



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CIVIL APPLICATION NO. 7723 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

=====

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

=====

**BHAVDEEP COOPERATIVE HOUSING SOCIETY LTD. THROUGH
USHABEN NATVARBHAJ AMIN & ORS.
Versus
STATE OF GUJARAT & ORS.**

=====

Appearance:

MR YATIN OZA, SENIOR ADVOCATE with MR. JIT P PATEL(6994) for the Petitioner(s) No. 1,2,3
for the Respondent(s) No. 1
MS DHWANI R TRIPATHI, AGP for the Respondent(s) No. 1
MR DEEP D VYAS(3869) for the Respondent(s) No. 2,3
MR HARSH N PAREKH(6951) for the Respondent(s) No. 6,7
MR HASMUKH C PATEL(1040) for the Respondent(s) No. 5
MR SATYAM Y CHHAYA(3242) for the Respondent(s) No. 4

=====

CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 07/03/2024

ORAL JUDGMENT



1. By way of present petition under Article 226 of the Constitution of India, the petitioners herein have prayed for the following reliefs:

“7. In the aforesaid premises, the petitioners prays as under:

A. This Hon’ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction:

(i) Holding and declaring that the action of the respondent authorities of directing the petitioner no.1 society and its members to repair and secure the dilapidated, dangerous and ruinous structures of the petitioner no. 1 society instead of taking appropriate steps to have these dangerous structures vacated/evicted and demolished, is without any application of mind, unconstitutional, unreasonable, irrational, unjustified, and amounts to a refusal to perform their duty under the provisions of the Gujarat Provisional Municipal Corporations Act, 1949 and is in clear disregard and contravention of the provisions of the Gujarat Ownership Flats Act, 1973.

(ii) Quashing and setting aside the notice dated 31.3.2022 issued by the respondent authorities to the extent that it seeks to direct the petitioner no. 1 society and its members to repair and secure the dilapidated, dangerous and ruinous structures of the petitioner no. 1 society instead of taking appropriate steps to have these dangerous structures vacated/ evicted and demolished.

(iii) Directing the respondent authorities to take appropriate steps for vacating/ evicting and demolishing the dangerous and dilapidated structures of the petitioner no. 1 society in terms of and in exercise of powers and duties under the provisions of the Gujarat Provisional Municipal Corporations Act, 1949.

AA. Your Lordships be pleased to issue a writ of mandamus or any other appropriate writ commanding Respondent no.6 & 7 to handover vacant and peaceful possession of their flats for the purpose of redevelopment as per Section 41A of the Gujarat Ownerships Flats Act, 1973.

B. Pending the admission, hearing and final disposal of the present petition, this Hon'ble Court may be pleased to stay and suspend the operation and implementation of the respondent authorities' direction, as contained in the notice dated 31.3.2022, directing the petitioner no. 1 society and its members to repair and secure the dilapidated, dangerous and ruinous structures of the petitioner no. 1 society and be further pleased to direct the respondent authorities to take appropriate steps for getting the dangerous and dilapidated structures of the



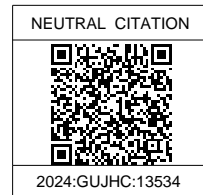
petitioner no. 1 society vacated/evicted and demolished in in exercise of powers and duties under the provisions of the Gujarat Provisional Municipal Corporations Act, 1949.

C. Ex parte ad interim relief in terms of prayer B hereinabove be granted.

D. Such other and further reliefs as may be deemed fit in the facts of the present case may be granted."

2. The petitioner No.1 is a co-operative housing society registered under the provisions of the Gujarat Co-operative Societies Act, 1961 vide registration No.D/6185 dated 12.12.1975. The petitioner No.1 is the owner of land admeasuring 2331 sq.mtrs at Block/Survey No.106 paiki, Final Plot No.71 in Town Planning Scheme No.19 in village : Vadaj, Taluka : Sabarmati, District : Ahmedabad. The aforesaid is situated opposite D.K. Patel Hall, Naranpura, Ahmedabad. In 1977-78, a total of 4 blocks (Block A to D) comprising of total 48 – 1BHK residential apartments of approximately 56 sq. meters each, were constructed and these flats were allotted to 48 persons who became members of the petitioner society. These flats are known as “Rang Milan Flats”. The petitioner No.2 is the Chairman and the petitioner No.3 is the Secretary of the petitioner No.1 society.

2.1 The construction of the flats is more than 44 years old and the structures are in a highly dilapidated and dangerous



state. The blocks are structurally unsafe and not repairable anymore. The structures are so ruinous that they cannot withstand the weight of the walls and slabs of upper floors for long. A copy of the report of the Structural Engineer dated 11.03.2022 in regard to the state of the structures opining that structure should be vacated and demolished as soon as possible along with the photographs of the structures is duly produced at Annexure – A.

2.2 The repairing and restrengthening of these structure is not feasible and even if feasible, would involve reconstruction right from the foundation which, even if possible, would be an impractical and herculean task requiring enormous amounts of money which the society and its members would not be in a position to afford. Moreover, embarking on a project of repairing such structures would mean that the members of the society would have to vacate their respective apartments and find alternate accommodation at their own cost during the course of such work, which would also be very expensive for the members and most of the members may not be in a position to afford it. The practical solution to the aforesaid problem was for the society to be redeveloped as



contemplated under the Gujarat Ownership Flats Act, 1973, a copy of which is duly produced at Annexure – D.

