

**Aditya Developers Vs. Nirmal Anand Co-operative Housing Society Ltd. and Others**

**Aditya Developers Vs. Nirmal Anand Co-operative Housing Society Ltd. and Others**

**SooperKanoon Citation :** [sooperkanoon.com/1185166](http://sooperkanoon.com/1185166)

**Court :** Mumbai

**Decided On :** Feb-10-2016

**Judge :** K.K. Tated

**Appeal No. :** Arbitration Petition No. 1521 of 2015

**Appellant :** Aditya Developers

**Respondent :** Nirmal Anand Co-operative Housing Society Ltd. and Others

**Judgement :**

1. Heard the learned counsel for the parties.
2. This petition is under section 9 of the Arbitration and Conciliation Act, 1996 for appointment of Court Receiver in respect of the property as described in Exhibit-A with power to take possession of flats from respondent nos.2 to 7 or their family members or any person found in possession thereof and hand over the same to the petitioner for demolition and re-development in accordance with the re-development agreement dated 25.9.2013. (Hereinafter referred to as 'said property')
3. In the present proceeding, respondent no.1 Society entered into a Re-development Agreement with the petitioner on 25.9.2013 for re-development of their property as described in Exhibit-A (hereinafter referred to as 'said

Agreement'. The said agreement was duly registered with the Sub-Registrar of Assurance, Mumbai Suburban District, Bandra. As per the said agreement, the Society agreed to hand over vacant and peaceful possession of the suit premises to the petitioner on terms and conditions as stated therein. It was specifically stated in the said agreement that, in case any difference or dispute arise between the parties than the Arbitrator can be appointed as per Clause 62 of the said agreement which reads thus:

62. In the event of any disputes, or difference arising between the parties hereto, as regards construction, the meaning and interpretation of these presents or any of the clauses hereto the right, and obligations of the parties hereto as regards construction, the meaning and interpretation of these presents or any of the clauses hereto as also the performance, failure, breach of violation of any of the terms, conditions and covenant, contained under these presents during subsistence of these presents or even thereafter the same shall be referred to the Three Arbitrators. One to be appointed each by the Society and the Developers and the Two Arbitrators shall appoint the Third Arbitrator an such arbitrator shall be in accordance with The Arbitration and Conciliation Act 1996 or statutory modification or reenactment there of for the time in force. The decision of the Arbitrator shall be final and binding on the parties hereto. The arbitrator shall have summary power including the power including the power to give interim awards and directions and Use personal knowledge. The place of Arbitrator shall be in Mumbai.

4. Out of 18 members of respondent no.1, 13 members handed over vacant and peaceful possession of their flats to the petitioner for re-development. Only 5 members i.e. respondent nos.3, 4, 5, 6 and 7 failed and neglected to hand over their respective flats to the petitioner for re-development.

Hence, the petitioner filed the present petition u/s 9 of the said Act for various reliefs.

5. The learned counsel for the petitioner submits that as per re-development agreement dated 25.9.2013, the respondent no.1 on behalf of their members permitted the petitioner to carry out the re-development of the said structure on

terms and conditions as stated in the said agreement. He submits that as per the said re-development agreement, petitioner agreed to provide temporary alternate accommodation to the members of respondent no.1. He submits that out of 18 members, 13 members vacated their respective flats and handed over same to the petitioner. In terms of that, petitioner provided alternate accommodation and or compensation as per the re-development agreement dated 25.9.2013. He submits that the respondent nos.3 to 7 objected for handing over vacant possession on one or the other ground. Hence, it constrained the petitioner to file the present petition under section 9 of the said Act. He submits that though respondent nos.6 and 7 gave their Consent Declaration cum Affidavit being Exhibit' I1' and 'I2', page 202 and 203 of the petition, they failed and neglected to hand over the flats in their possession. He submits that after executing the said agreement, petitioner submitted copy of plans to the respondent no.1 for approval. After inviting suggestions from the members and consultants of the petitioner, respondent no.1 finalised plans for proposed new building.

