

2026:BHC-AS:35191



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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.15791 OF 2025

1. Baliram Totaram Misal
2. Mujeebuddin Shamsuddin Khan
3. Swati Bhanudas Rajguru
4. Vinod Kumar Umapati Mishra
5. Gopilal Nathulal Jat
6. Parvati Suresh Mhaske
7. Sadhna Shamsundar Rane
8. Suman Sawlaram Gangavne
(since deceased)
9. Pratap Eknath Misal
and Nilima Pratap Misal
10. Manohar Maruti Gaikwad
11. Ashok Ganpati Kasurde &
Kalpana Ashok Kasurde
12. Popat Namdev Kadam
13. Gangadhar Baban Khillari &
Rekha Gangadhar Khillari
14. Manikrao Balaso Thopte
15. Poonaram Chitraram Gorchiya
16. Mohan Kumar Radhnath Pal
17. Balu Eknath Jadhav
18. Metaji Gopinath Dethe
19. Sangita Srikant Polekar
20. Babulal Gulaji Lohar
21. Deepa Krishna Shetty
22. Sikandar Chand Shaikh &
Saira Sikandar Shaikh
23. Narayan Shamrao Wagh
24. Sanjay Gajanan Jathar &
Pallavi Sanjay Jathar
25. Laxmi Balkrishna Khadpekar

26. Dinesh Bandhu Kandu
 27. Poonam Jogindar Thakur &
Jogindar Damodar Thakur
 28. Sharvan Singh Gurumukh Singh Bhella
 29. Gauri Shankar Tiwari
 30. Jivan Hindurav Jadhav
 31. Shafiuddin Shamsuddin Khan
 32. Nooruddin Shamsuddin Khan
 33. Tahirmunnisa Shamsuddin Khan
 34. Gulzar Ahmed Bharde
 35. Sarika Raju Mandalik &
Raju Gulab Mandalik
 36. Sukhdev D. Kadam
 37. Aanand Pitambar Kodag
 38. Shaheen Khalil Potrik
 39. Bhairulal Nathulal Jat
 40. Dattatray Gulab Aher
(since deceased) through his
widow Shobha Dattatraya Aher
 41. Anandrav Bapurao Amale
All r/o Koparkhairane,
Navi Mumbai – 4000 709.Petitioners
- V/S
- Saujanya Co-operative Housing Society Ltd.Respondent
-

Mr. Girish Agrawal with Ms. Chitra Darekar and Mr. Shubham Jangam
i/b Mr. P.D. Dalvi *for the Petitioners.*

Mr. Mahendra V. Shingade with Mr. Prabhat R. Salunkhe *for Respondent.*

CORAM : SANDEEP V. MARNE, J.
RESERVED ON : 17 AUGUST 2026.
PRONOUNCED ON : 27 AUGUST 2026.

J U D G M E N T:

1. Petitioners have filed the present Petition challenging the judgment and order dated 16 September 2025 passed by the Maharashtra State Co-operative Appellate Court, Mumbai, dismissing Appeal No.19 of 2025 and confirming the order dated 11 March 2025 passed by the learned Judge, Co-operative Court, Thane. By order dated 11 March 2025, the Co-operative Court has allowed the Application at Exhibit-10 filed by the Opponent/Respondent-Society seeking rejection of the Plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (**the Code**). Accordingly, by the impugned Order, Dispute No. CCT 201 of 2024 is rejected by the Co-operative Court under Order VII Rule 11 (d) of the Code and the order is upheld by the Appellate Court.

2. Briefly stated, facts of the case are that Respondent is a Co-operative Housing Society registered under the provisions of Maharashtra Co-operative Societies Act, 1960 (**MCS Act**). Petitioners are members of the Respondent-Society. The Society decided to undertake redevelopment of its building. According to the Petitioners, the Society's building consists of 69 ground floor structures situated at Condominium No.2, Plot No.8, Sector 23, Koperkhairane, Navi Mumbai – 400 709 on plot admeasuring 3200 square meters. The independent ground structures are allotted to respective members of the Society in the year 1995-96. According to Petitioners, the same were not 30 years old and did not require any reconstruction. However, the managing committee members of the Society commenced redevelopment process in the year 2016. In the Special General Body Meeting held on 9 May 2021, the

Society selected Project Management Consultant. Thereafter, in the Special General Body Meeting held on 8 August 2021 the Society authorized the Redevelopment Committee to select a developer. In the Special General Body Meeting held on 6 March 2022, M/s. Omkar Planet Buildcon was selected and appointed as the developer to carry out the redevelopment process. Petitioners have accordingly filed Dispute No. CCT 201 of 2024 before Co-operative Court at Thane challenging Resolutions passed in Special General Meeting dated 9 May 2021, 8 August 2021, 6 March 2022 and 28 May 2023 concerning redevelopment of disputed properties i.e. 69 ground floor structures.

3. The Respondent-Society appeared in the Dispute and filed its Written Statement. Additionally, Respondent-Society filed Application at Exhibit-10 seeking rejection of the Dispute under Order VII Rule 11(d) of the Code *inter alia* on the ground that the Dispute was barred under Section 92(2) of the MCS Act and that the same is not maintainable. It was contended by the Respondent-Society that the impugned resolutions relate to redevelopment of the Society's building and that therefore, the Dispute was barred under Section 91 of the MCS Act. The Application was resisted by the Petitioners by filing their Reply. The Cooperative Court has allowed the Application at Exhibit-10 by order dated 11 March 2025 and has rejected the Dispute under Order VII Rule 11 (d) of the Code. Petitioners filed Appeal No.19 of 2025 challenging the order of the Co-operative Court dated 11 March 2025. However, by order dated 16 September 2025, the Cooperative Appellate Court has dismissed the Appeal and has confirmed the order passed by the Cooperative Court. Aggrieved by orders dated 11 March 2025 passed by the Cooperative

Court and 16 September 2025 passed by the Cooperative Appellate Court, Petitioners have filed the present Petition.