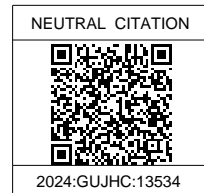
2.3 In line of the aforesaid, the members of the society decided to go for redevelopment. The process was initiated in the year 2017 and more than required number of 75% agreed to go for redevelopment pursuant to which offers were invited from the developers and the offer of the respondent No.5 wherein, each member would get 2BHK flat in place of their existing 1BHK flat, was approved in the year 2019 by much more than 75% of the members of the society. Thereafter, some time elapsed and upon request of the society that flat of larger area be provided, the respondent No.5 gave a better plan with 3BHK flats instead of the earlier offer of 2 BHK flats. Copies of some resolutions passed and block wise letters with signature of the members in this regard are duly produced at Annexure – E colly.

2.4 Considering the scope of project getting a 3BHK flat in redevelopment project as against the existing 1BHK flat was possible, consent was taken block wise from all the members wherein, for Block D, the respondent Nos.6 and 7 have their flat, consented to redevelopment and the respondent No.6



consented for redevelopment and signed on behalf of the respondent No.7 i.e. his father. On 07.02.2022, the respondent No.6 appointed as Chairman of the petitioner society. On 11.02.2022, Resolution came to be passed by the petitioner society duly signed by the respondent No.6 stating that any resolution for redevelopment to be signed by the Chairman, Secretary and 3 Committee members. On 28.02.2022, the project was allotted to respondent No.5 'Leela Buildcon' and a resolution for the same came to be passed by the petitioner society. The petitioner society got the structure inspected from the AMC licensed Structural Engineer who upon inspection, submitted its report and issued Structural Stability Certificate.

2.5 Memorandum of Understanding came to be entered into by the 46 out of 48 members with regard to the redevelopment with the respondent No.5 on 11.03.2022. Copies of the MOUs are duly produced at Annexure – G colly. Thus, more than 95% of the members have consented for redevelopment which is far more than the prescribed 75% under Section 41A of the Gujarat Ownership Flats Act, 1973. Therefore, the proposed redevelopment is in consonance with the provisions of the Gujarat Ownership Flats Act, 1973.



2.6 Thereafter, on 12.03.2022, the respondent No.6 was removed from the post of Chairman and one Ms. Usha Amin was appointed as new Chairman of the society and the new committee undertook further steps for redevelopment of the petitioner society. On 29.03.2022, the petitioner society addressed a letter to the respondent No.4 – Corporation referring to the Structural Engineer’s report and opinion, informing that the society had decided to go for redevelopment and stating that the responsibility and liability for any loss due to objection by few members would be that of those members as well as that of the respondent corporation.

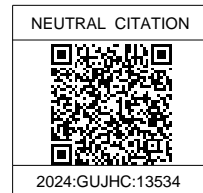
2.7 The respondent – Corporation in its impugned notice dated 31.03.2022 declared the structures to be dangerous and ruinous but asked the petitioner society to repair the same. A copy of the said notice is duly produced at Annexure – B. The photographs of the structure showing the collapse of RCC weather shed and RCC beam are duly produced at Annexure – C. Thus, the structures pose great danger to the lives of persons occupying and visiting the same and are also likely to cause damage to the surrounding property and residents when they fall. On 01.04.2022, the respondent No.6 filed Lavad Suit



No.83 of 2022 before the Board of Nominees wherein, the dilapidated condition of the structure is admitted.

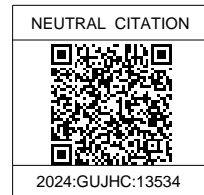
2.8 In view of the aforesaid facts, the petitioner society was left with no alternative but to address a letter dated 04.04.2022 to the respondent authority pointing out that the Structural Engineer had opined to demolish the structures and go for redevelopment and requested the respondent authority to initiate action for demolition of the structures by issuing demolition notice, so as to enable the society and the respondent No.5 to take forward the redevelopment of the society. A copy of the said letter dated 04.04.2022 is duly produced at Annexure – I. However, till date, no action has been taken by the respondent authority. In view thereof, the petitioners have approached this Court by filing the present petition under Article 226 of the Constitution of India seeking the reliefs, as referred above.

3. Heard Mr. Yatin Oza, learned Senior Counsel with Mr. Jit P. Patel, learned advocate appearing for the petitioners, Ms. Dhvani R. Tripathi, learned AGP appearing for the respondent No.1 – State, Mr. Deep D. Vyas, learned advocate appearing for the respondent Nos.2 and 3, Mr. Satyam Chhaya, learned



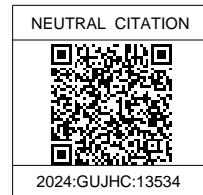
advocate appearing for the respondent No.4, Mr. Hasmukh C. Patel, learned advocate appearing for the respondent No.5 and Mr. Harsh N. Parekh, learned advocate appearing for the respondent Nos.6 and 7.

