

SUPREME COURT OF INDIA

Margaret Almeida

Vs.

Bombay Catholic Co-Operative Housing Society Ltd.

C.A.Nos.2683-2685 of 2013

(P.Sathasivam and Jagdish Singh Khehar JJ.)

22.03.2013

JUDGMENT

JAGDISH SINGH KHEHAR

1. Leave granted in all matters.

2. Through the instant common judgment, we propose to dispose of the following matters which came to be filed in this Court assailing the order passed by a Division Bench of the High Court of Judicature at Bombay (hereinafter referred to as 'the High Court') in Appeal Nos.489 of 2011, 413 of 2011 and 573 of 2011 :

(i) Margaret Almeida Ors. vs. Bombay Catholic Co-operative Housing Society Ors., Civil Appeals arising out of SLP (C) Nos. 30847-30849 of 2012),

(ii) Priti Mungrey Ors. v. The Bombay Catholic Co-operative Housing Society Ltd. Ors., Civil Appeals arising out of SLP (C) Nos.30867- 30869 of 2012), and

(iii) Anthony D'Sa v. The Bombay Catholic Co-operative Housing Society Ltd. Civil Appeals Ors. (arising out of SLP (C) Nos.28256-28257 of 2012).

During the Course of hearing, Civil Appeals (arising out of Special Leave Petition no.30847-30849 of 2012) were treated as the lead case. We will, therefore, mainly rely on the pleadings thereof, for narrating the factual controversy. Reference will be made to pleadings in the other connected

matters only for recording submissions based thereon, advanced during the course of hearing.

3. The following letter was addressed by the counsel for Margaret Almeida (a respondent in Appeal no.413 of 2011 before the High Court) intimating her of the outcome of the aforesaid appeal, and the steps taken by him on her behalf :

“Amardev J. Uniyal,

Advocate High Court

13th August 2012

Margaret Almeida Ors.,

Madam/Sirs,

Re : Appeal Nos.413 of 2011, 489 of 2011 and 573 of 2011 filed in Bombay High Court.

1. This is to inform you that the hearing in the aforesaid matters concluded on 9th August 2012. The Hon'ble Court pronounced the operative part of the Order directing that the aforesaid appeals are allowed and interim order dated 5th May 2011 stood vacated. The Counsel appearing on your behalf immediately requested the Hon'ble Court to stay the operation and effect of the said order for a reasonable time to allow the matter to be tested in Appeal.

2. However, the Hon'ble Court did not allow the said application and inter alia directed that the Sumer Associates Builders (Appellants in Appeal No.413 of 2011) shall not demolish the structures in which our clients reside upto 30th September 2012. I have made an application for the certified copy of the said order and same shall forward the same on its receipt. In the circumstances, you are advised to kindly file your Special Leave Petition before the Hon'ble Supreme Court and request for stay of the effect and implementation of the order dated 9th August 2012 at the earliest.

Yours faithfully,

Sd/-

for (Amardev J. Uniyal)”

The aforesaid letter was filed before this Court by the appellant Margaret Almeida by referring to it as the impugned order. When the matter came up for hearing on 14.8.2012, this Court passed the following order : “As and when the petitioners file the authenticated copy of the impugned order, list these special leave petitions before the appropriate bench.”

The matter was repeatedly listed thereafter, but was not taken up for consideration. On 14.9.2012, while directing the listing of the lead matter (along with other matters) for preliminary hearing on 21.9.2012, this Court extended, at the asking of the appellants, the interim protection which had remained in place during the pendency of the instant litigation before the Division Bench of the High Court (vide its order dated 9.8.2012). The aforesaid interim protection was extended from time to time (and continued till the final hearing of these appeals). On 1.10.2012, notice came to be issued to the respondents, after the impugned order passed by the High Court dated 9.8.2012 was placed on the record of the case pending before this Court. On completion of pleadings, the matter was heard for final disposal.

4. We shall first narrate the sequence of facts out of which the present controversy has arisen.

5. The Bombay Catholic Co-operative Housing Society Limited (hereinafter referred to as “the Catholic Society”) was incorporated and registered in 1914. In 1917 the Catholic Society was registered under the Central Cooperative Societies Act, 1912. The objects of the Catholic Society, as per its bye-laws, were to carry on buying, selling, hiring, letting and developing land. It was also the object of the Catholic Society to carry on the activity of building, besides such like allied activities.

6. For the aforesaid objectives, in the first instance at its inception, the Catholic Society purchased 6 acres of undeveloped land from private parties. The Catholic Society then purchased another 11 acres of such land in 1918. Eventually, the Catholic Society acquired ownership of approximately 34.24 acres of land to carry out the objectives defined in the bye-laws. The land in question was situated in Santacruz. The estate of Catholic Society was named after Lord Willingdon, the

then Governor of Bombay. Since the aforesaid land holding of the Catholic Society was comprised of three different blocks of land, the blocks came to be referred to as Willingdon West, Willingdon East and Willingdon South. The area in Willingdon West measuring about 17.12 acres was sold to shareholders on freehold basis. These owners were referred to as owner members. The area in Willingdon South measuring about 11.63 acres was leased to shareholders for 998 years. These members were referred to as lessee members. The subject matter of the present controversy relates to Willingdon East measuring approximately 5.5 acres.

7. In the land measuring 5.5 acres known as Willingdon East, the Catholic Society constructed 25 cottages. These cottages were let out during 1940-45 on a monthly rental basis. Out of the 73 tenements in the aforesaid 25 cottages, 54 were allotted to members of the Catholic Society. These tenants were referred to as tenant-members. 15 of the tenements were assigned to tenants simplicitor. These 15 tenants were not members of the Catholic Society.

8. After coming into force of the Maharashtra Cooperative Societies Act, 1960 (hereinafter referred to as “the Cooperative Societies Act”), all the tenants in Willingdon East became members of the Catholic Society, for which fresh shares were issued, at the face value of Rs.50/- per share. Therefore, all the tenants in Willingdon East, became tenant-members. The instant controversy relates to a dispute between the Catholic Society on the one hand; and the tenant-members on the other hand. The Catholic Society is the appellant herein, whereas, some of the tenant-members are the contesting respondents.

9. The first dispute between the rival parties arose when the Catholic Society resolved to re-develop the land measuring 5.5 acres known as Willingdon East. The decision to re-develop the land in question was taken on account of the fact, that the 25 cottages constructed thereon, were scattered all over the land. It was felt that by redevelopment, the said land would be effectively utilised for the benefit of a larger number of persons. To give effect to the aforesaid determination, the Catholic Society passed a resolution on 25.9.1966, wherein it was resolved to provide for 161 apartment-allotments in the buildings proposed to be raised in the land known as Willingdon East. It would be relevant to mention, that the reconstruction contemplated in the redevelopment of Willingdon East contemplated the raising of new buildings to house 230 tenements. Of these, 161 tenements were meant for allottee-members and the remaining 69 for the tenant-members already in occupation of the existing 25 cottages as tenants. The process of redevelopment included demolition of the existing 25 cottages, and raising of

new buildings in their place. The average estimated cost of each apartment was assessed at Rs.55,000/-, out of which allottee-members for the 161 apartment-allotments were required to deposit Rs.15,000/- each with the Catholic Society. The average estimated cost was determined in 1966, it must obviously be much higher now. The aforesaid resolution dated 25.9.1966 was assailed by seeking recourse to the remedies available under the Co-operative Societies Act. All the efforts made by the tenant-members, however, proved futile. It would be relevant to mention, that the aforesaid dispute raised by the tenant-members under Section 91 of the Cooperative Societies Act was finally dismissed on 5.3.1971. The said order dated 5.3.1971 was passed on an appeal preferred by the tenant-members before the Maharashtra State Cooperative Tribunal. The resolution dated 25.9.1966 and order dated 5.3.1971 (passed by the Maharashtra State Cooperative Tribunal) were challenged by the tenant- members by filing Misc. Petition no.250 of 1972 before the High Court. A learned Single Judge of the High Court dismissed the aforesaid petition on 17.4.1972. An intra-court appeal, preferred by the tenant-members was dismissed by a Division Bench of the High Court on 25.7.1972. The said order attained finality between the rival parties. In view of the aforesaid factual position it became open to the Catholic Society to give effect to its resolution dated 25.9.1966, whereby, it had decided to re- develop about 5.5 acres of land known as Willingdon East, to provide for 161 apartment-tenements by raising fresh construction, in place of the existing 25 cottages scattered all over the said land.