4. Mr. Agrawal, the learned counsel appearing for Petitioners would submit that the Cooperative Court and the Cooperative Appellate Court have erroneously rejected the Dispute by having recourse to provisions of Order VII Rule 11(d) of the Code. He submits that Petitioners have restricted their challenge in the Dispute only to the resolutions. That the Petitioners have separately filed Special Civil Suit No.145 of 2024 challenging the Development Agreement and the Power of Attorney dated 16 October 2023. That the Dispute does not involve any challenge to the Development Agreement or the Power of Attorney. Therefore, the dispute challenging only the resolutions adopted by the Respondent-Society is perfectly maintainable before the Cooperative Court under Section 91 of the MCS Act. He further submits that the Cooperative Court and the Appellate Court have erroneously relied on judgment of the Apex Court in **Margret Almeida and Ors. vs. Bombay Catholic Co-operative Housing Society Limited and Ors.**¹ for rejecting the dispute. That the issue is no more *res integra* and is covered by direct judgments of this Court which hold that not only a challenge to resolutions adopted by the General Body concerning redevelopment but also a challenge to the Development Agreement is maintainable before the Cooperative Court. He relies on judgment of this Court in **The Bank of India Staff Panchsheel Co-operative Housing Society Limited vs. Jitendra Kumar Jani and others**². He further submits that the judgment of the Apex Court in **Margret Almeida** (supra) has been considered by this Court in

1 2012 (5) SCC 642

2 2026 (2) ALL MR 659

Eknath Namdev Lashkare & Ors. vs. Pancharatna Properties and Ors.³

and it has been held that resolutions of General Body as well as Development Agreement must be examined together by the Cooperative Court as one cannot survive without the other. He further submits that the Cooperative Appellate Court has relied on judgment of this Court in **Komal Arvind Vesavkar and ors. vs. Vesawa Koli Sarvoday Sahakari Society Ltd. and ors.**⁴ which has been considered and distinguished by this Court in **Bank of India Staff Panchsheel CHSL** (supra). He also relies on judgment of this Court in **Jeetu Rajeshwar Kotpalliwar and others vs. Ujjwal Nandadeep CHS Ltd. and others**⁵ in support of his contention that a dispute involving challenge to General Body Resolution cannot be rejected by having recourse to provisions of Order VII Rule 11 of the Code. Mr. Agrawal would accordingly pray for setting aside the impugned orders and for restoration of the Dispute.

5. *Per contra*, Mr. Shingade the learned counsel appearing for Respondent-Society submits that the Cooperative Court and the Appellate Court have correctly appreciated the position that General Body Resolutions cannot be segregated from the Development Agreement. That therefore Petitioners cannot maintain a separate challenge to the General Body Resolution before Cooperative Court and file a Suit before the Civil Court challenging Development Agreement and Power of Attorney. He relies on judgment of this Court in **Komal Arvind Vesavkar** (supra) in support of his contention that once Development Agreement is already challenged before the City Civil Court, legality of resolutions cannot be challenged in a Dispute filed

3 2025 (6) AllMR 680

4 Writ Petition No.8254 of 2022, decided on 15 January 2025

5 Writ Petition No.1833 of 2025 decided on 12 February 2025

before the Cooperative Court. He also relies on judgment of this Court in **Parimal H Solanki In the matter between Bhoumik Co-operative Housing Society Limited and another Versus. Vina A. Sisawala and Ors.**⁶ in support of his contention that the redevelopment process had commenced prior to the 2019 amendment and that therefore, the same does not constitute the business of the Respondent-Cooperative Society. He also relies on judgment of the this Court in **Amita Jiten Desai and another vs. New Chandrodya Co-operative Housing Society Limited and another**⁷ in support of his contention that both the judgments of this Court in **Bank of India Staff Panchsheel CHSL** (supra) as well as **Eknath Namdev Lashkare** (supra) have been considered and distinguished by this Court while allowing the First Appeal and setting aside order passed by the City Civil Court under Order VII Rule 11 of the Code and holding that a suit challenging resolutions passed by Cooperative Society regarding the re-development is maintainable. He submits that there is no averment in the plaint that redevelopment of the building forms subject matter of business of the Society. He accordingly prays for dismissal of the Petition.

6. Rival contentions urged on behalf of the parties now fall for my consideration.

7. The short issue involved in the Petition is about the forum before which an aggrieved member can ventilate his grievance relating to redevelopment process undertaken by the cooperative housing society.

6 Interim Application (L) No.25993 of 2022 in Suit No.1190 of 2019, decided on 6 October 2022

7 2026 SCC OnLine Bom 2765

8. Section 91 of the MCS Act provides for settlement of disputes by a Cooperative Court when twin requirements specified under sub-section (1) are met. The first requirement is that the dispute must concern the enumerated subject matters. The second condition is that parties to the dispute must be the ones enumerated in clauses (a) to (e) of Section 91(1). It is only when both the conditions are met, the Cooperative Court gets jurisdiction to decide the dispute. So far as the second condition is concerned, there can be no doubt that, in the present case, the Petitioners are members of the Respondent-Society, and the dispute has been raised by the members against the Society. Thus, the second condition of parties falling in the enumerated categories (a) to (e) of Section 91 (1) is clearly met in the present case. The dispute is with regard to the first condition of the enumerated subject matters. Under Section 91(1), only disputes touching constitution, elections of the committee or its officers, conduct of general meetings, management or business of a society can be adjudicated by the Cooperative Court. The dispute undoubtedly involves a challenge to the resolutions adopted by the general body of the society. However, the dispute ultimately relates to implementation of redevelopment process by the Respondent-Society. Petitioners are aggrieved by implementation of the redevelopment concerning their respective structures. They believe that their structures do not require redevelopment and they are opposing the redevelopment process.