4. Mr. Yatin Oza, learned Senior Counsel appearing for the petitioners, submitted that the development permission for the existing superstructure came to be granted on 14.02.1979 and accordingly, the existing structure consists of 48 residential flats however, due to efflux of time and aging of the structure as also for want of modern facilities and a strong structure, members of the society being 48 deliberated the process of redevelopment and offers were called for from different developers through reference of the members. It was submitted that general meeting was held on 02.02.2019 and voting was carried out amongst members wherein, the Respondent No.5's offer being most beneficial and competitive in comparison to offers from different developers, 33 votes out of total 48 votes were received and accordingly resolution came to be passed on 02.02.2019 handing over the redevelopment project of society to Respondent No.5. It was submitted that after the selection of the developer i.e.



respondent No.5 herein, block wise consents came to be taken wherein the objecting members being Respondent No. 6 consented for redevelopment and also consented on behalf of his father i.e. Respondent No. 7. It was submitted that the respondent Nos. 6 and 7 are father and son and holds ownership of two flats in the petitioner society.

4.1 Mr. Oza, learned Senior Counsel, submitted that by resolution dated 28.02.2022, the Respondent No.5 came to be appointed as developer for the redevelopment of society and as per the resolutions, as also as per the wish and will of the majority of members, 46 members out of total 48 members entered in to Memorandum of Understanding with the Respondent No.5 on 11.03.2022. It was submitted that a licensed structural engineer also carried out survey on 11.03.2022, who upon survey and inspection submitted its report wherein the structure was reported as fully damaged and found unstable and the structural engineer further advised to vacate the and demolish the building as soon as possible. It was submitted that the respondent corporation was also pleased to inspect the structure and issue notice dated 31.03.2022 wherein it was observed that all the 4 blocks of the



society building is in dilapidated condition and it was directed that the structure is required to be secured immediately. It was also submitted that in July 2022, during monsoon season due to heavy rain, the structure became more dangerous and ceiling slab as well as water tank of Block A collapsed which warranted the respondent corporation to intervene and RED NOTICE was issued and few members were forced to vacate the premises. However, it is only due to objection of the respondent Nos. 6 and 7 that the petitioner society is not able to go ahead with redevelopment.

4.2 Mr. Oza, learned Senior Counsel, submitted that the dilapidated and dangerous condition of the building is admitted by the Respondent No. 6 in the lavad suit filed by the Respondent No. 6 on 01.04.2022 and therefore, at present, the building structure is admittedly in a dilapidated and dangerous condition. It was submitted that the resolutions passed by the society has been challenged vide lavad suit No. 83 of 2022 before the Board of Nominee however, no interim relief has been granted by the Board of Nominee and such suit is only filed to delay the redevelopment process. Reliance is placed on the ratio as laid down by this Court in case of *Girish Sumantlal*



Darji V/s Ahmedabad Municipal Corporation in Letters Patent Appeal No. 336 of 2023 wherein, the legal position for redevelopment process vis-a-vis pendency of suit.

4.3 Mr. Oza, learned Senior Counsel, submitted that it is the settled legal position that once having consented to redevelopment and having affixed their signature respondents are estopped from contending anything contrary to redevelopment. Reliance is also placed on the ratio as laid down in case of ***Sarojben Kiritbhai Shah V/s Ahmedabad Municipal Corporation*** in Letters Patent Appeal No.1075 of 2022.

4.4 Mr. Oza, learned Senior Counsel, submitted that as per the settled law in case of ***Rabari Tejmalbhai Gagabhai V/s Ratnamani Co-Op Housing Society Ltd.*** in Letters Patent Appeal No.1427 of 2023, only three conditions are required to be fulfilled for redevelopment of the society in terms of section 41A of the Gujarat Ownership of Flats Act: (i) The building shall have completed the period of twenty-five years from the date of issuance of the development permission by the concerned authority; (ii) The concerned authority has declared the building being in ruinous condition, i.e. declared it dilapidated



and dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighborhood thereof; (iii) Consent of not less than 75% of the members of the building for redevelopment of the building has been obtained. Therefore, in the present case, the petitioner society having fulfilled all the three conditions for falling in line with redevelopment in terms of Section 41A of the Act, the prayers, as prayed for, in the petition are required to be allowed and the petitioner society be permitted to be redeveloped.

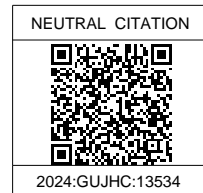
5. Mr. Harsh N. Parekh, learned advocate appearing for the respondent Nos.6 and 7, placed reliance on the affidavit-in-reply filed on behalf of the respondent No.6 and submitted that the prayers as sought for in the petition, are against the private persons and therefore, the present petition is not maintainable. It was submitted that the petitioner society has not followed the relevant by-laws and the provisions of the Gujarat Co-operative Societies Act, 1961 in seeking approval of the members of the society for redevelopment. It was also submitted that the objections raised by the respondents is based on the apprehension with respect to the handing over



the entire project to the respondent No.5. The society has not called for any tenders much less any proposal from the developers before deciding upon the respondent No.5. In light of the aforesaid, it is alleged that the society has malafidely handed over the redevelopment work to the respondent No.5. The respondents are the residents of the society and have no other residence and the same would cause irreparable harm if, the project does not see the light of the day.