10. After the said dispute under Section 91 of the Cooperative Societies Act challenging the resolution dated 25.9.1966 attained finality, the Catholic Society invited applications from its members (holding at least 5 shares) for allotment of flats in the proposed buildings to be constructed under the new building scheme. In this behalf the Catholic Society also submitted, for approval and sanction, building plans to the Bombay Municipal Corporation. Having shortlisted the successful allottees, the Catholic Society required the selected allottees to deposit Rs.15,000/- each, towards part payment of the price of the said flats. About 200 members made advance payment of Rs.15,000/- each. As such, the Catholic Society collected Rs.30 lakhs for implementing its redevelopment project, based on the resolution dated 25.9.1966.

11. The tenants in the 25 cottages at Willingdon East again felt threatened. They accordingly, raised a joint challenge, to the proposed action of redevelopment referred to above. On this occasion, the tenant- members filed an application under Section 18 of the Cooperative Societies Act before the District Deputy Registrar, Cooperative Societies, Mumbai, praying for the bifurcation of Willingdon East.

The foundation of the aforesaid claim was based on the fact that the interest of the tenant- members was not being adequately protected as they constituted a miniscule minority amongst the members of the Catholic Society. In this behalf it was asserted at the hands of the tenant-members, that there were about 745 members of the Catholic Society, out of which an overwhelming 685 members were not tenant-members. It was also pointed out by the tenant-members, that the Managing Committee of the Catholic Society is comprised of 11 members, out of which only two members represented the tenant-members. As such, it was asserted, that the interest of the tenant-members was not adequately protected, even at the level of the Managing Committee. The prayer made by the tenant-members before the District Deputy Registrar, Cooperative Societies was, that the Catholic Society should be bifurcated into two societies. Factually, the instant bifurcation would apply to on 5.5. acres of land known as Willingdon East. Because entire land holding comprising of Willingdon West had been sold to owner members on freehold basis, and the entire land holding comprising of Willingdon South had been leased to lessee-members on lease for a term of 998 years. Thereupon, the Catholic Society was only managing the affairs of 5.5 acres of land known as Willingdon East. One of the bifurcated societies, according to their prayer, should comprise of only tenant-members. And, the other bifurcated society should comprise of all non tenant-members.

12. On the receipt of the aforesaid application filed by the tenant- members under Section 18 of the Cooperative Societies Act, the District Deputy Registrar, Cooperative Societies consulted the Federal Society, i.e., the Bombay-Thane District Cooperative Housing Society Limited. Having consulted the Federal Society, the District Deputy Registrar, Cooperative Societies issued a draft order dated 6.9.1979 recording a tentative satisfaction for the bifurcation of the Catholic Society into two societies. Based thereon, a notice was issued to the Catholic Society seeking its objections, if any, to the tentative satisfaction recorded by the District Deputy Registrar, Cooperative Societies. To consider its course of action, the Catholic Society convened an annual general body meeting. The same was actually held on 16.12.1979. In its annual general body meeting, the Catholic Society passed a resolution, disapproving and rejecting the proposed bifurcation of the Willingdon East, in terms of the draft order of the District Deputy Registrar, Cooperative Societies dated 6.9.1979.

13. In addition to the response filed by the Catholic Society referred to in the foregoing paragraph, the Catholic Society also took up the matter with the Federal Society, i.e., the Bombay-Thane District Cooperative Housing Society Limited. The Federal Society thereupon re-examined the matter. On such re-examination it

prepared a report dated 7.6.1980, wherein, it was concluded that there was no justification for the bifurcation/division of the Catholic Society. The aforesaid report was forwarded by the Federal Society to the District Deputy Registrar, Cooperative Societies. The District Deputy Registrar, Cooperative Societies then reconsidered the draft order dated 6.9.1979 by taking into consideration the aforesaid report dated 7.6.1980. During the course of such reconsideration, the District Deputy Registrar, Cooperative Societies personally visited Willingdon East and also personally examined the records of the Catholic Society. On such reconsideration, the District Deputy Registrar, Cooperative Societies, passed an order dated 27.6.1980 by which the draft order dated 6.9.1979 proposing bifurcation/division of the Catholic Society, was withdrawn.

14. The tenant-members assailed the order dated 27.6.1980 withdrawing the draft order proposing bifurcation/division of the Catholic Society, by preferring an appeal. The Divisional Joint Registrar, Cooperative Societies, accepted the appeal, and set aside the order dated 27.6.1980. The appellate order required the District Deputy Registrar, Cooperative Societies, to reconsider the issue of bifurcation/division of the Catholic Society.

15. The Catholic Society assailed the order of the Divisional Joint Registrar, Cooperative Societies dated 12.12.1980 by preferring a Revision Petition before the State Government. The challenge raised by the appellant-society (the Catholic Society) to the aforesaid order dated 12.12.1980, was allowed, inasmuch as the order passed by the Divisional Joint Registrar, Cooperative Societies was set aside. The revisional authority remanded the matter to the Divisional Joint Registrar, Cooperative Societies, for passing a fresh order (in appeal) after hearing the rival parties. After its remand the Divisional Joint Registrar, Cooperative Societies again allowed the appeal, by an order dated 15.6.1982. By the aforesaid appellate order, the order of the District Deputy Registrar, Cooperative Societies (dated 27.6.1980) was set aside. Consequently, a direction was issued by the appellate authority, to the Assistant Registrar, Cooperative Societies, to proceed with the matter, from the stage of the passing of the draft bifurcation order (dated 6.9.1979).

16. The Catholic Society again assailed the order of the Divisional Joint Registrar, Cooperative Societies dated 15.6.1982 by preferring a revision petition before the State Government. Since the Catholic Society was not granted any interim order during the pendency of the revision petition, the Assistant Registrar, Cooperative Societies, Mumbai, proceeded with the matter from the stage of the draft order. By an order dated 22.3.1983 the Assistant Registrar, Cooperative Societies, Mumbai,

ordered the bifurcation/division of the Catholic Society by creating the following two societies :

- i) The Bombay Catholic Cooperative Housing Society Ltd., and
- ii) The Bombay Catholic Cooperative (Tenants) Housing Society Ltd. The society at (i) above, would be comprised of lessee-members, freehold land owners and others, whereas the society at (ii) would be comprised of tenant-members only.

17. The order passed by the Assistant Registrar, Cooperative Societies, Mumbai dated 22.3.1983 was challenged by the Catholic Society by preferring an appeal before the Divisional Joint Registrar, Cooperative Societies. The aforesaid appeal was dismissed by an order dated 19.9.1989, whereupon, the Catholic Society preferred a revision petition before the State Government. The said revision petition was also dismissed on 24.6.1991. The orders passed by the Assistant Registrar, Cooperative Societies, Mumbai (dated 22.3.1983), the Divisional Joint Registrar, Cooperative Societies, Mumbai (dated 19.9.1989) and the State Government (dated 24.6.1991) were challenged by the Catholic Society by filing Writ Petition no.2328 of 1991. A learned Single Judge of the High Court dismissed the aforesaid writ petition by an order dated 21/22.10.1999. The reasons which weighed with the learned Single Judge of the High Court in dismissing the writ petition, were summarised in paragraph 19 of the aforesaid judgment, which is being extracted hereunder:

“The facts which I have already noted above which need not to be repeated, would rather show that the order passed by the Assistant Registrar for bifurcation of the society is not at all harsh or arbitrary or oppressive to the shareholder members. As a matter of fact, it is the tenant members who have been oppressed and this class of members have suffered at the hands of the majority members who have no longer sufficient or substantial interest in the objectives of the society. The Assistant Registrar has made it clear that the society formed of the tenants viz. Bombay Catholic Cooperative (Tenants) Housing Society Ltd., shall offer the tenements occupied by the tenant members in the capacity of tenants in terms of Bombay Rent Act, to the same occupant tenant members on ownership basis if desired by the concerned tenant members against payment of reasonable consideration as may be fixed by the said society in consultation with the Cooperative Department and till that time, the status of the tenancy shall not be disturbed. The said direction indicates that there is no undue favour to the tenant

members and a balance has been struck by the Assistant Registrar by providing clause 7 in the operative order. So far as the shareholder members are concerned, the Assistant Registrar in its operative order has clearly set out that the admission of non-accommodated shareholders to membership of the newly created society viz., Bombay Catholic Cooperative (tenants) Housing Society Ltd., shall be strictly according to the chronological order and shall be gradual as and when tenements get ready for occupation. The Assistant Registrar further directed that while accommodating such persons to the membership, it shall be ensured that these members really intended to secure tenements of the society at the time of acquiring shares and not for investment or any other purpose other than residential. He also directed that it would also be ensured that these persons (shareholders members) are eligible to become members under the revised Bye-laws, rules and the Act and they are willing and are in a position to contribute and possess the new tenements. The Assistant Registrar, therefore, has taken sufficient care in ensuring that no injustice is occasioned to non-accommodated shareholders who are genuinely interested in accommodation and are eligible in securing residential accommodation. The shareholders who are eligible to become members under the revised Bye-laws and who genuinely were interested in getting the residential accommodation, according to their seniority shall get the accommodation as and when tenements would be ready for occupation. With this arrangement having been made by the Assistant Registrar how it can be said that the order of bifurcation shall oppress the class of shareholders or is detrimental to the interest of this class. Obviously, the shareholder members who were only interested investment while becoming member of the society should be weeded out, because it would not be in the interest of cooperative movement and for the well-being of the society. Thus, the contention of the learned counsel for the shareholder members that the order of bifurcation is oppressive or harsh to this class of society is unfounded and appears to be at the behest of the petitioner society. As a matter of fact, the appellate authority has considered the matter extensively and it cannot be said to have erred when it affirmed the order of Assistant Registrar, so far as revisional authority is concerned, the matter having been examined at quite length by the appellate authority, the revisional authority rightly did not go into the matter in details in its revisional jurisdiction and cannot be said to have erred in affirming the order of the Assistant Registrar and the appellate authority.”

18. The Catholic Society preferred an intra court appeal to assail the order passed by the learned Single Judge of the High Court dated 21/22.10.1999 (whereby writ

petition no.2328 of 1991 was allowed, in favour of the tenant-members). A Division Bench of the High Court allowed appeal No.20 of 2000 (arising out of writ petition 2328 of 1991) on 4.8.2007. By the aforesaid order, the Division Bench set aside the earlier determinations rendered by the Co-operative authorities, as also, the judgment rendered by the learned Single Judge. While doing so, the Division Bench remanded the matter to the authorities (under the provisions of the Co-operative Societies Act), for reconsidering the issue of bifurcation raised by the tenant-members. The operative part of the order passed by the Division Bench bringing out the effect of the appellate order is being reproduced hereunder :

“..... In our opinion, therefore, in order to comply with the mandatory requirement of consultation which is incorporated under sub- section (1) of Section 18 of the Act, it was necessary for the Deputy Registrar not only to take into consideration the opinion expressed by the federation but in order to show that he has complied with the mandatory requirements of consultation and the order that he made should also have shown that he has applied his mind to the opinion expressed by the federation. The requirement of the order made by the authority indicating on the face of it that the authority has applied its mind to the opinion submitted by the federation, will have to read into the provisions in order to make the requirement of consultation effective and meaningful. In the present case, admittedly, the opinion expressed by the federation has not been considered by the Deputy Registrar while deciding to make the order of bifurcation. It therefore, suffers from violation of mandatory requirement of consultation with the federal society, and therefore, we have no alternative but to set aside that order. But because the proposal had been submitted as far back as in the year 1979 and the final decision in that regard has not yet been taken, we propose to issue directions to the authority so that a decision can be made by the authority as expeditiously as possible.

5. In the result, therefore, the appeal succeeds and is allowed. The order dated 22.2.1983 passed by the Deputy Registrar, Co-operative Societies directing bifurcation of the petitioner-society is set aside. The orders passed by the Authorities under the Maharashtra Co- operative Societies Act and the learned Single Judge confirming that order are also set aside. The proceedings are remitted back to the Deputy Registrar. The parties shall appear before the Deputy Registrar on 27.8.2007 with a copy of this order. The petitioner shall also serve a notice on the federation with a copy of this order informing the federation that if it is so advised it may appear before the Deputy Registrar on 27.8.2007. the Deputy Registrar shall thereafter

permit the parties to file any additional affidavits and documents that they may want to file and then proceed to pass final order in the matter in accordance with law. The Registrar shall proceed as expeditiously as possible, and the final order shall be made by him in any case within a period of Eight weeks from 27.8.2007. It is directed that in case the Registrar decides to make the order of bifurcation, the Registrar shall provide in the order that the order shall not take effect for a period of four week from the date of making of the order.”

19. In compliance with the directions issued by the Division Bench of the High Court on 4.8.2007, the issue of bifurcation of the Catholic Society came to be placed before the Deputy Registrar, Co-operative Societies, Mumbai. Having heard the submissions advanced on behalf of the rival parties, the Deputy Registrar, Co-operative Societies, allowed the claim of the tenant-members, vide an order dated 28.11.2007. By the aforesaid order dated 28.11.2007, the Catholic Society was ordered to be bifurcated/divided into two societies. The manner of giving effect to the aforesaid bifurcation, emerges from the order of the Deputy Registrar, Co-operative Societies, Mumbai dated 28.11.2007. The same is being extracted hereunder:

“ORDER

I, Dr. P.I. Khandgale, the Deputy Registrar, Co-operative Societies, H (W), Ward, Mumbai, under the powers conferred upon me under Section 18(1) of Maharashtra Co-operative Societies Act 1960 and Rule 17(2) of the Maharashtra Co-operative Societies Act, 1961 in the interest of smooth working, administration and in the interest of members and also in view of public interest make division of “The Bombay Catholic Co-op Hsg, Society Ltd., S.V. Road, Santacruz (West), Mumbai – 400 054.

And de-register the society viz. The Bombay Catholic Co-op Housing Society Ltd. S.V. Road, Santacruz (W), Mumbai – 400 054, having Registration No.1412 of 1917, as per Section 21 of Maharashtra Co-operative Societies Act, 1960 from the date 28/11/2007.

As referred under Section 9(1) of Maharashtra Co-operative Societies Act, 1960, after division, two separate Housing societies are being registered under registration numbers as mentioned hereunder :

Sr. Name and address of Members Registration number | No. society | and date | 1 | The Bombay Catholic Freeholders, MUM/WHW/H | | (Leasehold, Freehold Leaseholders and S.G./(TC)/14007/2007-0 | | and others) | others. | 8, yEAR 2007 DATED | | Co-operative Housing | | 28/11/2007 | | Society Ltd. S.V. Road, | | | Santacruz (West), | | | Mumbai-54. | | | 2. | The Bombay Catholic Tenant Members MUM/WHW/H | | (Tenants and Allottee) | and allottee S.G./(TC)/14008/2007-0 | | Coop. Hsg. Society | members | 8, yEAR 2007 DATED | | Ltd., 24, Willingdon | | 28/11/2007 | | East, Santacruz (W), | | | Mmbai-400054 | | |

Since above mentioned separate societies are registered, two separate Managing Committees should be formed and I direct to divide the property and debts as under :

(As per balance sheet by the end of 31/3/2007)

1) Share Capital | To divide the same as collected from the | | | Members |
 2) Sinking Fund | As per shares actually held by the members. | 3)
 Reserved Fund | As per shares actually held by the members. | 4) Other reserved | As per shares actually held by the members | | fund | | 5) Amount of | As collected from the members. | | deposits | | 6) Amount in | As collected from the members. | | balance | | 7) Societies dues | Shall be made according to the members and | | payable and | the office bearers of the society shall take | | receivable | decision as regards arrears. | 8) By laws of the | It shall be mandatory for new societies to | | society | adopt by-laws of the Bombay Catholic | | | (Leasehold, Freehold and others) Co-operative | | | Housing Society Ltd. | 9) Societies old | It shall remain at the earlier place where | | office | earlier office situated and the secretaries | | | of both the society shall remain custodian of | | | this office and the records therein shall be | | | remained available for members of both the | | | societies and the same shall remain in the | | | possession of the members in whole societies | | | compound it remains. | 10) Land of the | | | Society | | | (i) The Bombay | The land of Willingdon South and Willingdon | | Catholic | South and Willingdon | | (Leasehold, | | | Freehold and | | | others) Co-op. | 5 ½ acres land of Willingdon East together | | Housing Society | with 25 t cottage and one shed therein. | | Ltd. | | | (ii) The Bombay | | | Catholic (Tenant | | | and Allottee) | | | Co-op. Housing | | | Society Ltd. | | 11) Staff | The existing members shall remain in the | | | Bombay Catholic (Leasehold, Freehold and | | | others). The Bombay Catholic (Tenants and | | | allottee) co-op hsg. Society Ltd. shall make | | | arrangement for their own staff. After | | |

division both registered societies shall take their own decisions as regards fixing salaries and other allowances the managing committee and the respective societies shall of frame their own rules regarding service as per provisions of Maharashtra Co-operative Societies Act, 1960 and Rule 1961 (12) Tenants The tenants residing in the premises of the Bombay Catholic (Tenants and Allottee) Coop. Hsg. Society Ltd. shall be tenants of the society and their tenancy rights shall be protected. (13) In order to look after the daily affairs of the two societies formed after division of the original society, society wise Board of Administrators is being appointed.