9. The issue as to whether redevelopment of a building of a cooperative society touches upon the 'business of the society' has been the subject matter of various decisions of this Court. Prior to the 2019

Amendments to the MCS Act, when special provisions relating to cooperative housing societies are introduced, this Court repeatedly held in Vardhaman Developers Ltd. Versus. Thailambal CHS Ltd.⁸, Mohinder Kochar Versus. Mayfair Housing⁹, and Maya Developers Versus. Rajkumar L. Nagda¹⁰ that redevelopment of its building does not constitute business of the society within the meaning of Section 91 of the MCS Act. However, the Amending Act of 2019 brought about a change in the definition of the term 'Housing Society' to mean a society, the object of which is to provide, *inter-alia*, demolition of existing buildings and reconstruction of the same. In **Parimal H. Solanki** this Court took into consideration the effect of Section 154B-31 of the MCS Act dealing with saving clause and held in paras 54, 56, 57 and 61 of the judgment as under:

54. The Amending Act of 2019 only brought above a change in the definition of "Housing Society" which now included redevelopment as one of the objects of the Society. However, Section 154B-31 clearly provided that inter alias, the Bye-Laws applicable to the Housing Society existing on the date of the Amending Act, to continue to be applicable, until expressly repealed, modified or amended. It is an admitted position that the Bye-Laws of the Plaintiff No. 1 Society have not been expressly repealed, modified or amended subsequent to the Amending Act of 2019 and would thus continue to apply to the Plaintiff No. 1 Society. This saving of existing Bye-Laws has been expressly brought in the Amending Act of 2019. The existing Bye-Laws of the Plaintiff No. 1 Society does not have "redevelopment" as one of the objects of the Society. Thus, I do not find merit in the contention on behalf of the Defendants that subsequent to the commencement of the Amending Act of 2019, the Bye-Laws are required to be read as if it includes redevelopment as one of the objects of the Plaintiff No. 1-Society. If this contention on behalf of the Defendants is upheld, the said saving provision in the Amending Act of 2019 would be rendered nugatory. In view of the said saving provision, the Bye-Laws of the Society would necessarily have to be amended to bring it in line with the definition of "Housing Society" under Section 154B-1(17).

8 Order dated 7 March 2011 in Notice of Motion No. 3274 Of 2010

9 2012 (6) Bom CR 194

10 2016 (6) Bom.C.R. 629

56. Thus, the dispute relating to the “business of the Society” which is to be referred by any of the parties to the dispute to the Co-operative Court necessarily would require redevelopment to be the “business of the Society”. This would have to be seen from the Bye-Laws of the Society as to whether redevelopment has been included in the Bye-Laws. The submission of Mr. Madon that the definition of “Housing Society” is an enabling provision and does not make redevelopment an object or business of the Society unless the Society actually amends its Bye-Laws to include redevelopment as one of its objects, is required to be accepted. In the present case, it is an admitted position that the Bye-Laws of the Society do not have redevelopment as an object. This can also be seen from the existing Bye-Laws of the Society tendered by Mr. Madon pursuant to the advocates for the Defendants calling upon the Plaintiffs to produce the Bye-Laws. It is no-one’s case that subsequent to Amending Act of 2019, the Plaintiff No. 1-Society has amended its Bye-Laws for inclusion of redevelopment as one of its object.

57. Thus, in my view, since redevelopment is not one of the objects of the Plaintiff No. 1-Society, as per the Bye-Laws of the Plaintiff No. 1-Society, it cannot be said to be the business of the Society.

61. I am not impressed with the arguments on behalf of the Defendants that Maya Developers (supra) being prior to the Amending Act of 2019, is no longer good law, as it is considering the provisions which have undergone a change in law. In my view, as Section 91 of the MCS Act has not undergone any change, Maya Developers (supra) is very much still applicable, particularly, in view of the directive under Section 79A continuing to be excluded from Section 91(1)(c) of the MCS Act. The purpose and ambit of Section 79A and Section 45 as held in Maya Developers (supra) are entirely distinct. They operate in different fields. Section 79A is a broad-based State power to be used in the public interest. One cannot read Section 79A into Section 45 as has been sought to be contended on behalf of the Defendants.

10. Thus, in ***Parimal H. Solanki*** the application preferred by the Defendants therein seeking direction for return of the plaint on the ground of lack of jurisdiction of this Court to entertain the suit relating to disputes over redevelopment has been rejected holding that redevelopment of its building was not one of the objects of the society as

the society had not amended its bye-laws to include redevelopment as one of its objects.

11. It is well settled position that for deciding application under Order 7 Rule 11, the averments in the plaint are required to be considered. Perusal of the averments in the Dispute filed by the Petitioners would indicate that the redevelopment process started in the year 2016, i.e. much prior to the introduction of Chapter XIII in the MCS Act by amendments of 2019. This is clear from the following averments in the plaint:

6. The Disputants state that the Committee members of the Said Opponent Society made their personal ill effort without the knowledge and consent of the members of the Said Opponent Society for their personal financial benefits/gains and for the benefit of acquainted Developers **(The Disputants state that the Said Committee members of the Said Opponent Society started the process of Redevelopment in fact in the year of 2016 in yearly annual general meeting (in Short AGM) or thereabout** in absence of any point of redevelopment in Agenda Notices of respective Said A. G. M. and and no resolutions are passed in respective the Said A.G.M. on the alleged basis of increased Floor Space Index to have excess and extra benefit of areas in addition to existing area but all efforts are without taking into confidence to the members at large of the Said Opponent Society.

10. **The Disputants state that the Said Opponent Society through it's Development Committee Members have started Redevelopment of the Dispute Properties firstly in the year of 2016** and continued up to the year 2022 by appointing Redevelopment Committee of 14 members of the Said Opponent Society and time to time issued Agenda Notices for Annual General Meeting (in short A.G.M.) to discuss the points mentioned therein the agenda Notices and All the above copies of the Agenda Notices are in possession of the Disputants and crave leave to refer to and rely upon the same when produced.

