

MARGARET ALMEIDA & ORS. ETC.

v.

BOMBAY CATHOLIC CO-OPERATIVE HOUSING SOCIETY
LTD. & ORS.

(Civil Appeal Nos. 2683-2685 of 2013)

MARCH 22, 2013

[P. SATHASIVAM AND JAGDISH SINGH KHEHAR, JJ.]

Interim Relief – Entitlement – Housing Society passes resolution on 25.9.1966 for re-development of the area which was let out to 69 tenant members – As per resolution, after redevelopment, 230 tenements would be constructed out of which 161 were meant for allottee-members and 69 for the tenant-members – The resolution, when challenged by tenant-members u/s.91 of Co-operative Societies Act, attained finality in favour of the Society – 161 beneficiaries also made deposits in the year 1966 to the Society – The tenant-members again challenged the resolution u/s. 18 of the Act seeking bifurcation of the Society, which issue is still pending – The Society by its resolution dated 6.12.2009 gave effect to its earlier resolution dated 25.9.1966 – Consequential conveyance deed dated 7.12.2009 was executed – 15 out of the 69 tenant-members, then filed suits seeking direction to restrain the society from taking steps in furtherance of resolution dated 6.12.2009 and the consequential conveyance deed – Interim relief not granted – In Notice of Motion, Single Judge of High Court granted interim relief and subsequently made the interim order absolute – Division Bench of High Court vacated the interim order – Held: The tenant-members are not entitled to interim relief – By vacating the interim order no irreparable loss is caused to them – They being in minority (initially at the time of filing of suit 15 and when reached this Court reduced to 5) as against 225 members, balance of convenience is in favour of the majority

- A *and not the contesting tenant-members – Their plea to procure a better offer for development than that offered to Society, also shows that they are agreeable to development and the initiation of proceedings for restraining development – lacks bonafide – The tenant-members are also not entitled to the interim relief as they do not have proprietary interest in the subject matter.*
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C The respondent-housing Society developed three blocks of land namely 'Willingdon West', 'Willingdon South' and 'Willingdon East'. It sold 'Willingdon West' area to shareholders on freehold basis and leased out the area in 'Willingdon South' to its shareholders. In the 'Willingdon East' the respondent-Society constructed 25 cottages and the same were let out to tenant-members (including the appellants).

D The respondent-Society passed a resolution on 25-9-1966 to redevelop the land in 'Willingdon East' by raising new apartments by demolishing 25 cottages, to house 230 tenements. Out of the 230 tenements, 161

E tenements would be meant for allottee-members and the remaining 69 tenements for the tenant-members who were already in occupation of 25 cottages.

F The tenant-members assailed the resolution u/s.91 of Co-operative Societies Act. After the same was finally decided against the tenant members, the respondent-Society invited applications for allotment of flats as per the resolution dated 25.9.1966 and collected advance from about 200 members.

G The tenant-members again challenged the redevelopment proposal u/s.18 of Co-operative Societies Act, praying for the bifurcation of the Catholic society into two i.e. one comprising of only tenant-members and the other comprising of all non tenant-members. The same

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also did not culminate in favour of the tenant-members, as the tenant-members ultimately withdrew their challenge and undertook to co-operate with the respondent-Society for redeveloping the Willingdon East area as envisaged in the resolution of the respondent-Society dated 6.12.2009. In compliance of the resolution dated 6.12.2009, a conveyance dated 7.12.2009 came to be executed.

Some of the tenant-members filed two civil suits praying for direction to the respondent-Society to restrain from taking steps in furtherance of the resolution dated 6.12.2009 and the consequential conveyance deed dated 7.12.2009. As the interim relief was not granted to the tenant-members, they moved Notice of Motion, wherein the Single Judge of High Court granted interim relief. Single Judge by a further order dated 5.5.2011 made the interim order absolute. In appeal, Division Bench of High Court vacated the interim order granted by the Single Judge. Hence the present appeals.

Dismissing the appeals, the Court

HELD: 1. The Catholic Society comprised of about 745 members. Out of these members the strength of the tenant-members at the present juncture is 69. The relief sought in the two suits is a claim for rights, on account of being tenant-members. The suits were filed by only 15 tenant-members. The suits were not filed in a representative capacity, and as such, it would be incorrect to assume, that the suits can be considered to have been filed by all the 69 tenant-members. 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 filed by them comprises of eight petitioners only. Further, three of the eight petitioners had prayer for transposing them as respondents, as they did not want to pursue the matter

A any further (along with the remaining petitioners). Thus, the strength of the tenant-members who had initiated the civil suits has successively diminished from 15. Keeping in mind, that the total tenant-members are 69, and the relief sought in the suits, and now through the instant

B 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 this Court is at the

C behest of at least a simple majority of the tenant-members. Therefore, acceptance of the prayer made by the tenant-members for interim directions, would not only be inappropriate but would be unthinkable. [Para 26] [910-B-H; 911-A-E]

D 2. It cannot be said that the tenant-members would lose their co-operative membership upon implementation of the resolution of the Catholic Society dated 6.12.2009 (and the consequential conveyance deed dated

E 7.12.2009). 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). Thereafter, they

F would have to be enrolled as members of the Cooperative Society to be formed by the developer, u/s. 10 of the Maharashtra Ownership of Flats (Regulation of the Promotion, Construction, Sale, Management & Transfer) Act, 1963, r/w. Rule 10 of the rules framed thereunder.