6. Having heard the learned advocates appearing for the respective parties, following emerge:

6.1 The petitioner No.1 society registered under the provisions of the Gujarat Co-operative Societies Act, 1961 vide registration No.D/6185 dated 12.12.1975 is the owner of the land admeasuring 2331 sq. mtrs at Block/Survey No.106 paiki, Final Plot No.71 in Town Planning Scheme No.19 in Village : Vadaj, Taluka : Sabarmati, District : Ahmedabad, and was constructed in the year 1977-78 in 4 blocks (Block A to D) comprising of 48 – 1BHK flats of approximately 56 sq. mtrs each for 48 members. The building use permission came to be granted for 48 members on 14.02.1979 which is duly produced at page 888/A.



6.2 On 01.02.2017, the petitioner society passed resolution for doing colour and plastering of structure since the structure is dilapidated and option was also given for redevelopment which was opted by majority of the members.

6.3 On 26.07.2018, Resolution came to be passed for getting consent of members for redevelopment and also about price for outright sell if, any member wants to sell their flat. It was also decided to form a redevelopment committee and members were informed to show their interest for being a member in redevelopment committee.

6.4 On 14.08.2018, meeting was held wherein, 29 members remained present and discussed about the redevelopment of the society. On 02.02.2019, General Meeting was held wherein, voting was done for selecting the offer of developers and from total 48 members, 33 members voted in favour of the respondent No.5 'Leela Buildcon' and accordingly, respondent No.5 was selected.

6.5 On 23.03.2020, the petitioner society wrote a letter to the Ahmedabad Municipal Corporation (AMC) informing that the structure is in dangerous and requires demolition.



6.6 On 10.01.2021, considering the scope of getting a 3BHK flat in redeveloped project as against 1BHK flat was possible, consent was taken block wise from all the members. For Block D where the respondent Nos.6 and 7 have their flat, consented to redevelopment and the respondent No.6 consented for redevelopment and signed on behalf of the respondent No.7 as well i.e. his father. On 07.02.2022, the respondent No.6 appointed as Chairman of the petitioner society.

6.7 On 11.02.2022, Resolution for redevelopment came to be passed by the petitioner society duly signed by the respondent No.6 as the Chairman of the society also by the Secretary and 3 Committee members.

6.8 On 28.02.2022, the project was allotted to respondent No.5 'Leela Buildcon' and a resolution for the same came to be passed by the petitioner society.

The petitioner society got the structure inspected from the AMC licensed Structural Engineer who upon inspection, submitted its report and issued Structural Stability Certificate dated 11.03.2022.

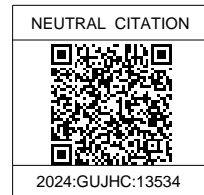
6.9 Memorandum of Understanding (MOU) came to be



entered into by the 46 out of 48 members with regard to the redevelopment with the respondent No.5 on 11.03.2022 duly produced at Annexure – G colly. The said MOU dated 11.03.2022 provides for the following amenities:

- a. Against existing 56 sq. yrd. carpet area, 94 sq. yrd. carpet area will be provided in redeveloped project (67% more carpet area)
- b. Project will be completed in approximately 30 months and project will be registered under the RERA Act.
- c. Rs.1,50,000/- shifting charges
- d. Rs.18,000/- per month rent with 10% increase every year.
- e. Rs.5 Crore Bank Deposit
- f. Transportation charges of Rs.10,000/- per member
- g. Stamp duty and documentation charges for the new flat will be at the expense of the developer i.e. the respondent No.5 herein.

6.10 On 12.03.2022, the respondent No.6 was removed from the post of Chairman and on the same day, Ms. Usha Amin was appointed as new Chairman of the society and formed new committee to take further steps for redevelopment of the petitioner society.

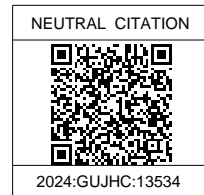


6.11 On 29.03.2022, the petitioner society addressed a letter to the respondent No.4 – Corporation referring to the Structural Engineer’s report and opinion, informing that the society had decided to go for redevelopment and stating that the responsibility and liability for any loss due to objection by few members would be that of those members as well as that of the respondent corporation.

6.12 The respondent – Corporation in its impugned notice dated 31.03.2022 declared the structures to be dangerous and ruinous but asked the petitioner society to repair the same. A copy of the said notice is duly produced at Annexure – B. The photographs of the structure showing the collapse of RCC weather shed and RCC beam are duly produced at Annexure – C.

6.13 On 01.04.2022, the respondent No.6 filed Lavad Suit No.83 of 2022 before the Board of Nominees objecting to the redevelopment wherein, the dilapidated condition of the structure is admitted.

6.14 On 04.04.2022, the petitioner society addressed a letter to the respondent authority pointing out that the Structural



Engineer had opined to demolish the structures and go for redevelopment and requested the respondent authority to initiate action for demolition of the structures by issuing demolition notice, so as to enable the society and the respondent No.5 to take forward the redevelopment of the society. However, till date, no action has been taken by the respondent authority.

7. At this stage, it is apposite to refer to Section 41A of the Gujarat Ownership Flats Act, 1973, which reads thus:

"41A. Re-development of flats and apartment. – Notwithstanding anything contained in this Act, any work in relation to the re-development of a building can be carried out on such terms and conditions as may be prescribed, after obtaining the consent of not less than 75 per cent. of the flats owners of such building :

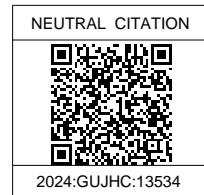
Provided that, in respect of such building, -

(i) a period of twenty – five years must have been completed, from the date of issuance of permission for development by the concerned Authority; or

(ii) the concerned Authority has declared that such building is in ruinous condition, or likely to fall, or in any way dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighbourhood thereof.