(emphasis added)

12. Thus, the redevelopment process is undertaken by the Respondent-Society much prior to amendment of the MCS Act by which Chapter-XIIIB is inserted therein w.e.f. 9 March 2019.

13. More importantly, in the entire plaint, there is no averment that redevelopment of Society's building is the object or business of the Respondent-Society. Thus, perusal of the pleadings in the Dispute filed by the Petitioner would clearly indicate that the same lacks necessary averments for the purpose of retaining jurisdiction of Co-operative Court under Section 91 of the MCS Act. This factor is in fact sufficient for upholding the orders passed by the Cooperative Court and the Appellate Court directing rejection of the dispute.

14. However, Mr. Agarwal has relied upon three judgments of this Court in support of his contention that the law has undergone a change post the judgment in ***Parimal H. Solanki*** and that therefore the dispute challenging the resolutions passed by Society for implementation of redevelopment process now clearly falls in the realm of challenge before the Cooperative Court under the MCS Act. On the other hand, Mr. Shingade has relied on two judgments of this Court to counter the submission of Mr. Agrawal and in support of his contention that it is impermissible to segregate challenges relating to resolutions and those relating to redevelopment agreement and to institute separate proceedings before the Cooperative Court and the Civil Court.

15. I accordingly proceed to examine the judgments relied upon by the learned counsel appearing for the rival parties.

16. Amongst the judgments relied upon by Mr. Agrawal and Mr. Shingade, the earliest one is in the case of **Komal Arvind Vesavkar** which is delivered on 15 January 2025 by a coordinate Bench of this Court. In that case, the order passed by the Cooperative Appellate Court upholding the dismissal of Dispute under Order 7 Rule 11 of the Code on the ground of maintainability was under challenge. The Dispute was filed by the members of a Cooperative Society which was set up with the object of promoting welfare of the fishing community residing in Versova and to provide infrastructure facilities to the local fishing folks and to streamline the business activities at Versova, Andheri, Mumbai. The Society owned land at Versova and created development rights in respect of society's land in favour of a developer by executing Development-cum-Sale Agreement based on resolutions shown to have been adopted in the general body meeting of the Society. The Dispute filed before the Cooperative Court challenged the resolutions adopted by the Society for redevelopment of its property. The Society filed application under Order 7 Rule 11 of the Code for rejection of the Dispute on the ground of maintainability. This Court took into consideration the judgment of the Apex Court in **Margret Almeida** and held in paras-21, 22, 23, 24, 26 and 27 as under:

21. In identical facts, but reverse position arose in **Margret Almeida vs Bombay Catholic Co-op Housing Society Ltd** (supra), where the resolution and the conveyance executed by the Co-operative Housing Society came to be challenged in the Civil Court and upon a preliminary objection raised as regards the maintainability, the Division Bench held the suits are not maintainable and the dispute could be examined exclusively by the Co-operative Court proceeding on the basis that it is possible to challenge the resolution and the conveyance independently. Based on such premise, the High Court

opined that the challenge to the resolution without challenging the conveyance is possible but not vice versa. Negating the reasoning of Division Bench, the Apex Court held that the premise on which the High Court commenced its inquiry itself was wrong and held in paragraph 47 as under:

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22. The decision of Margret Almeida (supra) is squarely applicable to the facts of the present case. **The Resolutions under challenge are essentially with reference to the Development Agreement executed with Respondent No. 2 and the subject-matter of Dispute will not fall exclusively within the jurisdiction of Co-operative Court. The Cooperative Court will not have the jurisdiction to examine the validity of Development Agreement, whereas, the Civil Court can adjudicate the challenge to the Development Agreement and can also go into the validity of Resolution as held in Margret Almeida (supra). In the instant case, the Development Agreement has already been challenged by some of the members of the Society in this Court and consequently, the legality of Resolutions will be gone into in those proceedings.** Even if an objection to jurisdiction of Civil Court was raised by Respondents, there was no adjudication of the objection and the objection cannot be the basis for approaching the Co-operative Court.

23. In view of the discussion above, it is not necessary for this Court to examine whether the agreement between the Developer and the Society constituted development or re-development of the Society's property and whether the dispute touches the business of the Society. **Following the decision of Margret Almeida (supra), it is the Civil Court which will have the jurisdiction and Dispute is not maintainable before the Co-operative Court.**

24. **The Appellate Court has rightly held that the resolutions are challenged with reference to the development process and as third party rights are involved, the Co-operative Court loses its jurisdiction.**

26. Apart from challenging the legality of the Resolutions as the Dispute challenges the consequent deeds, decisions and actions taken pursuant to the impugned Resolution, the Dispute also seeks declaration that the Development Agreement is illegal, bad in law and void-ab-initio. The Dispute also impleads the Developer who does not fall within the enumerated class of parties to the lis under Section 91 of MCS Act. The declaratory relief of this nature qua the Development Agreement falling under Section 31 of Specific Relief Act, 1963 can be granted only by Civil Court. Thus, with the presence of the Developer and the challenge to the Development Agreement, the subject-matter

of the lis as well as the parties to the lis qua the Development Agreement is not within the jurisdiction of the Co-operative Court.

27. The effect of deletion of the Developer from the Dispute would result in confining the Dispute to the validity of Resolutions and the Development Agreement remaining untouched. Resultantly, two different forums will have to be approached i.e the Civil Court to seek declaration as regards the validity of Development Agreement and Cooperative Court as regards legality of the Resolutions. As the reference in the Resolutions is essentially to the Development Agreement, the Co-operative Court would not have the exclusive jurisdiction to decide the subject matter of the Dispute. **The Apex Court in Margret Almeida and Ors vs Bombay Catholic Co-operative Housing Society Ltd (supra), did not agree with the reasoning of High Court based on premise that it is possible to independently challenge the resolution and conveyance and upheld the jurisdiction of Civil Court. In the present case, the Development Agreement is already in challenge before this Court in civil proceedings initiated by some of the members in which the legality of the Resolutions can be gone into.**

(emphasis and underlining added)

17. Thus, in *Komal Arvind Vesavkar*, this Court held that the development agreement was already in challenge in civil proceedings initiated by some of the members and that therefore the issue of legality of resolutions can also be gone into by the Civil Court. This Court held that since the reference in the resolution was essentially to the development agreement, the Cooperative Court would not have jurisdiction to decide the subject matter of Dispute. This Court upheld the Order of the Appellate Court which had concluded that the resolutions were challenged with reference to the development process and as third party rights were involved, the Cooperative Court had lost its jurisdiction.