G Thus on the instant aspect of the matter, the petitioners/appellants will not be subjected to any irreparable loss. [Para 28] [912-B-C, D-E, F-G]

3.1. In the peculiar facts and circumstances of the

H case, it is not possible for this Court to accede to the

claim of the appellants that their claim for the bifurcation of the Catholic Society under Section 18 of the Cooperative Societies Act would stand frustrated if resolution dated 6.12.2009 is given effect to. 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', by resolution passed on 25.9.1966. The said resolution was assailed by the tenant-members under Section 91 of the Cooperative Societies Act, and 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. Thus 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, the High Court while passing the impugned order dated 9.8.2012 was fully justified, in vacating the interim order(s) passed by the Single Judge. [Paras 29 and 30] [913-A-B, C-H; 914-AB]

A 3.2. tenant-members had filed an application
 under Section 18 of the Co-operative 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
 B 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. Inspite of the fact, that the aforesaid
 process (seeking bifurcation of the Catholic Society) was
 C initiated by the tenant-members in the seventies, and
 inspite 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. [Para 31] [914-
 D D-F]

3.3. 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
 E land, 230 tenements would 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
 F (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
 G 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. [Para 33] [915-G-H; 916-A-C]

H 4. It has been determined by the High Court that the

petitioners/appellants did not have any proprietary right as tenant-members of the Catholic Society. This 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. Thus 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. The Catholic Society has thus 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). Therefore, it would be inappropriate to grant an injunction, restraining all redevelopment activities, in terms of the prayer made by the petitioners/appellants. [Para 34] [916-D; 918-A-C, D-E]

5. As regards the plea of the tenant-members, that they were able to procure a better offer i.e. 75 crores, for the same developmental project as against the conveyance deed dated 7.12.2009 which contemplated a consideration of Rs.70 crores payable to the Catholic Society, the High Court recorded the finding that the offer of Rs.75 crores can be stated to have been made at the behest of a rival builder who has even paid for the litigation expenses of the tenant-members. The tenant-members readily accepted the offer made by the rival builder, when he proposed before the High Court that he would act in the same manner as the builder who had come forward with proposal of redevelopment contemplated by the resolution of the Catholic Society. Therefore, it can be inferred 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

- A 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*. Therefore, this Court affirms the determination
- B rendered by the High Court 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
- C 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.
- D [Para 35 and 36] [918-F-G; 922-D-H; 923-A]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2683-2685 of 2013.

- E From the Judgments & Orders dated 09.08.2012 of the High Court of Judicature at Bombay in Appeal No. 413 of 2011 in Notice of Motion No. 172 of 2010 in Suit No. 144 of 2010, Appeal No. 489 of 2011 in Notice of Motion No. 172 of 2010 in Suit No. 144 of 2010 and Appeal No. 573 of 2011 in Notice of Motion No. 172 of 2010 in Suit No. 144 of 2010.

- F WITH

C.A. Nos. 2686-2688 & 2689-2690 of 2013.

- Mukul Rohtagi, J.J. Bhat, C.A. Sundaram, Vineet B. Naik, Abhinav Vaisht, Rafique Dada, Shyam Divan, L.N. Rao, Shally
- G Bhasin Maheshwari, Purnima Bhat, C.D. Mehta, Nikhil Nayyar, Pritha Srikumar, T.V.S. Raghavendra Sreyas, Lalan Gupta, Bhavik Mehta, Vatsal Merchant, Pratap Venugopal, Varun Singh, K.J. John & Co., Aman Vachher, Ashutosh Dubey, Harsh Sharma Vriti Anand, P.N. Puri, P.S. Sudheer, Abu John
- H Mathew, Rishi Maheshwari, Garima Prashad, Ranjeeta Rohtagi

for the appearing parties.

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The Judgment of the Court was delivered by

JAGDISH SINGH KHEHAR, J. 1. Leave granted in all matters.

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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 :

C

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

D

(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).

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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.

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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 :

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A "Amardev J. Uniyal,
Advocate High Court

13th August 2012

B Margaret Almeida & Ors.,
Madam/Sirs,

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

C —

D 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.

E 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
F 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
G order dated 9th August 2012 at the earliest.

