

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST) NO. 6000 OF 2026
WITH
INTERIM APPLICATION (ST) NO. 6001 OF 2026

Mozam Ali Mir

Appellant

.. (Org. Plaintiff)

Versus

The Mumbai Municipal Corporation & Ors.

Respondents

.. (Org. Defendants)

.....

- Ms. Divya V. Parab a/w Mr. Suraj D. Chauhan i/by Ms. Divya V. Parab, Advocates for Appellant
- Mr. Sachin Vajale, Advocate for Respondent Nos. 1 to 3
- Dr. Birendra Saraf, Senior Advocate a/w Mr. Vaibhav Charalwar & Mr. Yash Jain i/by Mr. Yash Jain, Advocates for Respondent No. 4
- Mr. Ashish Kamat, Senior Advocate a/w Mr. Aditya Miskita, Mr. Shiraj Salekar, Ms. Samik Rajput and Ms. Palak Salecha, Advocates for Respondent No. 5

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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 26, 2026

P. C.:

1. Heard Ms. Parab, learned Advocate for Appellant; Mr. Vajale, learned Advocate for Respondent Nos. 1 to 3; Dr. Saraf, learned Senior Advocate for Respondent No. 4 and Mr. Kamat, learned Senior Advocate for Respondent No. 5.

2. Learned Advocates appearing for the respective parties would draw my attention to the twin orders dated 04.03.2026 and 23.03.2026. After hearing the learned Advocates at the bar, *prima facie*, there does not seem to be any dispute whatsoever raised by the

Appellant insofar as the issue of development is concerned though it was so recorded in the order dated 04.03.2026. I need not to go into the specificity for the same for the simple reason that there is substantive Suit pending before the Trial Court in respect of the subject flat No. 601 which is filed by third party against predecessor-in-title of the Appellant. This is a *lis* with which the Appellant is concerned.

3. Insofar as the issue of development is concerned, Mr. Saraf and Mr. Kamat, both the learned Senior Advocates would draw my attention to the fact that out of 22 members of Society, 17 members have already vacated their respective premises. They would further submit that 4 members have agreed to vacate and given letter of undertaking to that effect. Appellant is the 22nd member and because of ad-interim order passed on 04.03.2026, he is yet to vacate.

4. Both the learned Senior Advocates persuade the Court to vacate the ad-interim order primarily because whatever is argued before the Trial Court goes to show that there is no issue with regard to any opposition for redevelopment raised by Appellant. Appellant is duly represented by Ms. Parab. Appellant is also present in Court. In any given case like the present one it is but natural for the litigant to be concerned about the fruits of redevelopment especially when litigants feel that he has substantive right in the suit property / flat. Such is the

case before me. Merely because the Appellant is embroiled in litigation or may be embroiled in litigation with respect to the suit flat with third party will not entitle him to stall redevelopment. There are affidavits which are filed by the Appellant in the Trial Court which *prima facie* show that he has not opposed redevelopment of the Society rather he would join redevelopment. Insofar as the *lis* with respect to entitlement is concerned, it is a separate cause of action. Same should not stall the redevelopment of Society since it affects substantive rights of Society, Developer and all other members and most importantly the time which goes into such redevelopment in today's time and therefore insofar as the Appellant's substantive right is concerned, same will be governed by the decision of this Court in accordance with law which is *prima facie* well settled by the Division Bench of this Court in the case of ***Ritesh Haldar v. Elite Housing LLP and Ors.*** in Commercial Arbitration Appeal (L) No. 14486 of 2025.

5. Be that as it may, today because of the fact that possession of the property is claimed to be with the Appellant, Appellant would be entitled to transit rent but to be on the safer side, it would be appropriate if this Court appoints Court Receiver to visit the subject flat No. 601 tomorrow i.e. on 27.03.2026 and take possession of the flat from the occupant of the said flat and make appropriate report to the Court, only after which this Court will be in a position to pass

further orders regarding transit rent, corpus and all other charges due and payable in accordance with law. Hence Court Receiver of this Court stands appointed for the above exercise.

6. Needless to state that because of this order, the ad-interim injunction which has been granted on 04.03.2026 in paragraph No. 9 thereof stands immediately vacated. There is no embargo otherwise on the Development of the Society. Appellant is directed to cooperate if he claims to be in possession. Though he has shown the key of the said flat to this Court, however that cannot be a case to determine that he is in possession.

7. Court Receiver shall visit the said flat and accordingly take cognizance of the situation and take physical possession of the said flat and accordingly make appropriate report as to from whom he has taken possession so that final order can be passed to dispose of the present Appeal from Order.

8. In fact it is also brought on record that the Appellant has been admitted as member of the society on the basis of registered sale transaction which has been submitted to the Court. So whatever rights of Appellant with respect to corpus or any other benefits are concerned, same would undoubtedly be decided in accordance with law. Insofar as the transit rent is concerned, if Appellant hands over

possession to the Court Receiver tomorrow, appropriate orders will be passed in accordance with law to give transit rent to him.

9. Court Receiver shall act on a server copy of this order. All parties are directed to cooperate with the Court Receiver.

10. Court Receiver shall make appropriate report to the Court before the next date.

11. Stand over to **30th March, 2026** under the caption **“First on Board”**.

Amberkar

[MILIND N. JADHAV, J.]

Digitally signed
by RAVINDRA
MOHAN
AMBERKAR
Date:
2026.03.26
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