18. On 7 November 2025, another coordinate Bench of this Court delivered a judgment in *Eknath Namdev Lashkare*. In that case,

Cooperative Appellate Court had allowed applications as to maintainability of Dispute and had dismissed the Dispute on the ground of lack of jurisdiction. In that case, the Administrator of a tenant co-partnership society had executed a Development Agreement in favour of the developer. In the Dispute, the disputant had challenged the Resolution passed in the general body meeting of the society, as well as development agreement and power of attorney executed in favour of the developer. This Court applied the concept of agency and held that the developer was the agent of the society and that therefore the Dispute touched upon the business of the society. This Court therefore held that Cooperative Court has full jurisdiction, as the dispute touched the management and business of the society. It is held that the alleged interest in the property was not acquired by the developer before the Dispute and accordingly this Court followed the Apex Court judgment in ***Margret Almeida*** in which it is held that acquirer of property during pendency of Dispute can be joined as party thereto. In the facts of that case, this Court held that the resolution and development agreement must be examined together by Cooperative Court. This is clear from the following observations:

27. Under Margret Almeida, a person who derives his rights through the society or its office-bearers, even if not a member, is covered by Section 91(1)(a). In this case, respondent No. 1's rights do not exist independently of the society. His rights flow from documents executed by the society's Administrator. **There is no credible evidence that respondent No. 1 had any independent or prior ownership interest in the property before these documents were executed. Therefore, respondent No. 1 cannot be treated as a third party who acquired title before the dispute was filed.**

31. Following **Margret Almeida**, both the resolution of the general body and the development agreement must be examined together by the Cooperative Court, because one cannot survive without the other.

Accordingly, applying the principles of Margret Almeida, the present dispute clearly falls within Section 91 of the MCS Act and must be decided by the Cooperative Court as the proper forum.

(emphasis and underlining added)

Thus, the judgment in ***Eknath Namdev Lashkare*** turns mainly on factual distinction where the interest in the property was acquired by the developer during pendency of the Dispute.

19. Thereafter, on 19 December 2025, this Court delivered the judgment in ***Bank of India Staff Panchsheel CHSL*** outlining the contours of jurisdiction while deciding an application for rejection of plaint under Order 7 Rule 11 of the Code. This Court held in paragraph 20 of the judgment as under:

20. Order VII Rule 11 permits rejection of a plaint only where the bar is clear from the plaint itself. When an issue requires examination of additional material or evaluation of facts, it travels beyond the limited scope of that provision. Whether redevelopment forms part of the object of a housing society, as contemplated under Section 154B(1)(17) of the Maharashtra Co operative Societies Act, is not a pure question of law. It is a mixed question of law and fact. Its determination depends upon the specific objects of the society as recorded in its bye laws, the manner in which the society has acted upon those objects, and the nature of the resolutions passed by the general body. In the present case, the bye laws of the society are not part of the plaint. Without examining the bye laws, it is not possible to record a definitive finding as to whether redevelopment does or does not form part of the society's objects. Such an exercise would necessarily require evidence and adjudication on merits. That exercise lies squarely within the domain of the Cooperative Court during trial. Order VII Rule 11 permits rejection of a plaint only where the bar is clear from the plaint itself. When an issue requires examination of additional material or evaluation of facts, it travels beyond the limited scope of that provision. Since the question of redevelopment being part of the society's object is a mixed question of law and fact, and since the necessary factual foundation is not before the Court at this stage, the dispute cannot be rejected under Order VII Rule 11.

20. Thus, in ***Bank of India Staff Panchsheel CHSL*** this Court has held that whether redevelopment forms part of the object of the housing society or not is not a pure question of law and that the same is a mixed question of law and fact. This Court therefore held that evidence is required to be led for deciding the said issue and that the dispute cannot be rejected under Order 7 Rule 11 of the Code without granting an opportunity to the parties to lead evidence on the said mixed question of law and fact. The judgment in ***Bank of India Staff Panchsheel CHSL*** thus highlights the position that the issue as to whether redevelopment is the business of the society or not needs to be decided at the trial stage.

21. On 12 February 2025, this Court passed an order in ***Jeetu Rajeshwari Kotpalliwar*** in which the issue before the Cooperative Court was about lack of quorum in the general body meeting and on that count, validity of resolution was questioned. This Court therefore held that the Dispute contemplated a bonafide dispute between a member and a society relating to validity of resolution in the light of allegation lack of quorum. This Court therefore held that the lower Courts were not justified in dismissing the dispute under Order 7 Rule 11 of the Code.