Explanation. - For the purpose of this section, the expression "redevelopment" shall be the meaning as assigned to it in relevant Development Control Regulations."

8. The objections raised by the respondent Nos.6 and 7 with respect to the maintainability of the present petition are no longer *res-integra* in light of the judgment dated 21.06.2022 passed in Special Civil Application No.8530 of 2019 and the



judgment dated 09.11.2023 passed in Special Civil Application No.11314 of 2022 wherein, the prayers as prayed for by the petitioners are held to be maintainable. The redevelopment is accepted and consented by more than 75% members.

8.1 In the facts of the present case, in light of Section 41A of the Act, 1973, (i) 46 out of 48 members i.e. 95.8% members, have consented and signed the MOU which is entered into by the petitioner with the respondent No.5 (ii) the report of the Structural Engineer dated 11.03.2022 duly produced at Annexure – A, stating that the buildings are in extremely dilapidated and dangerous condition and (iii) the buildings are more than 44 years old. The aforesaid is undisputed.

8.2 This Court has also noted that the objector i.e. the respondent No.6 herein has also consented for redevelopment and signed on behalf of the respondent No.7 as well i.e. the father of the respondent No.6. The respondent No.6 was appointed as Chairman of the petitioner Society on 07.02.2022. The respondent No.6 signed as Chairman with Secretary and 3 committee members in the Resolution dated 11.02.2022. After the aforesaid exercise was undertaken, the redevelopment project came to be allotted to the respondent



No.5 and the society passed the Resolution to the said effect on 28.02.2022. After the respondent No.6 came to be removed as Chairman from the post of Chairman on 12.03.2022, the respondent No.6 preferred Lavad Suit No.83 of 2022 before the Board of Nominees on 01.04.2022 contending that though the respondent No.6 has no objection with respect to the redevelopment, majority of the members are proctoring the respondent No.6 as an objector and in view thereof, the Lavad Suit came to be filed.

In light of the aforesaid, the conduct of the respondent No.6 does not espouse confidence to this Court and from the record, it clearly appears that the respondent No.6 is the signatory to the Resolution dated 11.02.2022 resolving for the redevelopment of the petitioner society. The contention raised by the respondent No.6 that the tenders are not called for, does not hold good considering the aforesaid fact that the respondent No.6 was the Chairman of the society and signatory to the Resolution.

9. At this stage, it is apposite to refer to the ratio as laid down by the Hon'ble Supreme Court in Civil Appeal No.7261 of 2022 dated 13.10.2022 in case of ***Bengal Secretariat Co.op.***



Land Mortgage Bank and Housing Society Ltd. vs. Sri Aloke

Kumar & Anr. Paragraphs 52 to 58 of the said decision read

thus:

“52. It is not in dispute that the General Body of the Appellant Society, which is supreme, has taken up a conscious decision to redevelop the administrative building. The General Body of the Appellant Society has also resolved to appoint the Hi-Rise as the developer. Those decisions having not been challenged at all, the Respondent No. 1 being a member of the Appellant Society is bound by the said decisions. The General Body of the Appellant 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 Respondent No. 1, who could be said to be in minuscule minority cannot be the basis of not to abide by the decision of the overwhelming majority of the General Body of the Appellant Society. The redevelopment of the property is necessitated in view of the fact that the building is in a dilapidated condition with passage of time. The redevelopment thus, in our view, would be a requirement and a necessity and cannot be termed as business. The Appellant Society in such circumstances did not even require to carry out any amendment to the bye-laws or to include the “redevelopment of the buildings” as one of the objects of the Society before taking any decision to redevelop its property.

53. By now it is well established position that once a person becomes a member of the Co-operative 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 v. State of Punjab, reported in (1985) 2 SCC 670 : AIR 1985 SC 973). This view has been followed in the subsequent decision of this Court in the case of State of U.P v. Chheoki Employees Co-operative Society Ltd., reported in (1997) 3 SCC 681 : AIR 1997 SC 1413. In this decision, this Court further observed that the member of a Society has no independent right qua the Society and it is the Society that is entitled to represent as the corporate aggregate. This 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 Appellant Society are in force and not overturned by a forum of competent jurisdiction, the said decisions would bind the Respondent No. 1. He cannot be permitted to take a stand alone position but is bound by the majority decision of the General Body. Notably, the Respondent No. 1 has not challenged the Resolutions passed by the General Body of the Appellant Society to redevelop the property and more so, to appoint the Hi-Rise as the Developer to give him all the redevelopment rights.



