

**OFFICE OF THE
MAHARASHTRA STATE
CO-OPERATIVE APPELLATE COURT
Old Secretariat Building Annex,
Ground Floor, Mahatma Gandhi Road,
MUMBAI 400 008**

Presented on - 21.06.2013
Registered on - 24.06.2013
Decided on - 23.08.2013
Duration - Y M D
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**IN THE MAHARASHTRA STATE CO-OPERATIVE APPELLATE
COURT AT MUMBAI.**

(Before Shri. J.A. Shaikh, Member)

A.O. No.109 of 2013

(Arising out of order passed below Exh.5 on 18.06.2013 by the Ld Judge, Co-operative Court No.II, Mumbai in Dispute No.CC/II/33/2013)

Chaudhary Abdul Majid Shahadat,
Age :46 years, Occ.: Business,
R/O.: Flat No.F-117, Vivek Apartment, Kalina
Vihar Darshan Co-op. Housing Society Ltd.,
Kalina, Santacruz (E.), Mumbai-400098.

... Appellant

Versus

Kalina Vihar Darshan Co-op. Housing Society
Ltd., registered under No.BOM.SHG/HE6805
Of 1981 Vivek Apartment, Village Kole Kalyan,
Vidyanagari Marg, Santacruz (E.), Mumbai-
400098.

... Respondent

Ld Advocate Mr. Jayesh Bhatt for Appellant.

Ld Advocate Mr. A.V. Mehta a/w Ms. J.A. Karakasia for Respondent.

J U D G M E N T
(Pronounced in open Court)
(August 23rd, 2013)

1) Present appeal has been preferred by the original Disputant against impugned order passed below Exh.5 on 18.06.2013 by the Ld Judge, Co-operative Court No.II, Mumbai in Dispute No.CC/II/33 of 2013, wherein, Trial Court had rejected the application.

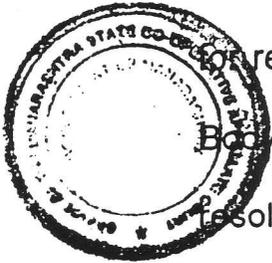
2) Facts in brief that gave raise to this appeal could be stated as below.

Dispute was filed by Disputant who is member of Opponent a registered Co-operative Society. Disputant had filed dispute for declaration that resolution dated 10.03.2012 passed in Special General meeting was illegal, null and void. He has also filed interim application seeking for temporary injunction.

3) Disputant claims that Society allegedly called for meeting on 10.03.2012 for repairs of building, however, in the same meeting without any quorum, passed resolution for redevelopment. Disputant claims that the said resolution is illegal, null and void, as there was no proper notice, agenda was

for repairs only. There is no proper resolution passed, General Body had no right to sell the land or structure. That the said resolution was passed for benefit of some of the members, hence, had filed dispute along with application for interim relief.

4) Respondent were served with notice, they had appeared and filed reply, admitting Disputant to be member of Opponent a registered Co-operative Housing Society. They have denied that the illegal resolution for redevelopment is passed. They claim that member's consents were obtained and out of 159 members 130 members have given their consent for redevelopment and accordingly process of redevelopment has started. They claim that present Disputant is in the habit of



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making false allegations and harassing office bearers, hence contended application be rejected.

5) Trial Court after hearing both sides, rejected the application. Being aggrieved by which appeal is preferred.

6) From the above facts, following points arise for my consideration and I have recorded my findings thereon for reasons here-in-after stated.

<u>Points</u>	<u>Findings</u>
1. Whether Disputant had prima-facie shown that resolution dated 10.03.2012 for redevelopment is illegal, null and void?No
2. Whether Disputant is entitled to interim relief?No
3. Whether the order passed by the Trial Court calls for interference?No
4. What order? As per final order.

REASONS

7) Heard both sides, perused compilation filed on record. On going through arguments and compilation, it is not in dispute that Disputant is a member of Opponent, which is a registered Co-operative Housing Society. Admittedly, in the present case Opponent Society had called for Special General meeting on 10.03.2012, agenda of which was for discussing repairs of the building. With these undisputed facts I proceed to answer the points.

