of the said AGM report itself, it is clearly mentioned that the said amount is imposed as a penalty for non-residential use and not as approval, permission, or regularisation of such use. Therefore, the said amount levied cannot be construed as recognition or ratification of commercial activity within the Society. Accordingly, any attempt by the Opponents to carry out commercial construction is prima facie contrary to lease deed .

(ii) Bye-laws of the Society

30. As per Bye-law 75(d) of the Society, no member shall use the plot for any purpose other than that specified in the allotment letter without prior written permission of the Managing Committee. This provision clearly mandates that the use of plots is not absolute but is strictly regulated and controlled by the Society in accordance with its object. Thus,

members are bound by the purpose for which the plot has been allotted, and any deviation therefrom, in the absence of prior approval, constitutes a clear breach of the Bye-laws.

31. In the present case, the material on record prima facie indicates that Plot No. 11 was allotted for residential use, and there is no evidence to show that any prima facie valid permission has been granted by the Managing Committee or the General Body permitting commercial use. In such circumstances, the proposed use of the plot for commercial purposes is in direct contravention of the Bye-laws.

(iii) *NOC issued by the Administrator*

32. In the present case, an NOC dated 13/01/2023 has been issued by the Administrator, Mr Vikrant Dongare, purportedly permitting the construction of a building for both residential and commercial use. The learned Advocate for the Opponents has contended that issuance of such NOC is merely a routine administrative act not requiring any approval of the General Body, and that under Section 78(4) of the Maharashtra Co-operative Societies Act, 1960, the Administrator was duly empowered to take such action, particularly in view of alleged past instances of commercial use of certain plots.

33. However, the said contention is prima facie not acceptable. Although Section 78(4) empowers an Administrator to manage the affairs of the Society, such power is confined strictly to day-to-day administration and cannot be extended to taking policy decisions which affect the rights of members. The grant of an NOC permitting commercial construction is not a routine or ministerial act, but a decision

having far-reaching consequences, as it directly impacts the nature and use of the property, the rights and obligations of members of the Society. Such a decision squarely falls within the exclusive decision of the General Body, and its approval is mandatory.

34. The applicant has relied upon the judgment *Madhav Nagar Cooperative Housing Society Ltd. v. Joint Registrar*, AIR ONLINE 2019 GUJ 394, wherein it has been discussed in para 46 that,

Even if there is no objection certificate issued by the society, the competent authority of the corporation, as the case may be, is duty-bound to give notice to the society so that if the society has anything further to say in the matter, they can put forward their case or objection.

35. Further, the Hon'ble Supreme Court in *Zoroastrian Cooperative Housing Society Ltd. v. District Registrar*, AIR 2005 SC 2306, recognises the supremacy of the General Body in matters of internal governance of a co-operative society.

36. In the present case, it is prima facie observed that the impugned NOC has admittedly been issued without convening any General Body Meeting and without obtaining consent or approval of the members. The submission made by the opponent on the point that the other members also have commercially constructed in the past is also prima facie untenable, as such instances, even if assumed, do not create any legal right, nor do they confer authority to continue further illegality. Therefore, prima facie, the issuance of the impugned NOC by the Administrator is beyond the scope of

powers conferred under Section 78(4) of the Act.

(iv) Relied Documents

37. Upon perusal of the documents filed by the Applicant along with Exhibit 3, it prima facie transpires that the Minutes of the Managing Committee Meeting of the Society dated 04/07/2021 specifically Agenda subject No. 2, wherein the title and interest regarding plot no. 11 of the concerned members specifically mentioned for residential use only. Thereby clearly establishing that the plot was intended to be dealt with only for residential purposes.

38. Further, the record reveals that the Society has, from time to time, issued communications through letters to the concerned members consistently reiterating that Plot No. 11 is meant exclusively for residential use. The undertakings obtained from successive members also stipulate that the plot shall be used only for the purpose for which it was allotted and that no change of user shall be effected without prior written permission of the Managing Committee. Those letter and undertakings are on record.

It is also significant to note that, pursuant to the order of the Deputy Registrar, the Administrator, Mr. Vikrant Dongare, upon assuming charge on 11/05/2022, had initially issued communications to the Opponents directing them to obtain an NOC before undertaking any construction and specifically clarifying that, being a residential society, only residential construction would be permissible on Plot No. 11. However, in a complete contrary from the said consistent stand, the very same Administrator subsequently issued the impugned NOC

dated 12/01/2023 permitting submission of revised plans to the Pune Municipal Corporation for construction of a building comprising both commercial and residential use, and also addressed communication to the said authority in that regard. Those documents are on record, along with Exhibit 3. This material contradiction clearly demonstrates arbitrariness and a lack of authority in the decision-making process. The issuance of such NOC is therefore prima facie contrary to the earlier communications, the resolutions of the Society, and the consistent and binding undertaking that Plot No. 11 is to be used exclusively for residential purposes.

39. The reliance placed by the Opponents on the judgments *in Dalip Singh v. State of Uttar Pradesh, (2010) 2 SCC 144, Sajali Kishku v. Talamoyee Kishku, 2019 (3) CAL 514, and The Chairman, State Bank of India v. M.J. James, AIR 2022 SC 582*, As the said decisions are distinguishable on facts and do not deal with the issue of change of user or the scope of powers of an Administrator under co-operative law, and therefore it is respectfully submitted that the ratio laid down therein does not apply to the facts of the present case.

40. Upon consideration of the rival submissions and material on record, it is to be observed that, the Opponents have no prima facie right to undertake commercial or mixed-use construction on Plot No. 11 in view of the Lease conditions, Bye-laws, undertakings given by successive transferees, and the consistent residential uses of the Society, and consequently, the NOC issued by the Administrator permitting such mixed use is prima facie illegal.

Balance of Convenience and Irreparable Loss

41. In the present case, the balance of convenience lies in favour of the Disputant Society. The Society is a bungalow-type tenant-ownership housing society wherein all plots, including Plot No. 11, are admittedly intended and consistently used for residential purposes. If the Opponents are permitted to proceed with or continue construction of a mixed-use structure comprising commercial activities, the same would alter the nature of the Society. On the other hand, no irreparable prejudice would be caused to the Opponents if they are restrained from undertaking such commercial or mixed-use construction, as they are free to pursue permissible residential construction in accordance with the Lease Deed, Bye-laws.

42. Conversely, grave and irreparable loss and injury would be caused to the Disputant Society and its members if the Opponents are permitted to continue with the impugned construction based on a prima facie unauthorised NOC issued by the Administrator. Such construction would lead to permanent alteration of the nature of the property, creation of third-party interests, and multiplicity of litigation, which cannot be adequately compensated in monetary terms. Therefore, the Disputant has established that the balance of convenience lies in its favour and that irreparable loss and injury would be caused if the relief sought is not granted. Accordingly, the following order is passed.

ORDER

1. The application is allowed.
2. The Opponents are hereby restrained from carrying out any construction activity on the suit plot No. 11 and from creating any third-party rights or interest therein in any manner whatsoever, either directly or through their agents, servants, representatives or any person acting on their behalf till the final decision of the dispute.
3. No order as to costs.

(Smt. V. A. MAKANDAR)

Date: 10/04/2026.

Judge,

Place: Pune

Co-operative Court No.2, Pune