1. Following persons shall be the members of the managing committee of the Bombay Catholic (Leasehold, Freehold and others) co-operative Housing Society Ltd., Santacruz (West), Mumbai – 54, to look after its affairs.

(a) Shri A.F.E. D’costa, Chairman, managing Committee.

(b) Shri F.J. Naronna, Committee Members,

Managing Committee.

(c) Shri Leo Rodrigues, Committee Members,

Managing Committee

(d) Shri B. Pulgado, Committee Members, Managing Committee

(e) Captain F.S. Vittal, Committee Members,

Managing Committee

2. Following persons shall be the member of Managing Committee to look after the affairs of The Bombay Catholic (Tenant/Allottee) Co-op. Housing Society Ltd., Santacruz (West), Mumbai – 54.

(a) Smt. C. Castaleno, Chairman, Managing Committee.

(b) Shri J. Rodrigues, Committee members,

Managing Committee.

(c) Shri Francis Philips, Committee members,

Managing Committee.

(d) Shri Anthoni Disa, Committee members,

Managing Committee.

(e) Smt. A. Fernandes, Committee members,

Managing Committee.

This order is issued on this day, the date 28.11.2007, under my signature and seal of this office. This order shall be executed after one month from the date 28.11.2007.”

20. The Catholic Society raised a challenge to the order passed by the Deputy Registrar, Co-operative Societies, Mumbai, by filing an appeal before the Joint Registrar, Co-operative Societies, Mumbai. In fact, a separate appeal was also filed by the tenant-members to assail the order passed by the Deputy Registrar, Co-operative Societies dated 28.11.2007. The Divisional Joint Registrar, Co-operative Societies, Mumbai disposed of appeal no.246 of 2007 (filed by the Catholic Society) and Appeal no.27 of 2008 (filed by the tenant-members) by a common order dated 29.9.2009. The operative part of the aforesaid appellate order is being extracted hereunder:

“ORDER

1) The Appeal No.246/2007 Appeal No.27/2008 are disposed of.

2) The impugned order dated 28.11.2007 passed by the Respondent Deputy Registrar, C.S.H./West Ward, Mumbai under Sec.18(1) of the M.C.S. Act, 1960 read with Rule 17 of the M.C.S. Rules, 1961 is hereby quashed and set aside.

3) The case is remanded back to the Respondent Deputy Registrar C.S.H./W Ward, Mumbai for afresh consideration and decide the case in the light of the observations made herein above.

4) This order would not come into effect for a period of 4 weeks as directed by the Hon'ble High Court in order dated 6.3.2009 in Writ Petition No.2808 of 2009.

5) No order as cost.”

A perusal of the operative part of the order extracted hereinabove reveals, that the order passed by the Deputy Registrar, Co-operative Societies, Mumbai under Section 18(1) of the Co-operative Societies Act (whereby the Catholic Society was bifurcated/ divided into two societies) was quashed and set aside. All the same, yet again, the issue of bifurcation was remanded back for redetermination at the hands of the Deputy Registrar, Co-operative Societies, Mumbai.

21. It would be pertinent to mention, that a challenge to the appellate order passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai, is permissible through a revision petition before the competent authority of the State Government. The tenant-members availed of the aforesaid remedy and by preferring Revision Application no.713 of 2009 before the State Government, wherein the aforesaid order dated 29.9.2009 passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai was assailed. It is however, relevant to notice, that the aforesaid challenge raised by the tenant-members, through the aforesaid revision petition was withdrawn. This is apparent from the operative part of the order passed by the State Government disposing of Revision Application no.713 of 2009 which is being extracted herein :

“ORDER

1. Applicant is allowed to withdraw Revision Application No.713/2009.

2. Order dt.29.9.2009 of the Defendant No.1 Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai quashing the order of division of Defendant No.2 Society, of the Deputy Registrar, Co-operative Societies, H/West Ward, Mumbai dt. 28.11.2007 is hereby confirmed.

3. Order of the Divisional Joint Registrar, Co-operative Societies, Mumbai Division, Mumbai dt. 29.01.2009 to the extent of issuing directions to the Deputy Registrar, Co-operative Societies, H/West Ward, Mumbai, for giving re-hearing afresh again, is hereby quashed.

4. No Order as to the costs.”

It would also be relevant to mention that while withdrawing Revision Application no.713 of 2009, the applicant undertook to co-operate with the Catholic Society, for the redevelopment of 5.5 acres of land known as Willingdon East. It would also be pertinent to mention, that while withdrawing Revision Application no.713 of 2009, the tenant-members undertook to support the implementation of the Catholic Society’s resolution dated 6.12.2009. In sum and substance, therefore, the State Government disposed of the revision petition by quashing the bifurcation proceedings. The order passed by the State Government dated 6.12.2009, brought to an end the claim raised by the tenant-members under Section 18 of the Co-operative Societies Act, praying for the bifurcation of the Catholic Society, with reference to the property known as Willingdon East.

22. In order to understand the effect of the resolution passed by the Catholic Society on 6.12.2009, it is necessary to extract herein the Catholic Society’s Resolution dated 6.12.2009. A relevant part of the aforesaid resolution is being reproduced hereunder :

“RESOLUTION PASSED AT THE SPECIAL GENERAL MEETING HELD ON 6TH DECEMBER, 2009 AT 4.30 P.M. AT SAINT TERESA’S CONVENT HIGH SCHOOL HALL, SANTA CRUZ (WEST), MUMBAI – 400054

RESOLVED to accept the proposal of M/s. Sumer Associates as nominee of M/s. Robin Home Developers Pvt. Ltd. on the following terms and conditions:

(1) Only the land admeasuring 21,774.10 sq. mtrs. Out of the Willingdon Estate and also known as Willingdon Colony (Willingdon East) bearing CTS Nos. H/401, H/402, H/415 to H/438 (hereinafter called the said land) would be sold to M/s. Sumer Associates as nominee of Robin Home Developers Pvt. Ltd. for the net price of Rs.70,00,00,000/- (Rupees Seventy Crores) payable in one lump-sum. The consideration of Rs.70.00 crores is fixed irrespective of any charge in Development Control Regulations or any other applicable rules and regulations or subsequent rulings by any authority or body (i.e. Heritage Authority, etf.) and subject to all other conditions agreed upon.

- (2) The sale of the said land will be on 'as is where is' basis.
- (3) All 161 allottee members and 69 tenants/occupants of the Society shall be attorned to M/s. Sumer Associates. The Society shall issue a certified list of 161 allottee members and 69 tenants/occupants as on 17.09.2009 to M/s. Sumer Associates which shall form part of the final conveyance.
- (4) M/s. Sumer Associates shall all its own costs, charges and expenses construct on the said land an aggregate of at least 230 tenements of which 161 tenements, each admeasuring 600 sq. ft. (carpet area) shall be sold on ownership basis under MOFA, unless otherwise mutually decided, to the 161 allottee members at a price of Rs.1800/- per sq.ft. (carpet area) provided that each of the said 161 allottee members surrender their respective Share Certificate of the Society for cancellation and proof of relinquishing their rights as members in the Society.
- (5) The remaining 69 tenements (out of 230 tenements) to be constructed by M/s. Sumer Associates, on the said land shall be sold and/or conveyed by M/s. Sumer Associates to the said 69 tenants/occupants either against making payment or free of cost. The obligation, if any of the said 69 tenants to pay for acquiring their flats is recorded in the Consent Terms/MOU/Agreement between some tenants and the Society. So far as remaining tenants out of the said 69 tenants are concerned, those covered by Undertakings given in Court or by Decrees, will not be required to pay any amount to M/s. Sumer Associates for acquiring the flats. The Society shall give certified true copies of the Undertakings/Consent Terms/Agreements, which have been already entered into between the Society and some of the tenants out of the said 69 tenants. M/s. Sumer Associates shall enter into agreements with the tenants who are members only upon their surrendering their respective shares to the Society for cancellation and relinquishing their rights as a tenant and/or member in the Society.
- (6) The Allottee and Tenant members immediately on execution of the Conveyance of the said land by the Society shall be deemed to have ceased to be members of the Society in lieu of their right of allotment and right of acquiring accommodation on the said land as provided under the said Conveyance.