6. The learned counsel for the petitioner submit that respondent no.1 in its Special General Body Meeting dated 17.11.2013 by lottery system allotted flats to its members and passed its resolution. Special Meeting was attended by 15 members of the respondent no.1 including respondent nos.3, 4, 6 and 7. He submits that thereafter petitioner on 5.5.2014 prepared list of existing members with proposed new flats nos. and forwarded the same to the respondent no.1.

7. The learned counsel for the petitioner submits that Mumbai Corporation of Greater Mumbai issued IOD dated 24.9.2014 in respect of re-development of the project. Hence, the petitioner by their letter dated 8.10.2014 informed to the respondent no.1 about obtaining IOD and further requested respondent no.1 to inform all its members to vacate their respective premises and hand over vacant and peaceful possession of the entire building by 5.11.2014.

8. The learned counsel for the petitioner submits that the respondent no.1 through their advocates letter dated 30.10.2014 intimated to its member to hand over vacant and peaceful possession of the respective flats on or before 5.11.2014 to the respondent no.1 along with lock and keys thereof. Respondent no.1 by its

letter dated 27.1.2015 requested its members to collect the cheque as per development agreement from the petitioner upon signing of individual agreements and further intimated to make suitable arrangement to vacate their flats within one month i.e. or before 28.2.2015. He submits that as the respondent no.3 to 7 failed and neglected to hand over the possession of the respective flats to the petitioner, petitioner by their letter dated 9.7.2015 called upon the respondent no.1 to inform respondent no.2 to 7 to vacate their respective flats and hand over the possession of the entire building to the petitioner for demolition thereof. As the respondent no.1 failed and neglected to hand over vacant and peaceful possession of all the flats i.e. flats occupied by respondent no.2 to 7, the petitioner by their letter dated 30.7.2015 invoked the Arbitration Clause and called upon the respondent to appoint sole Arbitrator as per clause 5 of that letter. He submits that as per section 9 of the said Act, petitioner is entitled relief as claimed in the present petition. In support of this contention, the learned counsel for the petitioner relied on following authorities :

1. Girish Mulchand Mehta and Ors. V/s. Mahesh S. Mehta and Ors., reported in 2010(1) ALL MR 719.
2. Mohinder Kaur Kochar V/s. Mayfair Housing Pvt. Ltd. and Ors. reported in 2012(6) ALL Mr 862.
3. Disha Construction V/s. Jaysen S. Mastakar and Ors. reported in 2013(5) ALL MR 696.
4. Shailaja S. Godbole and Ors. V/s. Disha Constructions and Ors. reported in 2014(2) ALL Mr 247
5. M/s. Calvin Properties and Housing V/s. Green Fields Co-operative Housing Society Ltd. And Ors. in Arbitration Petition No. 638 of 2013 dated 21.10.2013/19.11.2013 by Justice R.D.Dhanuka.
6. Dimple Realty LLP V/s. Shree Sapna CHS Ltd. and Ors. in Arbitration Petition (L) No. 1457 of 2015 dated 04.08.2015 by Justice R.D.Dhanuka.

7. Simal Mahesh Gaglani v/s. Shri Saibaba CHS Ltd. and Ors. in Arbitration Petition No. 1357 of 2015 dated 21.09.2015 by Justice R.D.Dhanuka.

9. The learned counsel for the petitioner submits that in all these matters, our Hon'ble Court held that on the basis of re-development agreement, the developer can file application under section 9 of the said Act for appointment of Receiver for taking forcible possession from occupants who are not ready and willing to cooperate with the developer for carrying out development activities. On the basis of these submissions, the learned counsel for the petitioner submits that they already spent huge amount as per the development agreement. He further submits that the petitioner is ready and willing to comply the terms and conditions of the development agreement. He submits that unless vacant and peaceful possession of the entire building is handed over to the petitioner, it is very difficult for the petitioner to comply the terms and conditions of the development agreement. Apart from that, the petitioner is suffering financial loss day by day. Hence, in the interest of justice, this Hon'ble Court be pleased to allow the present petition directing Court Receiver to take forcible possession from the members / respondent those who are not ready to cooperate in development of the suit property on terms and conditions as stated in re-development agreement dated 25.9.2013. He submits that petitioners are ready and willing to deposit entire cost payable to the members of respondent no.1 as per re-development agreement. He submits that if the present petition is not allowed, irreparable loss and injury will be caused to the petitioner.