8) Counsel for Disputant vehemently argued and pointed to Model Bye-laws Rule 97, contending that no decision can take place for conducting any business other than what is notified in Notice of the agenda. Hence, contended that subsequent confirmation of resolution would not make an illegal resolution as legal.

9) On the other hand, Counsel for Respondent pointed that agenda was for repairs. However during discussion members had proposed that it was better to redevelop or sell rather than to spend for repairs every 5 years. He argued that

subsequently letters were sent to all the members and out of these members 130 members had consented for redevelopment. Hence, contended that there is no substance in the application.

He argued that process of redevelopment would be as per Government guidelines, which will be strictly followed. Hence, contended that appeal be dismissed.

10) As could be seen from the arguments, main attack seems to be over the resolution passed. Therefore, it would be proper to reproduce the resolution which was passed as below:-

Resolution : Following is the extract of resolution passed in the said meeting "all the members agreed and unanimously decided that since repair work is not possible/feasible, as there was inadequate fund in



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the society and also not advisable due to risk factor considering the age of the society building. As it was also approved in our 26th AGM dated 9th October 2011 where it was discussed to look for better redevelopment option, as every five years society would not be in a position to spend such a huge amount. Hence re-development / outright sale finally decided. This is resolved by majority of vote.

Circular will be sent to circulate all the members for their opinion/consent by signing for the redevelopment process.



As could be seen from the resolution passed last line is very material that the circular would be sent to all the members for their opinion/consent by signing for the redevelopment process. Therefore from the resolution itself, it is clear that the circular was forwarded to all the members, for their consent specifically for redevelopment process and not for the sale of the premises. Hence argument that the resolution was passed for sell cannot be accepted. What was asked by the resolution is circular to obtain consent for redevelopment. As could be seen from the record which is filed at Page 108 to Page 240 they are various consent letters obtained, seeking opinion of all the members of the Society. As rightly mentioned by Counsel

for Opponent 130 members out of 159 members have given their clear consent for redevelopment. Therefore it becomes clear that majority had opted for redevelopment.

12) In the present case except Disputant there is no other person coming forward challenging the majority opinion to proceed for redevelopment.

13) Much was argued by Counsel that resolution is illegal, subsequent consents would not make it legal for which he had cited ruling reported in case of Eknath Ashiram Alokar, etc. V/s. State of Maharashtra and Ors. And Jijabapu Parvati Shinde, etc V/s. State of Maharashtra and Ors. reported in 1991 C.T.J.

24 wherein their Lordship in Para 18 has observes as below:-



Para-18 : *The finality of the power of the general body is not absolute, but is subject to the provisions of the Act, the Rules and the bye-laws and the same is made clear in that decision itself.*

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Therefore contending that just because majority had signed, it cannot be against rules, I must mention here that, serious challenge is that agenda was for repairs, but resolution is passed for redevelopment. I do not agree with the argument, as resolution itself speaks that some of them had raised opinion that it was better for redevelopment rather than to go in for repairs. Hence argument that resolution was passed for

redevelopment cannot be accepted. Further to confirm whether all the members were interested for redevelopment, consent letters were forwarded. When majority had signed and given their consent it was final that the Society had thought for redevelopment.

14) Therefore it becomes clear that resolution cannot be said to be illegal or void because, this resolution did not become final, but it is only opinion to obtain consent and wishes of the members. One must take into consideration that society members consists of layman. What is to be seen is the wishes of the majority. It has to be seen that no fraud is perpetrated. Here there is no fraud played. Hence I hold that Trial Court had rightly come to the conclusion that there is no illegality.



15) For the above reasons I hold that there is no merits in the appeal, the same is deserves to be dismissed. Hence I pass the following order.

ORDER

Appeal stands dismissed.

Mumbai
August 23rd, 2013

(J. A. Shaikh)
Member,
Mah.State Co-operative Appellate Court,
Mumbai.

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Judgment dictated on : 23.08.2013
Judgment transcribed on : 23.08.2013
Judgment checked & Signed on : 23.08.2013

TRUE COPY
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Registrar
Maharashtra State Co-operative
Appellate Court, Mumbai