(7) M/s. Sumer Associates shall part with possession of the new premises in the 161 allottee members and 69 tenants/occupants simultaneously with giving possession to any other purchasers to whom premises are sold.

(8) Upon completion of construction of first five buildings in all aspects, M/s. Sumer association shall at its own costs charges and expenses provide one office unit admeasuring 300 sq. ft. (carpet area) to the Society in the newly constructed building on the said land or they shall otherwise provide suitable alternate accommodation for the Society's office in Santa Cruz (West), provided that only the Stamp Duty and Registration charges on which shall be paid by the Society.

(9) M/s. Sumer Associates has deposited in escrow the said sum of Rs.70.00 crores with M/s. Dhruve Liladhar Co., Advocates, Solicitors Notary for the Society with clear instructions that, on and against execution of Conveyance or within thirty days from the date of the approval of the settlement/transaction by the Society at an (Extraordinary_ Special General Meeting the said Advocates Solicitors shall, without recourse to M/s. Sumer Associates, release and/or pay the said sum of Rs.70.00 crores to the Society without claiming any costs or lien.

(10) All members who have not been accommodated on the said land or on the Society's property shall be compensated on pro-rata basis according to number of shares held by dividing equally the consideration received net of tax, legal and other expenses but after concealing by process of legal expenses those members who are untraceable for over 15 years.

(11) M/s. Sumer Associates shall at its own costs, charges and expenses ensure that, neither the Chavan-Meredia Combine nor Charisma Builders or the Bawa Group nor Robin Home developers Pvt. Ltd. or other such party shall make any claim against the society. All of them shall be settled and/or compromised by M/s. Sumer Associates at its own costs. Charges and expenses.

(12) Undertakings given to the Hon'ble Courts in the proceedings initiated against some of the tenants and Consent Terms filed in some of the said proceedings and MOU's shall be honoured by M/s. Sumer Associates and they shall be totally and strictly adhered to by them and the Society shall not be liable for the same. Where applicable M/s. Sumer Associates will have to make efforts to modify and/or get released from the said Undertaking and/or

Consent Terms as may be advised. All undertakings to various Courts given by the Society shall be observed and fulfilled by M/s. Sumer Associates, and they shall keep the Society indemnified from and against all the costs and consequences arising from the same.

(13) The Conveyance should sufficiently indemnify the Society, its Committee and its members against all liabilities, claims costs and consequences as a result of this sale and the redevelopment of the property and for any delay or non-performance of any kind.

(14) To ensure against litigation of any kind these terms can be presented before the appropriate Court for confirmation or as Consent Terms/Settlement Terms as may be legally advised.

The aforesaid is without prejudice to the rights and contentions of the Society including in the pending Appeal before the Ministry of Co-operation, Maharashtra. All reference to M/s. Sumer Associates and/or Robin Home Developers Pvt. Ltd. shall include their/his partners, directors or successors as applicable from the context.”

FURTHER RESOLVED that by virtue of the amendment of the Bye Laws of the Society by insertion of Article 10 as regards the membership eligibility of a Building Sub-Society by insertion of Article 10 as regards the membership eligibility of a building Sub-Society as a member of the Society and consequent changes in the structure of the membership in the Society, the following covenants to be observed and performed by the Lessees as presently mentioned in the indenture of Lease executed between the members and the Society shall stand deleted:

1. Clause 4. That the Lessees will not make any excavation upon any part of the demised plot nor remove any stone, sand, gravel, clay or earth therefrom except for the purpose of forming foundations of buildings.

2. Clause 5. That the Lessees will use the demised plot and premises for the purpose of a private residence only and not without the license in writing of the Lessor first had and obtained to do or permit any trade or business in any building or upon any part of the demised plot and premises.

3. Clause 6. That the Lessees will not do or suffer anything to be done on the demised plot or premises which may cause damage nuisance or

inconvenience to the occupiers of adjacent houses, the Society or the neighbourhood.

4. Clause 7. That the Lessees will not assign, underlet, for a period exceeding 3 years or part with possession of the demised lands hereditaments and premises or of any part thereof to any person without the written consent of the Society such consent not to be unreasonably withheld when the proposed assignee or tenant is a member of the Society and holding five fully paid shares of the Society.

5. Clause 8. That the Lessees will not make any assignment or other disposition of the demised premises or part thereof (which shall have the effect of vesting the demised premises for the said term or any part thereof in other than one and the same party or parties at one time).

6. Clause 10. That the Lessee shall submit the plans of this building privy cess-pools and compounds, wall or fence for the approval of the Society and shall not start the construction without such approval.

RESOLVED FURTHER that the status of the leasehold plots which are under indenture for tenures of 998 years with members be converted to freehold status at and on the request of the individual members.

RESOLVED FURTHER that the Managing Committee of the Society is authorized to approve, execute and register individual Agreements or Indenture or other documents and do such other necessary acts, deeds and things as may be requested to effect the above.

RESOLVED THAT the approval for sale and transfer of the property of the Society known as Willindgon Colony in village bandra, Mumbai Suburban District bearing CTS Nos. H/401, H/402, H/415 to H/438 also called Willingdon East located at S.V. Road, Santa Cruz (West(Mumbai – 400 054, and admeasuring 25040 sq. yards equivalent to 21,774 ___ sq. mtrs. Together with structures standing thereon (“the said Property”) on “as is where is” basis subject to the rights of 69 tenants and 161 allottee members lumpsum consideration of Rs.70,00,00,000/- (Rulees Seventy Crores only) in favour of Messrs. Sumer Associates (“Sumer”), a nominee of Robin Home Developers Private Limited (‘RHDPL’) is hereby granted.

RESOLVED FURTHER THAT the Managing Committee of the Society authorized to approve, execute and register conveyance and other documents of the said Property in favour of Sumer as nominees of RHDPL and do such other necessary acts, deed and things as may be required to effect the above.”

In compliance with the resolution of the Catholic Society dated 6.12.2009, a conveyance dated 7.12.2009 came to be executed.

23. Even though all challenges raised by the tenant-members against the resolution of the Catholic Society dated 25.9.1966 had attained finality, and even though the prayer made by the tenant-members of the Catholic Society seeking the bifurcation/division of the Catholic Society, has not culminated in favour of the tenant-members in spite of the initiation of the proceedings in connection therewith in the seventies, yet the entire matter was sought to be reopened by raising a challenge through Civil Suit nos.144 and 145 of 2010, which were filed by some tenant-members, wherein the main prayer was, that the Catholic Society should be restrained from taking steps in furtherance of the resolution passed by the Catholic Society dated 6.12.2009 (as also, the consequential conveyance deed dated 7.12.2009).

24. In order to understand the nature of relief, sought by the tenant- members in the civil suits filed by them, it would be appropriate to extract hereunder the prayers made in Suit no.144 of 2010: “The plaintiffs therefore pray:

(a) for a declaration that the said Resolution dated 6th December, 2009 (Exhibit ‘K’ hereto) and the said Conveyance dated 7th December, 2009 (Exhibit ‘M’ hereto) are invalid, illegal and void ab initio and/or the same are voidable as against the plaintiffs and the Tenant members of Defendant No.17 Association. That this Hon’ble Court be pleased to pass order declaring section 164 of Maharashtra Co- operative Societies Act, as violation of Article 14 of the Constitution of India and the same ought to be struck down;

(b) for a Judgment and Decree directing Defendant No.20 herein to deliver up the Conveyance dated 7th December, 2009 Exhibit ‘M’ hereto for cancellation;

(c) that, pending the hearing and final disposal of the present suit, this Hon’ble Court be pleased to issue an Order and Injunction restraining the

Defendant Nos.1 to 17 and Defendant No.20 from taking any steps in furtherance of the said purported Resolution dated 6th December, 2009 and/or Conveyance dated 7th December, 2009. (ii) to issue an Order and Injunction directing Defendant Nos.1 to 16 to deposit in this Hon'ble Court the sum of Rs.70 crores received from Defendant No.20 under the Resolution dated 6th December, 2009 and under the Conveyance dated 7th December, 2009;

(d) for ad-interim reliefs in terms of prayer clause (c) above;

(e) for the costs of the present suit;

(f) for such other and further reliefs as the nature and circumstances of the present case may require.”