22. Lastly, the judgment in ***Amita Jiten Desai*** is the latest amongst all the judgments cited by the parties. According to Mr. Shingade, in ***Amita Jiten Desai*** this court has distinguished the judgments in ***Eknath Namdev Lashkare*** and ***Bank of India Staff Panchsheel CHSL***. In ***Amita Jiten Desai***, a First Appeal was filed challenging the order passed by the City Civil Court rejecting the plaint under Order 7 Rule 11(d) of the

Code on the ground that the same was barred as only Co-operative Court had jurisdiction to deal with the Dispute under Section 91 of the MCS Act. The Plaintiffs before the Court were members of the society. They challenged resolutions adopted by the society in relation to the areas of flats to be considered for redevelopment. The Plaintiffs were flat owners in respect of Building-C and desired similar benefits extended to the flat owners of Buildings-A and B. Plaintiff No.1 sought direction for allotment of permanent Alternate Accommodations in-lieu of garage occupied by him. Plaintiff also sought injunction against the society from executing any development agreement. The Civil Court rejected the plaint under Order 7 Rule 11 of the Code holding that the Suit sought to challenge the resolutions, which touched upon the affairs of the society and hence jurisdiction of the Civil Court was barred by virtue of Section 91 of the MCS Act. This Court took into consideration judgments of this Court in *Mohinder Kochar* and *Parimal H. Solanki* in which it was held that redevelopment of the building was not the business of the Co-operative Housing societies. This Court also took into consideration the judgment of Division Bench of this Court in *Pranav Constructions Limited Versus. Priyadarshini Co-operative Housing Society Limited*¹¹ and held that if the Resolutions do not touch the business of the society, they will have to be challenged before the Civil Court. This Court took into consideration the definition of the term 'housing society' appearing in Section 154B(1)(17) and held reading of the plaint did not disclose any pleadings as regards the object of the society from which it could be conclusively discerned as to whether redevelopment is an object of the society and whether the society

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amended its bye-laws pursuant to Section 154B(1)(17). This Court held in paragraphs 22 to 26 as under:

22. In *Pranav Constructions Limited vs Priyadarshini Co-operative Housing Society Limited and others* (supra), the Hon'ble Division Bench of this Court was considering appeals filed under Section 37 of Arbitration and Conciliation Act, 1996 arising out of Section 9 of the Act and one of the issues before the Court was whether existence of dispute between the members and the Society about their entitlements flowing out of redevelopment process can be ground for the Court to abstain from making interim measures under Section 9 of the Act. It held that the resolutions adopted by the general body of the Society touching the business of the Society needs to be challenged under Section 91 of the MCS Act and if the resolution does not touch upon the business of the Society, the remedy for the affected party is to file civil suit. The finding of the Hon'ble Division Bench comes in answer to the question as to the exact forum which can go into the correctness of the resolution adopted by the general body of the Society.

23. The Hon'ble Division Bench has in effect applied the provisions of Section 91 of MCS Act, which requires both the party to the lis as well as the subject matter of the lis to fall within the purview of Section 91 of the MCS Act. The resolutions, if do not touch the business of the Society, will have to be challenged in the civil Court. The question as to whether re-development constitutes business of the Society will have to be answered with reference to the objects of the Society. By the Amending Act of 2019, Section 154B-1(17) brought the addition in the definition of Housing society as under:

“housing society” means a society, the object of which is to provide its Members with open plots for housing, dwelling houses or flats; or if open plots, the dwelling houses or flats are already acquired, to provide its Members common amenities and services and to demolish existing buildings and reconstruct or to construct additional tenements or premises by using potential of the land;

24. A plain reading of the amended definition makes it evident that re-development is one of the permissible objects of a housing society. Section 154B(31)(1) of MCS Act contains a saving clause in respect of the existing ByeLaws, which would continue to apply to the said society. Considering the amended definition, where a Society has amended its objects to include re-development as one of its objects, the dispute arising out of re-development would be a dispute touching the business of the Society.

25. In *Bhounmik Co-operative Housing Society vs Vina A Sisawala*¹³, the Co-ordinate Bench has held that Section 154B(1)(17) is an enabling provision and the amended definition of housing society will not apply where the existing bye-laws do not include re-development as one of its objects. It held that dispute relating to the “business of the Society” necessarily require redevelopment to be business of the Society which would have to be seen from the Bye-Laws of the Society as to whether redevelopment has been included in the Bye-Laws.

26. A reading of the plaint in the present case does not disclose any pleadings as regards the objects of the Society from which it can be conclusively discerned whether redevelopment is an object of the Society or whether pursuant to Section 154B(1)(17), the Society amended its Bye-Laws. The Bye-Laws are not part of the plaint. Though Mr. Daver and Mr. Joshi would strenuously urge this Court to take into consideration the Bye-Laws of the Defendant No 1 Society, which they attempted to tender, this Court declined to do so as that would tantamount to looking into extraneous material outside of the plaint. Determination of the objects of the Society, which requires adjudication on facts, is necessary to arrive at a finding as to whether the dispute touches the business of the Society. Sans the examination of the ByeLaws of the Society, it is not possible on holistic reading of the plaint to arrive at a definitive finding that re-development is one of the objects of the Society and consequently the dispute touches the business of the Society and would be governed by Section 91 of MCS Act.

23. This Court thereafter took into consideration the ratio of the judgment in *Bank of India Staff Panchsheel CHSL* and held that only after the trial, it can be conclusively determined as to whether object of the society includes redevelopment or not. So far as the judgment in *Eknath Namdev Lashkare* is concerned, this Court distinguished the same by holding that the coordinate Bench was not concerned with the issue as to whether the object of the Society included redevelopment by examining bye-laws of the society. In *Amita Jiten Desai* this Court ruled in favour of jurisdiction of Civil Court even though the suit involved challenge only to the general body resolution

and the development agreement was yet to be executed. The First Appeal is allowed and the suit has been restored.

24. Before proceeding further, it would also be necessary to consider the judgment delivered by this Court in **Shreesh Kumar Vs. Bhramha CHSL**¹² in which the issue was not about maintainability of Dispute before the Cooperative Court in which resolution of General Body was challenged. The Developer had filed application for impleadment since serious allegations were made qua him in the Dispute. In the facts of that case and by interpreting the provisions of Section 94(3)(a) and (c) of the MCS Act, this Court held that the developer was rightly directed to be impleaded in the Dispute. This Court has made detailed analysis of provisions of Sections 91 and 94 of the MCS Act in the context of impleadment of non-member to the Dispute. Since the case did not involve the issue of maintainability of Dispute before the Cooperative Court it is not necessary to discuss ratio of the judgment in ***Shreesh Kumar***. Also the judgment rendered in unique facts of the case cannot be read to mean that in every case, a developer can always be impleaded in a Dispute filed before the Cooperative Court and that such dispute challenging only the resolutions would always be maintainable before the Cooperative Court.