10. On the other hand the learned counsel for the respondent no.3 vehemently opposed the present petition. He submits that as per clause 9, 11 and 54 of Re-development Agreement, petitioner was supposed to obtain consent from all the members within a period of 12 months from the date of execution of the re-development agreement.

Clause 9, 11 and 54 of the re-development agreement reads thus:

9. The MOU for re-development with developers has been approved and signed by majority of society members. The developers represented to the society that they will obtain consent of all members, within a period of twelve months from the

date of execution of this Re-development Agreement. It is however made clear to the Developers herein that in the event of their failure to obtain the consent from the said members within a period of twelve months from the date of execution of this Re-development Agreement for any reasons whatsoever, the general body of the society in discussions with the same developer may agree for a further extension of six months.

11. However, if the Developer could not obtain the consent of all members in said extended period also, the society shall extend this Re-development Agreement on its sole discretion for such period as the society deems fit and proper and the society's decision on the same shall be final and binding on the said developer. The society under such circumstances shall be at liberty to appoint new developer without any objection or hindrance of the developer nor liable to pay any compensation or damages or reimbursement of the expenses incurred by the developers except for 30% of the compensation received by each member on the signing of these presents. The Developer undertakes that they shall not claim any other compensation, reimbursement or any amount from society in this regard.

54. The Society and the members agree and undertake to vacate the building and their respective premises within 30 days of the Developers obtaining IOD from the Concerned Authority, on obtaining consent from all 18 members by the Developer and by furnishing bank guarantee as stated above and being informed about the same by the developers in respect of the said property in the event, any of the members fails to vacate his/her premises, the member concerned shall pay to the Developers Rs.5000/- (Rupees Five Thousand Only) per day as liquidated damages, till the Developers are handed over with actual and vacant possession of the flat and amount due thereof shall be recovered from the member from the corpus amount due to the member.

11. The learned counsel for the respondent no.3 submits that as per the re-development agreement, petitioner was supposed to execute the agreement with individual members and as the petitioner failed and neglected to do so, he is not entitled any relief in the present petition. He further submits that there is no contract between petitioner and respondent no.3 to 7. Hence, present petition is

not maintainable in law. He further submits that bare reading of the petition shows that there is no dispute between the petitioner and respondent no.1 Society who executed the re-development agreement dated 25.9.2013. If there is no dispute, there is no question of entertaining the petition under section 9 of the said Act. Hence, there is no substance in the present petition and same be dismissed with costs.

12. The learned counsel for the respondent no.5 submit that they have no objection to hand over vacant and peaceful possession of their flat no.B-14 on first floor to the petitioner through the respondent no.1 for re-development. He submits that respondent no.5 submitted all relevant papers to the Society for transferring the flat i.e. flat no.B-14, 1st floor in his name. He further submits that respondent no.5 is ready and willing to pay all the charges of the Society. He submits that if the respondent no.1 Society agrees to transfer the said flat in the name of respondent no.5, respondent no.5 has no objection to hand over vacant and peaceful possession of his flat to the petitioner for carrying out appropriate re-development.

13. The learned counsel for respondent no.5 submits that they have no objection to hand over vacant possession of flat to petitioner for re-development in view of affidavit dated 2nd February, 2016 filed by Debashish Mukherjee on behalf of Respondent No.1 Society.

14. Though respondent no.4 duly served, no one appeared on behalf of her when the matter was called out. Advocate for the petitioner submit that they have already paid entire consideration as per the re-development agreement of respondent no.4.

15. The learned counsel for the respondent nos.6 and 7 vehemently opposed the present petition. He submits that there is no privity of contract between the petitioner and respondent nos.6 and 7. Hence, present petition is not maintainable I law.