Since the interim prayers, as had been sought in the suits filed by the tenant-members, were not granted to them, they preferred Notice of Motion no.172 of 2010 (arising out of Suit no.144 of 2010) before the High Court. By an order dated 11.1.2010, a learned Single Judge of the High Court found favour with the prayer made by the tenant-members. The operative part of the order granting interim relief to the tenant-members is being extracted hereunder:

“47. Resultantly the following ad-interim order:

ORDER

(i) No further steps be taken by the concerned parties based upon the Conveyance dated 07/12/2009.

(ii) The parties to maintain status-quo with respect to the property in question i.e., Willingdon East.

(iii) The earlier statements already recorded in the order dated 24th December, 2009 to continue till further order.

iv) Reply/rejoinder, if any to be filed within two weeks.

(v) S.O. to 25/1/2010, for hearing. However, the liberty is granted to the parties to settle the matter also.

48. The learned counsel Mr.Chetan Kapadia, appearing for some of the Defendants, makes statement that 18 tenant/members have already surrendered possession and the tenancy to defendant No.72. However, in view of the above common order, it is made clear that parties to maintain status-quo will cover any further steps to these suits.”

It would also be relevant to mention that the High Court also passed a common order dated 5.5.2011 in Writ Petition no.1769 of 2010, Chamber Summons no.748 of 2011 and Notice of Motion no.172 of 2010 (arising out of Suit no.144 of 2010) and in Suit no.144 of 2010. Thereby, the Notice of Motion was disposed of by making absolute the interim order earlier granted (on 11.1.2010) in favour of the tenant-members. Relevant extract of the order dated 5.5.2011 in the aforesaid matters is being reproduced hereunder:

“112. In the circumstances, the Notice of Motion is disposed of by making the same absolute in terms of prayer (a)(i) and by directing all the parties to maintain status quo in respect of the suit property pending the hearing and final disposal of the suit. There, however, shall be no order as to costs.”

Even though the controversy, in the manner in which it has been dealt with hereinabove, seems to be in the nature of final determination between the parties, yet the instant order, is only a determination of the validity of the interim relief sought by the tenant-members. In so far as the instant aspect of the matter is concerned, it would be relevant to mention, that the order extracted above, dated 5.5.2011, was assailed by the Catholic Society before a Division Bench of the High Court by filing Appeal no.413 of 2011 (in Notice of Motion no.172 of 2010, in Suit no.144 of 2010). The aforesaid appeal was disposed of by a Division Bench of the High Court on 7.9.2012. By the aforesaid order, the interim protection afforded to the tenant-members on 5.5.2001, by a learned Single Judge of the High Court, was ordered to be vacated. It is the instant order dated 7.9.2012, which is the subject matter of challenge (at the hands of the tenant-members), before us.

25. While adjudicating upon the controversy in hand, and while determining the validity of the impugned order passed by the Division Bench of the High Court dated 7.9.2012, we shall apply ourselves to issues relevant for granting or denying interim prayers, while disposing of the instant appeals.

26. As noticed above, the Catholic Society comprises of about 745 members. Out of these members there were originally 54 tenant-members and 15 tenants simplicitor (the tenants simplicitor, were not members of the Catholic Society). After the coming into force of the Cooperative Societies Act, all the tenants (including the tenant-members, as also, the tenants simplicitor) became members of the Catholic Society. It is therefore, that the strength of the tenant-members at the present juncture is 69. The relief sought in the two suits (i.e. Suit no.144 of 2010 and Suit no.145 of 2010) is a claim for rights, on account of being tenant-members. It is important to point out, that the aforesaid suits were filed by only 15 tenant-members. It is these 15 tenant-members, who had pursued their prayer for interim relief, before the High Court. It is not a matter of dispute, that the suits referred to above, were not filed in a representative capacity, and as such, it would be incorrect to assume, that the aforesaid suits can be considered to have been filed by all the 69 tenant-members. The correct factual position is, that out of 69 tenant-members only 15 tenant-members had filed the aforesaid suits. The number of tenant-members who were pursuing their remedy through the aforesaid suits, has diminished further before this Court, inasmuch as Special Leave Petition (C) nos.30847-49 of 2012 comprises of 8 petitioners only. It is therefore apparent, that 7 of the plaintiffs in the suits, have now not joined hands with those who have approached this Court, (and are now appellants, before this Court). The instant factual narration however proceeds further, inasmuch as, IA nos.17-19 of 2012 (arising out of SLP (C) nos.30847-49 of 2012) have been filed by three of the petitioners (now appellants) i.e., petitioner/appellant nos.2, 3 and 4, i.e., Jennifer Pegado, Elwyn D'cruz and Don Donato D'Silva, with a prayer for transposing them as respondents, as they do not want to pursue the matter any further (along with the remaining petitioners). In view of the prayer made in the aforesaid interlocutory application, it is apparent, that the strength of the tenant-members who had initiated the civil suits, referred to above, has successively diminished from 15 in the civil suits, to 8 at the special leave petition stage, and further to 5 at the appellate stage (after three of the petitioners have prayed for transposing them as respondents). Keeping in mind, that the total tenant-members are 69, and the relief sought in the suits, and now through the instant petitions/appeals (which are filed on the strength of being tenant-members), has diminished to 5, it would be inappropriate to consider the grant of any interim relief, in the absence of any clear determination, that the claim pressed by the appellants before us, is at the behest of at least a simple majority of the tenant-members. Out of 69 tenant-members 35 would constitute a simple majority. The instant petitions/appeals are now being pursued by only 5 tenant-members. In the aforesaid view of the matter, the acceptance of the prayer made by the tenant-members for interim directions, would not only be inappropriate but would be unthinkable.

27. Secondly, the principal contention advanced at the hands of the learned counsel for the petitioners/appellants before the High Court was, that after the resolution of the Catholic Society dated 6.12.2009 (and the consequential conveyance deed dated 7.12.2009) is implemented, the petitioners/appellants would lose their primary membership with the Catholic Society. This, according to the learned counsel for the petitioners/appellants, would be violative of Section 35 of the Cooperative Societies Act, for the simple reason, that the tenant-members cannot be compelled to lose their membership of the Cooperative-Society, without the approval of the Registrar, Cooperative Societies. Based on the aforesaid reasoning, it was submitted, that the resolution dated 6.12.2009 (and the consequential conveyance deed dated 7.12.2009) run counter to the cooperative principles enshrined in the Cooperative Societies Act.

28. While determining the aforesaid claim canvassed at the hands of the tenant-members, the Division Bench of the High Court, in the impugned order dated 9.8.2012, had clearly recorded that there was no question of the tenant-members losing their cooperative membership. In this behalf it was pointed out, that all the 69 tenant-members, besides 161 allottee-members would be entitled to occupy the tenements, consequent upon completion of the building project emerging out of the resolution of the Catholic Society dated 6.12.2009 (and the consequential conveyance deed dated 7.12.2009). Accordingly, the High Court while accepting the plea advanced at the hands of the Catholic Society, expressed the view, that after the construction of the new tenements at Willingdon East, they would be occupied by the allottee-members and the tenant-members. Thereafter, they would have to be enrolled as members of the Cooperative Society to be formed by the developer, under Section 10 of the Maharashtra Ownership of Flats (Regulation of the Promotion, Construction, Sale, Management Transfer) Act, 1963, read with Rule 10 of the rules framed thereunder. Since the aforesaid factual/legal position was not disputed before us, during the course of hearing, we have no alternative but to accept the same. Thus viewed, it is not possible for us to conclude that the tenant-members shall lose their cooperative membership upon the implementation of the resolution of the Catholic Society dated 6.12.2009 (and the consequential conveyance deed dated 7.12.2009). We are therefore satisfied, that on the instant aspect of the matter, the petitioners/appellants before us, will not be subjected to any irreparable loss.

29. The third contention advanced at the hands of the learned counsel for the petitioners/appellants, was again on the aspect of irreparable loss. It was sought to be canvassed at the hands of the appellants, that once the resolution of the Catholic

Society dated 6.12.2009 (and the consequential conveyance deed dated 7.12.2009) is given effect to, the claim made by the tenant-members for the bifurcation of the Catholic Society under Section 18 of the Cooperative Societies Act will stand frustrated. It was submitted, that the position would be irreversible, and as such, it is imperative to injunct the Catholic Society, from giving effect to the resolution dated 6.12.2009 and the conveyance deed dated 7.12.2009.