25. In my view, when a member is aggrieved by the process of redevelopment undertaken by the society, instead of leaving the issue of rejection or retention of complaints filed in Disputes before Cooperative Court or in Suits filed before the Civil Courts, to be decided on a case to

¹² 2026 SCCOnline 7169

case basis, it would be appropriate to deal with the larger issue of the exact forum before which such member can vent his grievances. This would help to achieve better clarity for the members aggrieved by redevelopment process. I propose to do so because I believe that this issue is already answered authoritatively by the Apex Court in its judgment in ***Margret Almeida***. The judgment of the Apex Court in ***Margret Almeida*** provides a complete answer to the issue involved in the petition. In case before the Apex Court, the Society had passed Resolution on 6 December 2009 to sell its land in favour of Respondent No.22 and 23 therein. In pursuance of the resolution, a sale-deed/conveyance was executed on 7 December 2009. Aggrieved by the resolution and sale, two suits were filed by the Appellants before this Court. In the Suit, Resolution dated 6 December 2009, as well as Conveyance dated 7 December 2009 were challenged. The Society raised preliminary objection regarding maintainability of the Suits in view of provisions of Sections 91 and 163 of the MCS Act. The objection was rejected by the Single Judge of this Court but the same found favour with the Division Bench. The Division Bench held that Plaintiffs ought to have filed a Dispute before the Cooperative Court challenging the Resolution of the General Body and the subsequently executed Conveyance by joining the assignee as a party to the Dispute. Aggrieved by the order of the Division Bench, Appeal was preferred before the Apex Court. After examining the entire scheme of the MCS Act, the Apex Court held that it was impermissible to join the assignee (*Respondent Nos.22 and 23*) as parties to the Dispute if the same was filed before the Cooperative Court. The Apex Court examined the provisions of Section 94(3)(a) of the MCS Act and has concluded that the

expression '*has acquired any interest in the property of a party to a dispute*' used in Section 94(3)(a) applies only to a party who acquires interest in the property during pendency of the Dispute. Thus, it is held that where the interest in the property, which is the subject matter of the Dispute, is acquired by a person prior to the institution of the Dispute, the power under Section 94(3)(a) of the MCS Act cannot be exercised to implead such acquirer of the right as a party to the Dispute.

26. The Apex Court in ***Margret Almeida*** thereafter examined correctness of the conclusion reached by the Division Bench of this Court that the Suits were not maintainable. The Apex Court held that the High Court had proceeded on a footing that it was possible to challenge the resolution and the conveyance independently. The Apex Court however felt it unnecessary to deal with the said finding of the Division Bench of this Court about segregation of challenges to resolution and conveyance. Hypothetically however, the Apex Court presumed that it was possible for the Plaintiffs/Appellants to challenge only general body resolutions before the Cooperative Court. The Apex Court accordingly held that if the Resolution dated 6 December 2019 alone was challenged before the Cooperative Court, the assignees (*Respondent Nos.22 and 23*) who were also the beneficiaries of the Resolution, could not be made parties in the Dispute before the Cooperative Court. The Apex Court held that in such situation, even if Cooperative Court came to the conclusion that the Resolution is illegal, the assignees would always ignore such declaration as the same was made behind their back. The Apex Court further held that if Plaintiff was disputing validity of the title conveyed by virtue of the conveyance, such

dispute will necessarily have to lie before the Civil Court under Section 9 of the Code and in such situation, legality of the Resolution will have to be gone into again. The Apex Court accordingly concluded that the High Court was not right in holding that the suits were not maintainable. It would be apposite to reproduce paragraphs 44 to 47 of the judgment which read thus:

44. We are of the opinion that having regard to the language of Section 94, sub-section (3)(a), more specifically “has acquired any interest”, the acquisition of the interest contemplated is only an acquisition made during the pendency of the dispute before the Cooperative Court. For the reason that such an acquisition of interest is qualified by the words, “in the property of a person who is a party to the dispute”, we hold so for another reason also. To hold otherwise, would lead to a situation where a dispute between an enumerated person and a 3rd party would become amenable to the jurisdiction of the Co-operative Court at the instance of the persons enumerated under Section 91 but not at the instance of a 3rd party in view of the judgment of this Court in (1991) 1 SCC 469. An absurd situation, ex facie violative of Article 14, in as much as such a construction would lead to a situation that with reference to a dispute, the affected parties are compelled to approach different fora for the adjudication of the same dispute depending upon the fact which party is seeking a relief. Such a construction, being inconsistent with a constitutional mandate, is impermissible.

45. For coming to the conclusion that the suits in question are not maintainable and the dispute could be examined exclusively by the Co-operative Court, the High Court proceeded on the basis that it is possible to challenge the resolution and the conveyance independently. Starting from such a premise, the High Court opined that challenge alone to the resolution without challenging the conveyance is possible but not vice-versa. The reason given by the High Court for the same is as follows:-

“If Court passes a decree or order setting aside the resolution of the general body, the validity of the conveyance will not be intact, but if a decree or order is made merely setting aside the conveyance, the resolution of the General body will remain intact. By the conveyance land owned by the Society is transferred. The society is a body corporate. The person or persons who have signed the conveyance on behalf of the Society derive the authority to do so from resolution of the

General Body. If the resolution is set aside or is declared invalid the act of the person of executing the conveyance would become unauthorised. Such an order in relation to the validity of the General Body resolution will impair the validity of the conveyance. Consequently, if the resolution remains intact but the conveyance is set aside for some reason the Society may be in a position to execute another conveyance pursuant to the resolution of the general body.”