16. The learned counsel for the respondent nos.6 and 7 relies on advertisement given by respondent no.1 in newspaper dated 8.4.2009 for inviting bids for re-

development from experienced developer. He submits that in the said advertisement, respondent no.1 has not given proper description of the suit property. He further relies on the letter dated 9.4.2009 of the respondent no.1 to its member, petitioner's letter dated 23.4.2009 to the Society (page 239), letter dated 27.8.2010 of the Society to its member (page 247), letter dated 20.11.2010 from Society to its member (page 248), letter dated 3.5.2011 from Society to its member (page 249) and respondent nos.1's letter dated 18.3.2012 to its member calling Special General Body Meeting. He submits that all these correspondence show that initially, the Society rejected the petitioner's proposal for re-development. He submits without considering views of each and every member, the Society entered re-development agreement dated 25.9.2013 with the petitioner which is contrary to law. Hence, there is no question of granting any relief in favour of the petitioner in the present petition. Hence, there is no substance in the present petition and same be dismissed with cost.

17. I have heard both the counsel at length. The dispute in the present petition is whether the petitioner made out a case for appointment of Court Receiver with all powers to take vacant and peaceful possession of the respective flats from the respondents and hand over to the petitioner for executing the re-development agreement dated 25.9.2013.

18. It is to be noted that out of 18 members, 13 members already handed over vacant and peaceful possession of their flats to the petitioner for carrying out re-development of the suit property. During the hearing of petition, respondent no.5 agreed to hand over vacant possession of petitioner for re-development. Now only four members objected to vacate their flats.

19. The objection raised by the respondents are not sustainable at this stage because admittedly, there is an agreement between the petitioner and respondent no.1 Society who is the owner of the suit property for re-development activities. The Society by its General Body Meeting decided to carry out re-development of the suit property and for that purpose, they appointed the petitioner by re-development agreement dated 25.9.2013. The said agreement was duly registered with the Sub-Registrar of Assurance, Bombay. It is to be noted that the

objection raised by the respondent members about the maintainability of the present petition, their rights and other objections are not maintainable in law. Bare reading of the re-development agreement shows that the Society who is the owner of the Suit Property decided to hand over vacant and peaceful possession to the petitioner for carrying out development. Not only that the petitioner was also ready and willing to comply the terms and conditions of the said agreement i.e. payment of charges/compensation to the respondent/occupants of the suit flats. It is to be noted that Municipal Corporation has also issued IOD in favour of the petitioner on 24.9.2014. Though the petitioner called upon the respondent nos.3 to 7 they failed and neglected to do so.

20. As per the submissions of the respondent that they are not party to the Arbitration Agreement and therefore Arbitration Clause if any, contained in the agreement between the petitioner and the Society would not bind them and they could not be impleaded as a party respondent in the present proceeding. Reference to the decision of the Division Bench of this court in the matter of ***Girish Mulchand Mehta vs. Mahesh S. Mehta, 2010 (1) ALL MR 719*** would be relevant paragraph 15, 16, 18, 19 and 20 of the said judgment reads thus:

15. The Appellants would then rely on the decision of the Apex Court in ***Ramesh Himmatlal Shah v. Harsukh Jadhavji Joshi*** reported in ***AIR 1975 SC 1470*** to contend that the flats in question occupied by them have been allotted to them by the Housing Society which allotment is coupled with the right to transfer their shares of the Society and interest in the said flat which is the property of the Society. In the said decision, the Apex Court has observed that the right so enjoyed by the member is the species of the property namely the right to occupy a flat of this type, which assumes significant importance and acquires under the law a stamp of transferability in furtherance of interest of commerce. It went on to observe that there is no fetter in any of the legal provisions against such a conclusion and for which reason the attachment and sale of the property of the member in execution of the decree are valid under the law. The legal position expounded by the Apex Court in the said decision will be of no avail to the case on hand. The crucial question is whether the members can be heard to say that their rights in the flats occupied by them were dehors the rights of the Society therein

and that they were not claiming under the Society at all. In our considered opinion such stand of the members(Appellants herein) cannot be countenanced.