30. Even though there may be some truth in the third submissions canvassed at the hands of the petitioners/appellants (as has been noticed in the foregoing paragraph), it is not possible for us to accede to the claim of the petitioners/appellants, in the peculiar facts and circumstances of this case. In so far as the instant aspect of the matter is concerned, it would be relevant to mention, that the first dispute between the rival parties arose when the Catholic Society resolved to redevelop the land measuring about 5.5 acres, known as Willingdon East. The aforesaid resolution was passed as far back as on 25.9.1966. The said resolution was assailed by the tenant-members under Section 91 of the Cooperative Societies Act. The issue attained finality in favour of Catholic Society, after a Division Bench of the High Court dismissed the intra-court appeal preferred by the tenant-members, on 25.7.1972. The aforesaid resolution dated 25.9.1966 (which was declared as legal by the High Court), is sought to be given effect to by the Catholic Society, through its resolution dated 6.12.2009 (and consequential conveyance deed dated 7.12.2009). Five tenant-members are now desirous of stalling the resolution of 25.9.1966, even though about 47 years have gone by since then. The narration of the factual position recorded above reveals that the Catholic Society, left to itself, would have commenced the redevelopment of Willingdon East, comprising of 230 tenements, more than four and a half decades prior hereto, had the tenant-members allowed the Catholic Society to proceed with the matter in terms of its aforesaid resolution. The instant action of the tenant-members has adversely affected all those who would have been entitled to tenements, had the petitioners/appellants herein not obstructed to the redevelopment resolution of the Catholic Society. Deprivation of the rights of 230 individuals, at the behest of five of them, tilts the balance of convenience in favour of the majority ($230 - 5 = 225$), and against a miniscule minority of 5 members. In this view of the matter also, we are of the view that the High Court while passing the impugned order dated 9.8.2012 was fully justified, in vacating the interim order(s) passed by the learned Single Judge (dated 11.1.2010 and 5.5.2011).

31. The main contention advanced at the hands of the learned counsel for the petitioners/appellants, is based on a plea canvassed at the hands of the tenant-members for the bifurcation/division of the Catholic Society. Unless the aforesaid

issue is examined objectively, the issue in hand cannot be treated to have been appropriately deal with. In this behalf, it would be pertinent to mention, that the tenant-members had filed an application under Section 18 of the Cooperative Societies Act, to protect the interest of the tenant-members of the Catholic Society. To achieve the aforesaid objective, it was canvassed, that the Catholic Society should be bifurcated/divided in such a manner, that one of the emerging societies would comprise of only tenant-members. The second resultant society, could cater to all non-tenant members. In spite of the fact, that the aforesaid process (seeking bifurcation of the Catholic Society) was initiated by the tenant-members in the seventies, and in spite of the fact that about four decades have since elapsed, the tenant-members have failed to obtain a final determination with reference to their prayer for bifurcation/division of the Catholic Society.

32. All the same, we have independently considered the plea of bifurcation/division raised by the petitioners/appellants noticed above. Even though the Deputy Registrar, Cooperative Societies, Mumbai vide an order dated 28.11.2007, had allowed the prayer made by the tenant-members for bifurcating/dividing the Catholic Society, yet the aforesaid order dated 28.11.2007 was quashed by the Divisional Joint Registrar, Cooperative Societies, Mumbai, while disposing of an appeal preferred by the Catholic Society, on 29.9.2009. As of now, the tenant-members have not obtained any order for bifurcating/dividing the Catholic Society. However, what needs to be considered at the present juncture is, that even the Federal Society, i.e., the Bombay-Thane District Cooperative Housing Society Limited in its report dated 7.6.1980, had concluded that there was no justification for the bifurcation/division of the Catholic Society. Furthermore, tenant-members had filed Revision Application no.713 of 2009 before the State Government, to assail the order passed by the Divisional Joint Registrar, Co-operative Societies, Mumbai dated 29.9.2009. It would be relevant to mention, that the Deputy Registrar, Co-operative Societies, Mumbai, had ordered the bifurcation/division of the Catholic Society vide an order dated 28.11.2007. The Divisional Joint Registrar, Co-operative Societies had set aside the aforesaid bifurcation order on 29.9.2009. The Revision Application no.713 of 2009, filed to challenge the quashing order, was withdrawn by the tenant-members. The tenant-members must, therefore be deemed to have acquiesced to the order dated 29.9.2009. In a sense, therefore, the plea for bifurcation may reasonably be taken as having been not pressed, specially when, remand proceedings are not shown to have proceeded further. Accordingly, it is natural to infer, that the objective of the tenant-members, for seeking the bifurcation/division of the Catholic Society, is not being seriously pursued. Even though the matter has not attained finality as of now, yet it is not possible for us at this juncture, to record a prima facie finding in favour

of the tenant-members. What needs to be kept in mind, is the effect of the pending consideration.

33. Merely on account of the said pending claim for bifurcation raised by 69 tenant-members, they have exclusively occupied 5.5 acres of land situated in Santacruz, Mumbai. On the redevelopment of the said land, 230 tenements will be created. The gains to the tenant-members, are clearly incomparable to the loss which has ensued on account of continued status quo. 161 beneficiaries, as per the resolution of the Catholic Society dated 25.9.1966 who had made deposits in 1966 (at the asking of the Catholic Society) are still waiting. Thus viewed, even on the aspect of bifurcation/ division of the Catholic Society, there can hardly be any justification in the prayer made by the tenant-members, for an injunction against the resolution of the Catholic Society dated 6.12.2009 (and the consequential conveyance deed dated 7.12.2009). The balance of convenience, is surely not in favour of the tenant-members.

34. While we are also satisfied, that the Division Bench of the High Court in the impugned order dated 9.8.2012 has correctly evaluated the rights of the petitioners/appellants in their capacity as tenant-members. In so far as the instant aspect of the matter is concerned, it would be pertinent to mention, that on the issue whether the tenant-members had a separate identity and right (as against the other members of the Catholic Society) came to be considered by a learned Single Judge of the High Court in Misc. Petition no.252 of 1972. The plaintiffs in the present suits (Suit no.144 of 2010, and Suit no.145 of 2010) are admittedly the same as the petitioners in Misc. Petition no.252 of 1972. The High Court having considered the aforesaid issue, namely, whether the petitioners/appellants had any proprietary right as tenant-members of the Catholic Society, it held as under:

“This is an entire frivolous petition by the members of a co-operative society for writs and order under Art.226 of the Constitution quashing the orders passed by the respondents. The effect of the impugned orders was that the suit filed by the present petitioners for declarations that the Resolutions passed at the annual general meeting of the first respondent society were illegal, void and inoperative in law and that the present petitioners to quiet and peaceful enjoyment of their respective tenements, stood dismissed by the appropriate authorities under the Maharashtra Cooperative Societies Act, 1960. In challenging the said orders by the present petition, the petitioners have raised various contentions, but I need refer to only three of them and they are as follows:

(1) that the general body of the first respondent society has no power to deprive the petitioners of their tenements;

In support of the first proposition Mr.B.R. Nayak has relied on the decision of the Full Bench of this Court in the case of Manohar vs. Konkan Co.op Housing Society (63 Bom. L.R. 1001 at 1006), but I am afraid the said decision instead of helping Mr.Nayak on the point, is against him in so far as it lays down in unmistakable terms that it is the society alone which is the absolute owner of the property and the members of the society have merely the rights and obligations conferred by the various provisions of the statute itself. It is, therefore, quite clear that it is the society that, as the absolute owner of the property, would have all the rights which any other owner of the property has, and that the petitioners have no proprietary interest at all in their tenements. Under the circumstances, the petitioners do not have even a prima facie case on the point that the first respondent society has no right to deprive them of their tenements.”