54. *It was also argued on behalf of the Respondent No. 1 that the property is in a good condition and there is no need to redevelop the existing building. In the first place, as noted earlier, the decision of the General Body of the Society to redevelop the subject property has not been challenged at all. Besides, no provision in the Co-operative 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 redevelop 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 one single member in minority disapproves 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 many years to redevelop its property. Even with regard to the appointment of the "Hi-Rise" 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.*

55. *The object of the provision has to be borne in mind. The entire legislative scheme goes to show that the Co-operative Society is to function democratically and the internal democracy of a society, including resolutions passed in accordance with the Act, the Rules, and the bye-laws have to be respected and implemented. The Co-operative Movement is both a theory of life and a system of business. It is a form of voluntary association where individuals unite for mutual aid in the production and distribution of wealth upon principles of equity, reason and common good. It stands for distributive justice and asserts the principle of equality and equity ensuring to all those engaged in the production of wealth a share proportionately commensurate with the degree of their contribution. It provides as a substitute for material assets, honesty and a sense of moral obligation and keeps in view the moral rather than the material sanction. The movement is thus a great Co-operative movement.*

56. *The basic principles of co-operation are that the members join as human beings and not as capitalists. The Co-operative Society is a form of organization wherein persons associate together as human beings on the basis of equality for promotion of economic interest of its members. This movement is a method of doing the business or other activities with ethical base. "Each for all and all for each" is the motto of the co-operative movement. This movement not only develops latent business capacities of its members but produces leaders; encourages economic and social virtues, honesty and loyalty, becomes imperative, prospects of better life, obtainable by concerted effort is opened up; the individual realises that there is something more to be sought than mere material gains for himself. So, in fact, it being a business cum moral movement, and the success of the Co-operative Society depends upon the reality with which one of the members work for the achievement of its objects and purpose. The Committee on Co-operation in India emphasized the moral aspect of co-operation, to quote the words:-*



"The theory of co-operation is very briefly that an isolated and powerless individual can, by association, with others and by moral development support, obtain in his own degree the material advantages available to wealthy or powerful persons and thereby develop himself to the fullest extent of his natural abilities. By the Union of forces, material advancement is secured and by united action self reliance is fostered and it from the inter-action of these influences that it is hoped to attain the effective realisation of the higher and more prosperous standard of life which has been characterised as better business, better arming and better living; we have found that there is a tendency not only among the outside public but also among supporters of the movement to be little its moral aspect and to regard this as superfluous idealism. Cooperation in actual practice must often fall short of the standard aimed at and details inconsistent with co-operative ideals have often to be accepted in the hope that they may lead to better things. We wish clearly to express that it is the true co-operation alone, that is, to a co-operation which recognises the moral aspect of the question that Government must look for the amelioration of the masses and not to a pseudo co-operative edifice, however imposing, which is built in ignorance of co-operative principles. The movement is essentially a moral one and it is individualistic rather than socialistic. It provides as a substitute for material assets honesty and a sense of moral obligation and keeps in view the moral rather than the material sanction. Pages 5 and 6 of Theory and Practice of Co-operation in India and Abroad by Kulkarni, Volume 1. Co-operation is a mode of doing business, is at present applied as the solution of many economic problems. Co-operation is harnessed to almost all forms of economic activity. Though co-operation was introduced in this country as a remedy for rural indebtedness, it has been applied successfully in a wide range of activities such as production, distribution, banking, supply, marketing, housing and insurance. See Theory and Practice of Co-operation in India and Abroad by Kulkarni Volume 1 Page 2."

57. In the overall view of the matter, we are convinced that the impugned judgment and order passed by the High Court is not sustainable in law and deserves to be set aside. At one point of time, we were inclined to allow this appeal by imposing an exemplary costs on the Respondent No. 1 for unnecessarily dragging the Appellant Society into a frivolous litigation & not allowing the Appellant Society to go ahead with the project for the past almost two decades. However, we refrain from passing such order of costs in the hope that the Respondent No. 1 realises that the development of the administrative building will be for the betterment of the society. No individual member is going to gain anything from the redevelopment. It is the society as an autonomous body which will gain something.

58. For the foregoing reasons, this appeal succeeds and is hereby allowed. The impugned judgment and order passed by the High Court is hereby set aside and it shall now be open to the Appellant Society to proceed further with its project of redevelopment in accordance with the resolutions passed by the General Body from time to time. It is needless to clarify that the first priority should be given to demolish the entire building as the same is in a dilapidated condition.



10. It is also apposite to refer to the decision dated 08.12.2023 passed by this Court in ***Letters Patent Appeal No.1427 of 2023***. Paragraphs 8 to 12 of the said decision read thus:

“8. Having extensively gone through the provisions of Section 41-A read with the Rules 18 to 25 made thereunder, we record that the society for carrying out redevelopment work of the building has to follow the terms and conditions as laid down in Section 41-A which are :-

(i) The building shall have completed the period of twenty-five years from the date of issuance of the development permission by the concerned authority;

(ii) The concerned authority has declared the building being in ruinous condition, i.e. declared it dilapidated and dangerous to any person occupying, resorting to or passing by such structure or any other structure or place in the neighborhood thereof;

(iii) Consent of not less than 75% of the members of the building for redevelopment of the building has been obtained. 9. There is no dispute about the fact that the above noted three conditions for redevelopment project/work of the building in question has been fulfilled in the instant case. No such dispute has been raised that the concerned authority has not declared the building being in ruinous condition. The only dispute raised by the appellants (fifteen numbers of the society) is that the building is not in dilapidated condition, based on an alternative report of Structural Engineer. The said issue, as rightly held by the learned Single Judge, cannot be examined by us as a Court of appeal. The fact remains that the concerned authority, namely the Ahmedabad Municipal Corporation had issued a notice dated 19.05.2022, about three and a half years back, directing for carrying out major repairs of the building in question noticing that the building is in ruinous condition. More than 75% of the members have agreed for redevelopment and there is no dispute about the said fact. There is also no dispute about the date of development permission having been granted for the building as disclosed in the writ petition.

