

MHCO120001162023



IN THE COURT OF HON'BLE JUDGE CO-OPERATIVE
COURT NO.2 PUNE AT. PUNE

Dispute No.102/2023

Mr. Amrut Mhaske

----- Disputant

V/s.

Bramha Suncity Co-operative Housing Society Ltd.

-----Opponent

ORDER BELOW EXH.05

(Dictated and Pronounced on 20/10/2023)

1] This is an application filed by the disputants for temporary injunction against opponent society in terms of restraining order from acting upon and giving effect to the resolution No.3 passed in the Managing Committee Meeting dated 12/03/2023 about revocation of POA. On the grounds more specifically mentioned in the application Exh-05. Mainly on the ground that, the General Body Meeting dated 14/10/2018 by majority confirmed the terms of arrangement between the builder / promoter. Further, the General Body authorized the then Managing Committee to execute the document of conveyance and other related documents by mutual consent and withdraw all pending litigation's.

2] As per decision of General Body and as per authority vested by the General Body the Managing Committee has finalized draft of conveyance deed and other supplementary documents in various meetings. The Managing Committee and subcommittee get the draft of conveyance deed along with draft of POA verified from the panel advocate of society and accepted the same.

3] Thereafter, the conveyance deed of the property is executed on 24/10/2018 which is duly registered in the office of Sub-Registrar, Haveli No.8 Pune at Sr. No. 7901/2018 on 29/10/2018. Further, both parties

have also executed POA on 24/10/2018 which is duly registered with the office of the Sub-Registrar, Haveli No.8 at Pune at Sr. No. 7903/2018 on 29/10/2018. Those documents are executed in view of said General Body resolution for according to approval to agreed conveyance arrangement and for the empowerment of the Managing Committee to get it completed as per discussion and authority given by the General Body.

4] The said POA is executed by the society in favour of the builder / promoter only for the purpose of stream line the further development and not for any activity within the area of society. Further, the society is restricted to the land conveyed in its favour and not concerned with remaining land. The said POA is concerned with development of any layout, land and it was just formality. Further, the decisions taken and resolution passed in said SGBM dated 14/10/2018 are implemented.

5] The Managing Committee election held in the year 2022, on 01/11/2022 the office bearers are elected.

6] The majority of new managing committee members have instituted several cases against the society and earlier office bearers in their individual capacity challenging the conveyance deed, POA, several resolutions passed by the society etc., when they were not a part of Managing Committee and were not elected.

7] During the tenure the new managing committee members they held several Special General Body Meeting and Managing Committee Meetings and passed resolutions without following due process of law and without authority, passed various important and crucial resolutions having grave financial implications causing financial loss to the society.

8] Several complaints were filed against the above Managing Committee and lastly the Deputy Registrar C. S. Pune city-5 by order dated 26/05/2023 disqualified about 16 Managing Committee Members for the period of five years. Further, by order dated 29/05/2023 the Deputy Registrar appointed authorized officer upon the society in place

of Managing Committee. Various illegal acts and misdeeds committed by the committee members are pointed out in detail in the said order.

9] During the tenure of above Managing Committee from November 2022 to May 2023, they have passed several resolutions which are detrimental to the interest of the society and now those are challenged before this court.

10] By agenda notice dated 08/03/2023 the Managing Committee Meeting of the society was called on 12/03/2023 wherein subject No.3 was discussion on legal case and take appropriate resolutions for required actions. In the said meeting the resolution No.3 shown to have been passed pertaining to cancellation of POA given to the builder by the society in October 2018.

11] At the time of execution of conveyance deed of the society the POA dated 24/10/2018 was executed and registered and the above Managing Committee by passing the said resolution seeks to revoke. It is important to note that, said conveyance deed and POA were duly approved in the General Body Meeting dated 14/10/2018. Any resolution of the General Body cannot be revoked by resolution No.3 of Managing Committee. Further, those resolutions of General Body are already implemented and executed and therefore now those cannot be revoked or cancelled by the Managing Committee. Therefore, the said resolution No.3 of the Managing Committee dated 12/03/2023 is illegal, null and void and required to be set a-side.

12] The said resolution is passed by the above Managing Committee Members only to strengthen their dispute No.106/2021 filed by some of the above Managing Committee Members. Even otherwise the said issue is subjudice in various courts and therefore the Managing Committee have no any right and authority to revoke the same.

13] The disputant has prima facie case and balance of convenience is also in favour of disputant. If the opponent society is not restrained from executing and implementing the said resolution then there would be

multiplicity of proceedings and unnecessary society and members would suffer irreparable loss which cannot be compensated in terms of money. Therefore, it is fit case wherein injunction is required to be granted.

14] The show cause notice of this application is duly served upon the opponent, the authorized officer appointed upon opponent society is appeared through advocate and filed his reply and written statement at Exh-10 and submitted that, at present there is no elected Managing Committee in the opponent society. Ld.DDR by order dated 26/05/2023 removed the then Managing Committee and appointed the Authorized Officer to look after the day to day business and management of the society. The authorized officer partly received the record from the Managing Committee, on the basis of this part record, authorized officer submitted his say. Special General Body Meeting was held on 14/10/2018 wherein the resolution as stated in the dispute is passed. As per the POA the conveyance is already executed and registered in favour of the society and society has acquired right, title and interest in the property mentioned in the conveyance deed.