The applicants in Misc. Petition no.252 of 1972, assailed the order dated 17.4.1972 (extracted above), by filing Appeal no.74 of 1972. Appeal no. 74 of 1972, was dismissed by a Division Bench of the High Court, on 25.7.1972. The aforesaid determination attained finality between the rival parties. In the impugned order dated 9.8.2012, the Division Bench of the High Court by relying upon the aforesaid determination, further concluded that, the petitioners/appellants are disentitled in law to claim the relief sought by them. It is apparent, that the relief sought by the tenant-members, is a relief which can ordinarily be sought only by individuals/parties who have a proprietary interest, in the subject matter. While we concur with the Division Bench, to the effect that the tenant-members have no proprietary interest in the subject matter of the controversy, it is necessary for us to refrain from further determining, whether or not the petitioners/appellants in their capacity as tenant-members having no proprietary interest can still claim an exclusive right to redevelop a part of 5.5 acres of land constituting Willingdon East, (even if it is assumed, that they do not have a right to redevelop, the entire land of Willingdon East), by seeking a bifurcation of the Catholic Society. Be that as it may, the Catholic Society has undoubtedly, on the basis of the instant consideration, made out a prima facie case in its favour (the final determination whereof will only be rendered, at the culmination of the proceedings, initiated through the civil suits referred to above). In view of the deliberations recorded hereinabove, yet again it would be inappropriate to grant an injunction, restraining all

redevelopmental activities, in terms of the prayer made by the petitioners/appellants.

35. In the background of the conclusions drawn by us hereinabove, it is no longer necessary to examine the matter under any other parameter(s). Be that as it may, we wish to consider the claim raised by the tenant-members, i.e., the petitioners/appellants before us, on the basis of their contention that whilst the conveyance deed dated 7.12.2009 contemplates a consideration of Rs.70 crores payable to the Catholic Society, the tenant- members had been able to procure a better offer, wherein, for the same developmental project the consideration offered was of Rs.75 crores.

36. The instant issue has been examined minutely by the High Court in the impugned order dated 9.8.2012. While doing so, the High Court has drawn the following conclusions. Firstly, that only M/s. Robin Home Developers Pvt. Ltd. (M/s. Sumer Associates) had come forward with a proposal of redevelopment of Willingdon East. Due to the pending litigation, no recognized builder was prepared to make an unconditional offer on “as is where is” basis. Most of the builders wanted the Catholic Society to settle the pending litigation. Since the litigation had been pending for the last more than four decades, the Catholic Society was not in a position to abide by the pre-condition canvassed at the behest of the recognized builders. Secondly, the Catholic Society at the time of the general body meeting held on 6.12.2009, had only one proposal, namely, the proposal of M/s. Sumer Associates. Thirdly, M/s. Sumer Associates had assured the Catholic Society of a sum of Rs.70 crores. In fact, the aforesaid amount of Rs.70 crores was kept in escrow by M/s. Sumer Associates. Fourthly, during the general body meeting of the Catholic Society, some of the tenant- members orally made an offer of Rs.75 crores without depositing a single paisa as against the concrete proposal of M/s. Sumer Associates. Fifthly, based on the documents placed on the record, it was clear, that the offer of Rs.75 crores made by the tenant-members, was in fact made by a rival builder, namely, Mr. B.Y. Chavan (who was duly impleaded before the High Court). It is therefore, that the Division Bench of the High Court in the impugned order dated 9.8.2012, made the following observations:-

“33. It was urged by the learned counsel for the appellants that Mr. Chavan is instigating the plaintiffs to carry on the litigation. Bills submitted by the Attorneys have been placed on record, to show that Mr. Chavan has been actively instrumental in giving instructions to the solicitors/counsels for the plaintiffs. The correspondence is placed on record to demonstrate that the offer of Rs.75 crore has been made at the behest of Mr. Chavan. Mr. Chavan

is a party to the proceeding and his right, if any, is based on the MOU executed in his favour by only 8 tenant- members. Mr. Chavan was present at the conferences held by the plaintiff’ solicitors as evidenced from the bills sent by the solicitors for the conferences held on 29 September 2009, 4 December 2009, 5 December 2009 and 12 December 2009 regarding writ petitions/suits filed by the plaintiffs against the Society. Having seen the conduct of the said developer-Mr. Chavan, the Society had no confidence in him and his associates and has expressed confidence in the M/s. Sumer Associates. It is for the Society to decide who should be given the development rights and not for a small minority of 15 persons like the plaintiffs. The plaintiffs urged at length before us that the course adopted by the Sumer Associates is inequitable and bad in law. However, when the counsel for Mr. Chavan at the end of the hearing made an offer for higher figure and act exactly in the same manner as M/s. Sumer Associates, no objection was raised by the plaintiffs. No contention was then raised that development through Mr. Chavan in the same manner as M/s. Sumer Associates will affect the claim of plaintiffs of bifurcation of the Society. Thus upon offer of Mr. Chavan, all arguments of the plaintiffs based on law and equity vanished. This conduct of the plaintiffs is relevant when the Court considers passing equitable orders. Such conduct of the plaintiffs themselves is against the spirit of co-operative movement and there can be no other higher breach of principles of co-operative movement when a small minority of members stall the decision of overwhelming majority of members and deprive the members of their legitimate claim. The Court proceedings cannot be used as an instrument of harassment and extortion. Prima facie, we find substance in the contention of the Society that Mr. Chavan is using the plaintiffs as a tool to block the redevelopment of the Society.”

The aforesaid conclusion drawn by the High Court is sought to be reiterated by the applicants in Interlocutory Application nos. 17-19 of 2012. As already noticed hereinabove, the instant interlocutory applications have been filed by three of the petitioners/appellants, namely, Jennifer Pegado, Elwyn D Cruz and Don Donato D’Silva. In paragraph 2 of their aforesaid applications, it was sought to be averred as under:-

“2. That the above petition was filed by these petitioners at the instance of B.Y. Chavan and Sagar Builders Developers i.e. respondent nos. 17 and 18 in the above petition and who have been instigating the tenants in the property to pursue a Bifurcation Application and stall the re-development of

the Willingdon (East) property which has been sold by the respondent no. 1-Society to the respondent no. 20. The said respondent nos. 17 and 18 have been spending the entire litigation expenses for the last number of years as also in respect of the present petition with a view to obstruct re-development of the Willingdon (East) property in view of they being unsuccessful in acquiring the same by causing a bifurcation of the Society. These petitioners have now realized that the above petition being prosecuted is only in the interest of B.Y. Chavan and Sagar Builders Developers, the respondent nos. 17 and 18 in the above matter and therefore having settled their differences with the respondent no. 1 and respondent no. 2 have addressed letters to Advocates Shally Bhasin Maheshwari, who has been engaged by the respondent nos. 17 and 18 on behalf of the petitioners calling upon the said Advocates to forthwith withdraw the above Special Leave Petition. However, notwithstanding the said instructions the said Advocates have failed to withdraw the petition and now instead of withdrawing the petition seek to continue with this Special Leave Petition by merely dropping these petitioners as petitioners. The petitioner no. 6 Martin James Michael has also settled his differences with respondent nos. 1 and 20 and his siblings and has also instructed Advocate Shally Bhasin Maheshwari to withdraw the petition, however, since then he has sometime in the past few weeks passed away and therefore he may be dropped as petitioner.”

Based on the factual position noticed by three of the petitioners/appellants in I.A. nos. 17-19 of 2012, the finding recorded by the High Court in respect of the offer of Rs.75 crores can be stated to have been made at the behest of a rival builder Mr. B.Y. Chavan. Mr. B.Y. Chavan has even paid for the litigation expenses of the tenant-members. The tenant-members readily accepted the offer made by Mr. B.Y. Chavan, when he proposed before the High Court that he would act in the same manner as M/s. Sumer Associates. It is therefore natural to infer, that the tenant- members are agreeable to the redevelopment of 5.5 acres land comprising of Willingdon East in the manner contemplated by the resolution of the Catholic Society dated 6.12.2009 (and the consequential conveyance deed dated 7.12.2009), which is impugned in the suits filed by the tenant- members. This also prima facie shows that the action of the tenant-members prima facie seems to lack bona fides. We therefore affirm the determination rendered by the High Court in the impugned order, that it was for the Catholic Society to decide who should be given the redevelopment rights, and not the tenant-members who are a small minority of 15 persons (the number having now diminished to 5) who have initiated the litigation out of which the present proceedings have

arisen. As of now, therefore, it is possible to prima facie infer, that the petitioners'/appellants' claim before the High Court does not seem to be bona fide. They also do not prima facie seem to have genuinely initiated the instant litigation. In the above view of the matter, the opinion recorded by the High Court, that all arguments of the plaintiff based on law and equity vanished, upon the offer made by Mr. B.Y. Chavan, cannot be stated to be unjustified.

37. For all the reasons recorded hereinabove, we find no merit in the instant Civil Appeals. The same are accordingly hereby dismissed.