16. In the present case, it is not in dispute that the General Body of the Society which is supreme, has taken a conscious decision to re-develop the suit building. The General Body of the Society has also resolved to appoint the Respondent No. 1 as the Developer. Those decisions have not been challenged at all. The Appellants who were members of the Society at the relevant time, are bound by the said decisions. The Appellants in the dispute filed before the Cooperative Court have only challenged the Resolution dated 27/4/2008, which challenge would merely revolve around the terms and conditions of the Development Agreement. As a matter of fact, the General Body of the Society has approved the terms and conditions of the Development Agreement by overwhelming majority. Merely because the terms and conditions of the Development Agreement are not acceptable to the Appellants, who are in minuscule minority (only two out of twelve members), cannot be the basis not to abide by the decision of the overwhelming majority of the General Body of the Society. By now it is well established position that once a person becomes a member of the Cooperative Society, he loses his individuality with the Society and he has no independent rights except those given to him by the statute and Bye-laws. The member has to speak through the Society or rather the Society alone can act and speaks for him qua the rights and duties of the Society as a body (see **Daman Singh and Ors. v. State of Punjab** reported in **AIR 1985 SC 973**). This view has been followed in the subsequent decision of the Apex Court in the case of State of **U.P. v. Chheoki Employees Cooperative Society Ltd.** reported in AIR 1997 SC 1413. In this decision the Apex Court further observed that the member of Society has no independent right qua the Society and it is the Society that is entitled to represent as the corporate aggregate. The Court also observed that the stream cannot rise higher than the source. Suffice it to observe that so long as the Resolutions passed by the General Body of the Respondent No. 2 Society are in force and not overturned by a forum of competent jurisdiction, the said decisions would bind the Appellants. They cannot take a stand alone position but are bound by the majority decision of the General Body. Notably, the Appellants have not challenged the Resolutions passed by the General Body of the Society to re-develop the property and more

so, to appoint the Respondent No. 1 as the Developer to give him all the re-development rights. The propriety rights of the Appellants herein in the portion (in respective flats) of the property of the Society cannot defeat the rights accrued to the Developer and/or absolve the Society of its obligations in relation to the subject matter of the Arbitration Agreement. The fact that the relief prayed by the Respondent No. 1 in Section 9 Petition and as granted by the Learned Single Judge would affect the propriety rights of the Appellants does not take the matter any further. For, the propriety rights of the Appellants in the flats in their possession would be subservient to the authority of the General Body of the Society. Moreso, such rights cannot be invoked against the Developer (Respondent No. 1) and in any case, cannot extricate the Society of its obligations under the Development Agreement. Since the relief prayed by the Respondent No. 1 would affect the Appellants, they were impleaded as party to the proceedings under Section 9 of the Act, which was also necessitated by virtue of Rule 803E of the Bombay High Court (Original Side) Rules. The said Rule reads thus:

R803E. Notice of Filling Application to persons likely to be affected.-

Upon any application by petition under the Act, the Judge in chambers shall, if he accepts the petition, direct notice thereof to be given to all persons mentioned in the petition and to such other persons as may seem to him to be likely to be affected by the proceedings, requiring all or any of such persons to show cause, within the time specified in the notice, why the relief sought in the petition should not be granted. 18. We have no hesitation in taking the view that since the Appellants were members of the Society and were allotted flats in question in that capacity at the relevant time are bound by the decision of the General Body of the Society, as long as the decision of the General Body is in force. As observed earlier, the Appellants have not challenged the decisions of the General Body of the Society which is supreme, in so far as re-development of the property in question or of appointment of the Respondent No. 1 conferring on him the development rights. The Appellants have merely challenged the Resolution which at best would raise issues regarding the stipulations in the Development Agreement. The General Body of the Society has taken a conscious decision which in this case was after due deliberation of almost over 5 years from August