Yours faithfully,

Sd/-

for (Amardev J. Uniyal)"

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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

- A 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
- B 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
- C 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
- D 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
- E 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
- F 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
- G 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 respondent
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herein, whereas, some of the tenant-members are the contesting appellants. A

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 B C D E F G H

- A 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
- B 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
- C 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
- D 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
- E 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
- F 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
- G 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
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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,

- A 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
- B 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
- C 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/
- D 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
- E 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
- F 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/
- G 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
- H 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, Co-operative 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-

- A 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
B 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
C 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
D 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:

E “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
F 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
G 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 clear. Obviously, the

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- A 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

- A 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.”
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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 :
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“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.
- F
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- And de-register the society viz. The Bombay Catholic Co-op Housing Society Ltd. S.V. Road, Santacruz (W),
- H

MARGARET ALMEIDA v. BOMBAY CATHOLIC CO-OP HOUSING SOC. LTD. [JAGDISH SINGH KHEHAR, J.] 893

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. No.	Name and address of society	Members	Registration number and date
1	The Bombay Catholic (Leasehold, Free-hold and others) Co-operative Housing Society Ltd. S.V. Road, Santacruz (West), Mumbai-54.	Freeholders, Leaseholders and others.	MUM/WHW/H S.G./(TC)/ 14007/2007-08, YEAR 2007 DATED 28/11/ 2007
2.	The Bombay Catholic (Tenants and Allottee) Coop. Hsg. Society Ltd., 24, Willingdon East, Santacruz (W), Mmbai-400054	Tenant Members and allottee members	MUM/WHW/H S.G./(TC)/14008 /2007-08, YEAR 2007 DATED 28/11/2007

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.

A	(3)	Reserved Fund	As per shares actually held by the members.
	(4)	Other reserved fund	As per shares actually held by the members
B	(5)	Amount of deposits	As collected from the members.
	(6)	Amount in balance	As collected from the members.
C	(7)	Societies dues payable and receivable	Shall be made according to the members and the office bearers of the society shall take decision as regards arrears.
D	(8)	By laws of the society	It shall be mandatory for new societies to adopt by-laws of the Bombay Catholic (Leasehold, Freehold and others) Co-operative Housing Society Ltd.
E	(9)	Societies old office	It shall remain at the earlier place where 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.
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G			
	(10)	Land of the Society	
		(i) The Bombay Catholic	The land of Willingdon South and
H			

- | | | |
|--|--|------------------|
| (Leasehold, Freehold and others) Co-op. Housing Society Ltd. | Willingdon South and Willingdon | A |
| (ii) The Bombay Catholic (Tenant and Allottee) Co-op. Housing Society Ltd. | 5 ½ acres land of Willingdon East together with 25 t cottage and one shed therein | B |
| (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 | C
D
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F |
| (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. | G |
| (13) In order to look after the daily affairs of the two societies formed after division of the original | | H |

A 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. A

(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." B

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 : C D

"ORDER E

- (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. F
- (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. G

H

A (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.

B (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.

D 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 :

G "ORDER

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

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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. A B
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. C
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. D E F

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 : G

A "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

B 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:

C (1) Only the land admeasuring 21,774.10 sq. mtrs. Out
of the Willingdon Estate and also known as
D 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
E 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.

F (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
G 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
H 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

- A 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.
- B
- (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.
- C
- D
- (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.
- E
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- (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
- H

- expenses but after concealing by process of legal expenses those members who are untraceable for over 15 years. A
- (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. B C
- (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. D E F
- (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. G
- (14) To ensure against litigation of any kind these terms can be presented before the appropriate Court for H

A confirmation or as Consent Terms/Settlement Terms as may be legally advised.

B 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."

C 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:

E 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.

F 2. Clause 5. That the Lessées 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.

G 3. Clause 6. That the Lessees will not do or suffer anything to be done on the demised plot

H

or premises which may cause damage
nuisance or inconvenience to the
occupiers of adjacent houses, the Society
or the neighbourhood. A

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. B C

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). D E

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. F

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. G

RESOLVED FURTHER that the Managing Committee of
the Society is authorized to approve, execute and register
individual Agreements or Indenture or other documents and H

A do such other necessary acts, deeds and things as may be requested to effect the above.

B 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.

D 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.”

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

F 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). A

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: B

"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; C D E

(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; F G H

- A (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
B 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
C 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:

D “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.
E (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
F 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.

G

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
H the above common order, it is made clear that parties to

maintain status-quo will cover any further steps to these suits.” A

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: B C

“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.” D

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. E F G

25. While adjudicating upon the controversy in hand, and H

A 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.

B 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 C 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, D 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 E 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- F 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 G 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/ H 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

A 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

A 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).

C 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.

G 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

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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

A 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
 B 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
 C 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
 D 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
 E 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
 F 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

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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

- A 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
- B 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
- C 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
- D 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
- E 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
- F 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,
- G 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,
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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 paise 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

A 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
B 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/
C 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
D 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.
E 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
F 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
G 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
H substance in the contention of the Society that Mr.

Chavan is using the plaintiffs as a tool to block the redevelopment of the Society.” A

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:- B

- “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 C
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- A 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
- B 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,
- C 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
- D 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
- E 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
- F 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
- G 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
- H of now, therefore, it is possible to prima facie infer, that the

petitioners'/appellants' claim before the High Court does not A
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 B
be unjustified.

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

K.K.T.

Appeals dismissed.

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