10. The only dispute which is being raised before us is about the procedure for redevelopment having not been followed by the concerned body of the society. In this regard we may note that a detail procedure under Rules 19 to 25 has been prescribed wherein it is provided that for making decision to undertake the redevelopment of the building, the Managing Committee or the body shall convene the special general meeting of the cooperative society or association. The



Rules and the by-laws of the society with respect to convening of such meetings, such as notice, circulation of agenda items, quorum at the meetings, taking policy decisions, entering into an agreement, supplying the minutes of meeting of the members, etc. shall be applicable in the matters relating to redevelopment project. Sub-rule (3) of Rule 19 provides that the Managing Committee shall place before the general body the agenda items for taking policy decision relating to redevelopment of building; and for appointment of the Architect/ Project Management Consultant to prepare the redevelopment project. The special general body meeting shall take a decision with the consent of not less than 75% of the total members of the body for redevelopment of the building and select an Architect/Project Management Consultant to prepare the redevelopment project. The general body may authorize the Managing Committee to take all further necessary actions/steps for redevelopment project. To the above procedure, no illegality can be pointed out by the learned counsel appearing for the appellants. Rule 20 further provides that the Architect / Project Management Consultant appointed by the Committee as per the decision taken at the special general meeting, shall prepare the project report within two months from the date of appointment and submit the same to the Managing Committee. The project report contains the details as mentioned therein. It is further provided that the Architect/Project Management Consultant after preparation of the project report shall invite offers from the eligible contractors/builders/company or developer. Rules 21 and 22 provide the manner in which the selection of developer is to take place. In this regard, relevant is to note that the offer given by the respondent No.3 Developer for redevelopment of the society has been considered in the meeting dated 31.12.2020 of the society and the changes were suggested in the discussion. After incorporating those changes, the final offer of respondent No.3 has been accepted on 30.03.2021. Till date, only a Memorandum of Understanding has been arrived with the respondent No.3 Developer and no Development Agreement has so far been signed. Rule 23 provides the terms and conditions to be approved in the special general body meeting of the society to enter into a Development Agreement with the developer in consultation with Architect/Project Management Consultant. The conditions to be incorporated in the Development Agreement, amongst others, shall contain the conditions laid down in Clauses (i) to (x). Rule 24 provides that the developer will not be able to make any changes in the building plan except with the written permission of the Managing Committee. The procedure for allotment of new flats has been provided in Rule 25.

11. Taking note of the above provisions of the Rules made under the Gujarat Ownership Flats Act, 1973, we are of the considered opinion that due care has been taken by the Legislature to address the concern of the appellants herein. The appellants can dispute the conditions of the Development Agreement, if not properly incorporated and shall have a right to participate in the process of development in a constructive way. However, 15 members out of total 96 members of the society cannot be permitted to stall the process of redevelopment only on their own suspicions and notions. There are no allegations of fraud or violation of any of the procedures prescribed in the Rules as



noted hereinabove.

12. For the above reasoning in addition to the reasoning given by the learned Single Judge, we do not find it a fit case to interfere. The appeal is found devoid of merits and hence, dismissed. The appellants are directed to cooperate in the process of redevelopment of the society by giving constructive suggestions in the matter of entering of Development Agreement with the selected developer."

11. It is also apposite to refer to the decision dated 23.01.2023 of the Division Bench of this Court in Letters Patent Appeal No.1075 of 2022. Paragraphs 48, 52 and 54 of the said decision read thus:

"48. The contention of Mr. Oza, learned Senior Advocate that there is no provision under the Gujarat Ownership Flats Act for providing summary eviction of a nonconsenting member unlike the provision under the Maharashtra Housing and Area Development Act, 1976 or The Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, providing for such eviction and as such Writ Court could not have issued a Writ of Mandamus to the contesting respondents to quit and handover vacant possession of their flats, is no doubt an attractive argument which requires to be brushed aside, inasmuch as the Hon'ble Apex Court in the case of Binny Ltd. and Anr. versus V. Sadasivan and Others reported in (2005) 6 SCC 657, has held that the High Court under Article 226 of the Constitution of India is empowered to issue Writ on the principles that it is a public law remedy and available against a body or persons performing public law function. In fact, the learned Single Judge had taken note of observations made by the Hon'ble Apex Court in the case of Dwarka Nath versus Income Tax Officer, reported in 1965 3 SCR 536, whereunder it has been held to the following effect:

"6. This article is couched in comprehensive phraseology and it ex facie confers a wide power on the high court to reach injustice wherever it is found. The constitution designedly used a wide language in describing the nature of the power, the purposes for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with the those in England, but only draws in analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the



English courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to a vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself.”