2002 till the Respondent No. 1 came to be finally appointed as Developer in terms of Resolution dated 2nd March, 2008. Moreover, the General Body of the Society by overwhelming majority not only approved the appointment of Respondent No. 1 as developer but also by subsequent Resolution dated 27<sup>th</sup> April, 2008 approved the draft Development Agreement. Those terms and conditions have been finally incorporated in the registered Development Agreement executed by the Society in favour of Respondent No. 1. That decision and act of the Society would bind the Appellants unless the said Resolutions were to be quashed and set aside by a forum of competent jurisdiction. In other words, in view of the binding effect of the Resolutions on the Appellants, it would necessarily follow that the Appellants were claiming under the Society, assuming that the Appellants have subsisting proprietary rights in relation to the flats in their possession. It is noticed that as of today the Appellants have been expelled from the basic membership of the Society. Their right to occupy the flat is associated with their continuance as member of the Society. It is a different matter that the decision of expelling the Appellants from the basic membership of the Society will be subject to the outcome of the decision of the superior authority where the appeals are stated to be pending. If the decision of the Society to expel the Appellants is to be maintained, in that case, the Appellants would have no surviving cause to pursue their remedy even before the Co-operative Court much less to obstruct the re-development proposal. As a matter of fact those proceedings will have to be taken to its logical end expeditiously. Even if the Appellants were to continue as members, they would be bound by the decision of the General Body whether they approve of the same or otherwise. In any case, keeping in mind that the Development Agreement does not absolutely take away the rights of the Appellants in the flats in question, as after demolition of the existing building, the Appellants would be accommodated in the newly constructed flats to be allotted to them in lieu of the existing flats, on the same terms as in the case of other members, provided the Appellants continue to remain members of the Society. Under the Development Agreement, the Respondent No. 1 is obliged to complete the project within 18 months from the date of receipt of full Commencement Certificate from the Corporation. The full Commencement Certificate would be issued only upon the vacant possession of the entire building is delivered to the

Respondent No. 1 who in turn would demolish the same with a view to reconstruct a new building in its place. Significantly, out of twelve (12) members, ten (10) members have already acted upon the Development Agreement as well as have executed separate undertaking-cum-agreement with the Respondent No. 1 Developer. They have already vacated flats in their occupation to facilitate demolition of the existing building and have shifted to alternative transit accommodation as back as in February 2009. The project has been stalled because of the obstruction created by the Appellants herein who are in minuscule minority. The said ten members of the Society who have already shifted their premises, they and their family members are suffering untold hardship. At the same time, the Respondent No. 1 who has already spent huge amount towards consideration of the Development Agreement and incurred other incidental expenses to effectuate the Development Agreement in addition will have to incur the recurring cost of paying monthly rent to the ten members who have already shifted to transit accommodation. The learned Single Judge has noted that the Appellants are not in a position to secure the amount invested and incurred including the future expenses and costs of the Respondent No. 1 herein in case the project was to be stalled in this manner. Even before this Court the Appellants have not come forward to compensate the Respondent No. 1 herein and the other ten members of the Society for the loss and damage caused to them due to avoidable delay resulting from the recalcitrant attitude of the Appellants. Considering the impact of obstruction caused by the Appellants to the re-development proposal, not only to the Respondent No. 1 Developer but also to the overwhelming majority of members (10 out of 12) of the Society, the learned Single Judge of this Court opined that it is just and convenient to not only appoint the Court Receiver but to pass further orders for preservation as well as protection and improvement of the property which is subject matter of Arbitration Agreement. We have already noticed that the Court's discretion while exercising power under Section 9 of the Act is very wide. The question is whether in the fact situation of the present case it is just and convenient to appoint Court Receiver coupled with power conferred on him to take over possession of the entire building and hand over vacant and peaceful possession thereof to the Respondent No. 1 who in turn shall re-develop the property so as to provide flats to each of the members of the

Society in lieu of the existing flats vacated by them as per the terms and conditions of the Development Agreement, as ordered by the learned Single Judge. For the reasons noted by the Learned Single Judge which we have reiterated in the earlier part of this decision, we find that it would be just and convenient to not only appoint Court Receiver to take over possession of the property but also pass further order of empowering the Court Receiver to hand over vacant possession of the suit building to the Respondent No. 1 to enable him to complete the re-development work according to the terms and conditions of the Development Agreement.

19. Our attention was invited to the decisions of our High Court in the case of **Raja Construction Co. v. Sahara Cooperative Housing Society Ltd. and Ors.** in **Notice of Motion No. 2753/2007** decided on **August 31, 2007** and another decision of the Division Bench in the case of **Whiz Enterprise Private Ltd. v. State of Maharashtra and Ors.** in **WP (L) No. 28/2009** decided on **30/7/2009** [since reported in **2009(6) ALL MR 539**]. We are conscious of the fact that in both these decisions the member who was in minority did not bother to challenge the decision of the General Body of the Society. Even in the present case, the Appellants have not challenged the relevant decisions of the Society to re-develop the suit property and to appoint the Respondent No. 1 as the Developer. At best, the Appellants have challenged the Resolution dated 27th April, 2008 which in turn relates to the approval of the Development Agreement, which has already been executed between the Respondent No. 1 Developer and the Respondent No. 2 Society. Indeed, in those cases the relief was not on an Application under Section 9 of the Act, but for the reasons recorded hitherto the relief to be granted in this petition would nevertheless be the same.