15] There are several litigation, suits, proceedings is pending in various courts.

16] The Managing Committee of opponent society has passed the resolution in its meeting dated 12/03/2023. The Managing Committee has no power and authority to cancel the resolution passed by the General Body. At any rate, the resolution, which was already executed and implemented, cannot be revoked. On the basis of conveyance deed name of opponent society has been mutated in the Revenue Record.

17] There is no reason for the disputant to file the present dispute as it is settled principle that, the Managing Committee has no right to revoke the resolution passed by the General Body. Therefore, there is no any need to seek any order from this court.

18] It is submitted that after perusal of the conveyance deed dt. 24/10/2018 it appears that the development rights in respect of the subject

layout of 21 H. 5. 04 R situated at S. No.7/1, 7/2, 7/3, 7/4, 7/5, 8/1/1/2, 38A/1B/1 & 38B, Vadgaon Sheri, Pune have been obtained by Brahmacorp Ltd. Thereafter, the said builder appears to have made phase wise development in the said land. Out of said development, as a first phase, the builder has developed a real estate project known as BRAHMA SUBNCITY over a part portion of large layout describe in the said conveyance deed. Thereafter, they have developed second phase identified as BRHAMA SUNCITY SIGNATURE. Both the said projects have been developed on apart portion of said larger layout. Thereafter, the opponent society is formed and registered in respect of both the said projects, which consists of 26 buildings and 1277 flats having total land area admeasuring 69,222.18 Sq. Mtrs. Consuming total and limited potential admeasuring 95,520.54 Sq. Mtrs. Arising out of the larger layout as mentioned in the conveyance deed.

19] It is submitted that, after formation of the opponent society, it was perusing with the said builder for execution and registration of conveyance deed since 2012. However, due to incomplete development on the said larger layout, the builder did not execute conveyance deed. Hence, the opponent society filed an application for deemed conveyance with the competent authority under MOFA bearing No.227 of 2023, which came to be rejected. The opponent society again filed the similar application before the competent authority being No. 1002922/2016, which also came to be rejected against the said order the opponent society preferred writ petition being No.1584 of 2018 before the Hon'ble Mumbai High court. At the same time, the opponent society also filed a RCS No.69 of 2018 before the Hon'ble CJJD, Pune PMC Court. In said suit, the society also sought interim relief, which came to be rejected by the Hon'ble CJJD, Pune vide its order dt. 16/01/2018. After that it appears that a compromise took place between the society and builder, which has been confirmed by the Hon'ble court by passing an order. Thereafter, a SGM of the opponent society took place on 14/10/2018,

wherein resolution came to be passed, which is already referred and filed on record. It is submitted that the then office bearers of the opponent society executed conveyance deed and related documents on 24/10/2018 as per the mandate of the General Body.

20] Considering the pleadings of the parties, following points arose for my determinations, I give my findings thereon supported with the reasons as under;

Sr. No.	Point	Findings
1.	Whether prima facie case is in favour of the applicant?	In the negative
2.	Whether the balance of convenience is in favour of the applicant?	In the negative
3.	Whether applicant will suffer from irreparable loss if, injunction as prayed for is not granted?	In the negative
4.	What Order?	As per final order

REASONS

As to point No.1 to 3:-

21] Heard Ld. Adv. Shri. A. Y. Inamdar for disputant at length.

22] Opponent and their advocate absent when called.

23] The copy of resolution No.3 passed in Managing Committee Meeting dated 12/03/2023 is filed on record. This resolution reads as;

Resolution No.3 :- It is resolved unanimously by the Managing Committee to issue a notice to Bramha Corp., PMC and Public Notice in newspaper for revocation of Power of Attorney given by Ex Chairman and Ex Secretary in Oct.2018

24] It is admitted fact that, as on today no elected Managing Committee is looking after day to day affairs of the opponent society. As per the pleadings of the parties, it is seen that, there are several litigation between the builder / developer M/s.Bramahcorp. Ltd., and the opponent society in respect of conveyance executed on 24/10/2018 is pending in various courts.

25] By filing this dispute disputant wants to challenge the resolution passed by Managing Committee Meeting dated 12/03/2023. This disputant is not the Managing Committee Member on 12/03/2023 or as on today. From perusal of the pleadings of the parties , it is not clear that, after passing of this resolution what steps are taken by the then Management Committee, as per this resolution No.3 dated 12/03/2023. From plain reading of this resolution No.3 passed in Managing Committee Meeting dated 12/03/2023. It is seen that this resolution is not directly and immediately affect any personal right of the disputant. The disputant has no any immediate personal injury if, the resolution No.3 passed in the Managing Committee Meeting dated 12/03/2023 is not stayed. Accordingly, it is held that, prima facie case and balance of convenience is not in favour of the disputant / applicant and if, temporary injunction as prayed for is not granted then, disputant / applicant will not suffer from any loss.

26] In view of above discussion I, answer point No.1 to 3 in the negative and in answer to point No.4 I, proceed to pass following order.

ORDER

- 1] Application Exh-05 is rejected.
- 2] No order as to cost.

Date:20/10/2023

Place: Pune .

(A.S.Wanve)

Judge,

Co-operative Court No.2,Pune