46. We do not propose to examine the correctness of the legal premise that the general body resolution and the conveyance could be segregated in a dispute such as one on the hand. For the sake of argument, we presume that it is possible for the plaintiffs, appellants herein, to challenge only the general body resolution. We also presume that the conclusion arrived at by the High Court that if the general body resolution is set aside, the same will impair the validity of the conveyance even without an appropriate declaration by a competent judicial body. (We emphasise that we only presume so without examining to the said conclusion for the limited purpose).

47. If the resolution dated 6th December, 2009 alone is challenged before the Co-operative Court, in view of our conclusion recorded earlier, the respondents 22 and 23 (the beneficiaries of the resolution) could not be made parties before the Co-operative Court. In such a situation, even if the Co-operative Court came to the conclusion that the resolution is illegal, it would always be open for the respondents 22 and 23 to ignore such a determination as they are not parties to the proceedings and assert their title on the basis of the conveyance dated 7th December, 2009. **If any party such as the plaintiffs (the appellants herein) disputes the validity of the title conveyed thereunder, necessarily such a dispute would have to be adjudicated by a competent Court under Section 9 of the Code of Civil Procedure wherein, necessarily, the question whether a valid title was conveyed in favour of respondents 22 and 23 by the society would arise for determination. The legality of the resolution would still have to be gone into again.** Therefore, in our opinion, the premise in which the High Court commenced its enquiry itself is wrong.

(emphasis and underlining added)

27. As observed above, the judgment of the Apex Court in **Margret Almeida** gives a complete answer to the controversy at hand. As held by the Apex Court, even if it is theocratically accepted that it is possible for a member to challenge only the resolution before the

Cooperative Court, such challenge becomes meaningless because if the development agreement is not challenged before the Cooperative Court, any declaration made by the Cooperative Court qua the resolution becomes meaningless. The Apex Court has held that the aggrieved person will have to ultimately challenge the conveyance (*which in the present case is development agreement and power of attorney*). Most importantly, the Apex Court has held that in para-47 that while maintaining a challenge to the development agreement before the Civil Court, the legality of the resolution can always be gone into.

28. Following the ratio of the judgment of the Apex Court in ***Margret Almeida***, in my view, the correct remedy for the Petitioners is to challenge the development agreement and power of attorney before the Civil Court. They have exercised the remedy of filing a Civil Suit. While determining challenge to the validity of development agreement and power of attorney, the Civil Court can also decide the issue of validity of the resolutions adopted by the Society. This is precisely what is held by this Court in ***Komal Arvind Vesavkar*** after appreciating the law enunciated by the Apex Court in paragraph 47 of the judgment in ***Margret Almeida***.

29. It is also seen that challenging the general body resolutions adopted for execution of development agreement and power of attorney before Cooperative Court and challenging the validity of development agreement and power of attorney before the Civil Court would result in anomalous situation. To illustrate, if the Civil Suit (challenging the development agreement) is decided first and is dismissed and if the

challenge to resolution raised in the Dispute before the Cooperative Court remains pending, since Civil Court has not determined the issue of validity of the general body resolutions adopted, the decree would not bind the Cooperative Court. If the Cooperative Court independently determines validity of resolution and holds that the resolutions adopted are bad in law, the same would lead to an incongruous situation where the resolution adopted for execution of the development agreement would be declared illegal whereas the Suit challenging the development agreement is dismissed. The objector (*who is the disputant before the Cooperative Court and Plaintiff before the Civil Court*) would achieve nothing by seeking theocratical declaration as to the illegality of the Resolution. This is a reason why it is important that both the challenges to the resolution and to the development agreement are adjudicated upon by the same Court.

30. Having held that the challenge to the resolution and challenge to the development agreement must be raised before the same Court, the issue for consideration is whether such composite challenge can lie before the Cooperative Court or before the Civil Court. In the judgment in ***Margret Almeida*** the Apex Court has interpreted the provisions of Section 94(3) of the MCS Act and has held that a person who has acquired interest in the property of a person who is party to a Dispute before filing of the Dispute, such person can never be made a party to the Dispute. It is only when acquisition of interest in the property occurs during pendency of the Dispute that the acquirer of such interest can be impleaded as a party to the Dispute. Therefore, in a given case where the Development Agreement is already signed and executed and acquisition

of interest in the property of the society has already happened, a member challenging such acquisition cannot implead the developer as party before the Cooperative Court. Since the developer cannot be a party before the Cooperative Court in such Dispute in view of provisions of Section 94(3) of the MCS Act, challenge to the Development Agreement would not be maintainable before the Cooperative Court. This is a reason why the correct remedy for a person who is aggrieved both by the general body resolution, as well as by the development agreement is to maintain a Suit before the Civil Court. A member cannot segregate challenges by filing civil suit qua development agreement and file a Dispute before Cooperative Court *qua* the general body resolution. The member can also not file a composite dispute before the Cooperative Court challenging the resolution, as well as the development agreement as held by the Apex Court in ***Margaret Almedia***. The correct remedy would be to file a civil suit raising a composite challenge to resolution and development agreement.

31. The conspectus of the above discussion is that the Dispute filed by the Petitioners before the Cooperative Court is clearly not maintainable. The developer has acquired interest in the property of the Society on 6 October 2023 and therefore the developer could not have been impleaded as party to the Dispute which is filed in June 2024. This is a reason why Petitioners have rightly not impleaded the developer as a party to the Dispute. However, the declaration sought by them *qua* resolutions without challenging the development agreement is meaningless. For the reasons discussed above, proper remedy for the Petitioners is to incorporate challenge to the resolutions in the pending

suit. Even otherwise, there is no averment in the Dispute that redevelopment of property of the Society forms business of the Society or that the Bye-laws of the Society are brought in tune with the provisions of Section 154B(1)(17) of the MCS Act. The Cooperative Court has correctly dismissed the Dispute and there is no infirmity in the order of the Cooperative Appellate Court dismissing the Appeal.

32. The Writ Petition is devoid of merits. It is accordingly dismissed.

(SANDEEP V. MARNE, J.)