20. It was also argued that the property was in good condition and there was no need to re-develop the existing building. In the first place, as noted earlier, the decision of the General Body of the Society to re-develop the suit property has not been challenged at all. Besides, no provision in the Cooperative Societies Act or the rules or any other legal provision has been brought to our notice which would curtail the right of the Society to re-develop the property when the General Body of the Society intends to do so. Essentially, that is the commercial wisdom of the

General Body of the Society. It is not open to the Court to sit over the said wisdom of the General Body as an Appellate Authority. Merely because some members in minority disapprove of the decision, that cannot be the basis to negate the decision of the General Body, unless it is shown that the decision was the product of fraud or misrepresentation or was opposed to some statutory prohibition. That is not the grievance made before us. In the present case, the General Body took a conscious decision after due deliberations for over five years to re-develop its property. Even with regard to the appointment of the Respondent No. 1 as the Developer, the record shows that it was decided by the General Body of the Society after examining the relative merits of the proposals received from the developers and interviewing them. Even the proposed development agreement to be entered with the Developer(Respondent No. 1) was approved by the General Body. The Appellants raised untenable pleas to cause obstruction and have belatedly filed proceedings in the Cooperative Court as a counter blast only to protract the re-development work to be carried out by the Respondent No. 1 herein.

21. It is to be noted that once the person becomes a member of the Co-operative Society he loses his individuality with the Society and has no independent rights except which is given to him by the statute and bye-laws. Hence, objection raised by the respondent nos.3, 4, 6 and 7 that there is no privity of contract between them and petitioner, is not maintainable.

22. Considering the above mentioned facts and the law declared by our High court and also out of 18 members, 13 members already handed over vacant and peaceful possession of the flats to the petitioner to carry out re-development, I am of the opinion that the petitioner has made out a case for allowing this Arbitration Petition. Hence, following order is passed:

(A) Petition is allowed in terms of prayer clause (a) and (b) which reads thus:

(a) that pending the commencement and culmination of the arbitral proceedings between the Petitioner and Respondent No.1, this Hon'ble Court be pleased to appoint the Court Receiver, High Court, Bombay or any other fit and proper person as receiver of the Property described in Exhibit 'A' hereto with all powers under

Order XL Rule 1 of the Code of Civil Procedure including power to take physical possession of the Subject Premises described in the Exhibit 'B' hereto from Respondents No.2 to 7, their family members and / or any person found in possession thereof, with the help of police assistance, if necessary, and to hand over the same to the Petitioner for demolition and re-development of the Property in accordance with the said Agreement being Exhibits 'C' hereto.

(b) that pending the commencement and culmination of the arbitral proceedings between the Petitioner and Respondent No.1, this Hon'ble Court be pleased to grant an order and injunction restraining the Respondents No.2 to 7, their family members, servants, agents and any person claiming by, through and/or under them or any one or more of them from in any manner selling, transferring, alienating, dealing with, disposing off and/or creating third party rights and/or encumbrances in respect of the subject premises described in Exhibit 'B' hereto or any part thereof and/or parting with possession thereof and/or obstructing, interfering with and/or creating hurdles in re-development of the Property described in Exhibit 'A' hereto by the Petitioner under said Agreement (being Exhibit 'C' hereto), in any manner whatsoever.

(B) Petitioner is directed to deposit cost and/or compensation payable to non-co-operating members/respondents in the office of Court Receiver as per Re-development Agreement dated 25.9.2013 before taking possession.

(C) Non-co-operating members/respondents are entitled to withdraw said amount after possession is taken by Receiver and handed over to the Petitioner.

(D) No order as to costs.

(E) At this stage, the learned counsel for the respondent nos.3, 6 and 7 seek stay of the order.

(F) Considering the facts and circumstances of the case, Court Receiver is directed not to take physical possession of the suit premises for three weeks from today.

(G) Court Receiver to act on copy of this order duly authenticated by the Sheristedar of this court.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**