52. *At the outset, it requires to be noticed that by calling upon the occupant (respondent No.9) to vacate the premises by issuance of writ of mandamus, there is no order of eviction is passed. The resolution of the general body of members passed by the majority (now all the members having consented for redevelopment except respondent No.9) would indicate that during the period of redevelopment taking place, all the occupants of the existing property who are in occupation of their respective flats would be provided alternate accommodation in a rented premises and rent of the such premises would also be paid by the developer himself. Thus, there is no eviction or dispossession. Eviction in terms of the prevalent rent laws or ejection of an occupant from the suit property as contemplated under the Transfer of Property Act would mean to dispossess a person in occupation of a premises under the authority of law by putting an end to such right. In other words, eviction means right to reside or occupy ceasing or such right getting terminated by operation of law. In the instant case, respondent No.9 is neither dispossessed nor evicted but has only been directed to be shifted to an alternate premises which she/they would continue to reside till redevelopment takes place. Temporary shifting of residents of a premises in redevelopment project would not amount to dispossession or eviction as sought to be contended. In fact, appellant is not deprived of the property viz. residential accommodation at all.*

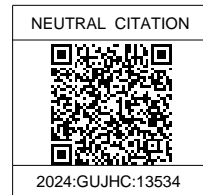
54. *. Having affixed their signatures to the resolutions and having not questioned the resolutions so passed by taking appropriate steps, respondent Nos.5 to 8 herein as well as the appellant are estopped from contending contrary to the same, inasmuch as they are bound by resolutions for which they have affixed their signatures. Hence, we are of the considered view that no prejudice is caused to the appellant or similarly placed persons as discussed in detail by the learned Single Judge vide paragraph 37. In that view of the matter, we are unable to accept the contentions raised by learned Senior Advocate appearing for the appellant.”*

12. Considering the facts of the present case and the position of law, as referred above, once the project of redevelopment is undertaken by the society and there is consent of more than 75% members as also the flats-in-question are more than 44 years old, the objections raised by the respondent Nos.6 and 7



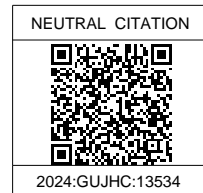
are not maintainable. The project of redevelopment undertaken by the petitioner society is required to be proceeded further. This Court deems it fit to exercise powers under Article 226 of the Constitution of India as the decision taken for the redevelopment is in larger public interest and provides for the benefits to the house holders/flat owners and the property right of any occupier would not be affected and every occupier will get a new unit against their occupation. In the opinion of this Court, in the redevelopment process when almost all the members, except 2 members, have given consent for redevelopment, at the instance of the 2 members, the consent of the majority members should not suffer.

13. At the cost of repetition, it is required to be observed that the construction of the building is old and damaged and the report of the Structural Engineer also states that the building is in dilapidated condition, under such circumstances, in the interest of the residents of the building/flats, the decision of redevelopment appears to be taken in good faith and such process cannot be stalled at the instance of the respondent Nos.6 and 7 being signatory to the Resolution of redevelopment. It is also stated by the respondents that the



respondents are not against/adverse to the redevelopment.

13.1 Even otherwise, the Hon'ble Division Bench in Letters Patent Appeal No.1427 of 2023 by order dated 08.12.2023, has extensively explained the procedure of redevelopment under Rules 19 to 25 in paragraph 10 of the said order wherein, the Hon'ble Division Bench has held that it is only at the stage of MOU between the petitioner and the respondent No.3 and no development agreement has so far been signed. Rule 23 provides the terms and conditions to be approved in the special general body meeting of the society to enter into a development agreement with the developer in consultation with Architect/Project Management Consultant. The conditions to be incorporated in the Development Agreement, amongst others, shall contain the conditions laid down in Clauses (i) to (x). Rule 24 provides that the developer will not be able to make any changes in the building plan except with the written permission of the Managing Committee. The procedure for allotment of new flats has been provided in Rule 25. Taking note of the aforesaid provisions, the Hon'ble Division Bench held that due care has been taken by the Legislature to address the concern of the appellants therein. The appellants



can dispute the conditions of the Development Agreement, if not properly incorporated and shall have a right to participate in the process of development in a constructive way.

14. In light of the aforesaid discussion and the ratio as as referred above, the respondent Nos.6 and 7 are the members of the society and loose their individual rights to challenge the decision of the society for and except, through the society. The Lavad suit, which is instituted by the respondent No.6 appears to be an afterthought after being signatory to the resolution for redevelopment. Nonetheless, the lavad suit proceeding is independent proceeding initiated by the respondent No.6 against the society for which, the redevelopment, in the opinion of this Court, cannot be stalled. The aforesaid cannot be a reason to stall the process of redevelopment. The petitioner society is compliant of the conditions under Section 41A of the Act, 1973, in the facts of the present case, (i) the building is more than 25 years old i.e. 44 years; (ii) the Structural Engineer Report states that the building is in dilapidated condition and (iii) there is consent of more than 75% members i.e. 95.8%. members.

15. For the said reasons, the prayers as prayed for in the



present petition, are required to be allowed and the same are allowed. The respondent Nos.6 and 7 are directed to vacate their respective flats in the petitioner No.1 society and handover the peaceful and vacant possession thereof for the redevelopment as per Section 41A of the Gujarat Ownership Flats Act, 1973 within a period of eight weeks from the date of receipt of the order and cooperate in the redevelopment of the petitioner No.1 Society. In view of the aforesaid, the prayers 7A(i) and & 7A(ii) are held to be infructuous.

16. With the aforesaid, the present petition stands allowed.
Rule made absolute.

Direct service is permitted.

(VAIBHAVI D. NANAVATI,J)

NEHA