

SANJAY  
ASARAM  
MANDAWGAD

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Date: 2026.08.25  
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (ST.) NO. 13849 OF 2026**

- |                                                            |   |
|------------------------------------------------------------|---|
| <b>1. PRATIK SHAH</b>                                      | ] |
| Age: About 38 years, Adult, Indian                         | ] |
| Inhabitant, residing at B/2712                             | ] |
|                                                            | ] |
| <b>2. PRADEEP JAIN</b>                                     | ] |
| Age: about 74 years, Adult, Indian                         | ] |
| Inhabitant, residing at B/3411,                            | ] |
| Both residing at White City, CTS Nos.                      | ] |
| 174/C/1, 174/C/2, 174/C/3 and                              | ] |
| 174/C/4, Village Akurli, Akurli Road,                      | ] |
| Kandivali (E),                                             | ] |
| Mumbai – 400 101.                                          | ] |
|                                                            | ] |
| <b>3. WHITE CITY CO-OPERATIVE<br/>HOUSING SOCIETY LTD.</b> | ] |
| A Society registered under the                             | ] |
| provisions of the Maharashtra Co-                          | ] |
| operative Societies Act, 1960,                             | ] |
| Having its registered office at                            | ] |
| CTS Nos. 174/C/1, 174/C/2, 174/C/3                         | ] |
| and 174/C/4, Village Akurli, Kandivali                     | ] |
| (East), Mumbai – 400 101.                                  | ] |
|                                                            | ] |
- ... Appellants**  
(Orig. Defendant  
Nos.1 to 3)

**Versus**

- |                                                                  |   |
|------------------------------------------------------------------|---|
| <b>1. M/S. RAJESH REAL ESTATE<br/>DEVELOPERS PRIVATE LIMITED</b> | ] |
| A company incorporated under the                                 | ] |
| provisions of the Companies Act, 1956                            | ] |
| and having its registered office at R.B.                         | ] |
| House, M.I.D.C. Cross Road 'B', Off                              | ] |
| Andheri Kurla Road, J.B. Nagar                                   | ] |
| Junction, Andheri (East),                                        | ] |

Mumbai – 400 059,  
and also at Seksaria Chambers, 2nd  
Floor, 149, Nagindas Master Road, Fort,  
Mumbai – 400 023.

...(Orig. Plaintiff)

**2. THE MUNICIPAL CORPORATION OF  
GREATER MUMBAI**

A statutory corporation, constituted  
under the Mumbai Municipal  
Corporation Act, 1888, having its office  
at the Municipal Head Office,  
Mahanagar Palika Marg, Fort,  
Mumbai – 400 001.

**3. UMESH KALANTRI**

Age: about 47 years, Adult, Indian  
Inhabitant, residing at B/3612, White  
City, CTS Nos. 174/C/1, 174/C/2,  
174/C/3 and 174/C/4, Village Akurli,  
Akurli Road, Kandivali (East),  
Mumbai – 400 101.

**... Respondents.**  
(Ori. Defendant  
No.3)

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Mr. Rohaan Cama a/w. Darshit Jain i/by Tamsin Monis for Appellants.  
Mr. Mayur Khandeparkar a/w. Amogh Singh, Silpa Nair, Pooja Tated  
Singhvi and Vinisha Bhavanani i/by Jeet Gandhi for Respondent No.1.  
Ms. Smita Tondwalkar, AGP for Respondent No.2-State.

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**Coram : Sharmila U. Deshmukh, J.**  
**Reserved on : July 30, 2026.**  
**Pronounced on : August 25, 2026.**

**JUDGMENT :**

1. Heard. **Admit.** With consent, taken up for final disposal.
2. The present appeal is at the instance of the original

Defendant Nos.1 to 3 being dissatisfied by the impugned order dated 2<sup>nd</sup> May, 2026 passed by the Trial Court in Notice of Motion No. 1262 of 2026 in L.C. Suit No. 770 of 2026, allowing the notice of motion in terms of prayer clauses (a) to (c) resulting in grant of injunctive reliefs against the Defendants. For sake of clarity, the parties are referred to by their status before the Trial Court.

**3.** S.C. Suit No.770 of 2026 seeks declaration that the Plaintiff is entitled to carry out development and allied activities upon the subject property in accordance with the sanctioned plans and permissions, and for injunction against disturbing the plaintiff's access and carrying out development activities on the subject property including in respect of works relating to road widening, setback compliance, demolition and reconstruction of compound wall etc.

**4.** The plaint describes the subject property as portion of larger property on which Defendant No 4 Society has been developed. The larger property is described as land bearing CTS No.174C and its sub divisions including CTS No.174/C/1, No.174/C/2, 174/C/3 and 174/C/4 of village Akurli, Kandivali (East) Mumbai, admeasuring approximately 45,800 square

meters. The Plaintiff's case is that the larger property comprises of multiple developments, i.e. Defendant No 4 and Lodha Woods , which are independent and separate developments, registered separately under RERA and having distinct planning permissions, with no overlap amongst the developments. It is the Plaintiff's claim that the balance portion of the larger property including the development potential vests in Plaintiff and is being independently developed as part of Lodha Woods project.

5. It is pleaded that the development of the larger property is subject to sanctioned development plan provisions and pursuant to the sanctioned modification, the road abutting the said property is required to be widened *inter alia* from approximately 18.30 meters to 27.45 meters , which proposal has been duly sanctioned by the Competent Authority. The portions of the larger property are required to be surrendered for public purpose and such setback area are required to be handover to the Municipal Corporation and do not form part of the ownership, possession or control of Defendant No.4-Society. The works relating to road widening, setback etc, being pursuant to the sanctioned modification is affirmed by Municipal

Corporation of Greater Mumbai (MCGM) by communication dated 16<sup>th</sup> March, 2026. An obstruction is claimed in the works being carried out by the Plaintiff in furtherance of sanctioned development and statutory requirements for re-aligning and reconstructing the compound wall, boundary demarcation and access areas.

**6.** The interim application giving rise to the impugned order sought injunctive reliefs against the Defendants from obstructing the Plaintiff from accessing the suit property and carrying out lawful development including carrying out works relating road widening, setback compliance, demolition and reconstruction of compound wall, laying of utilities and allied infrastructure and demolition of temporary structure.

**7.** In reply, the Defendant Nos.1, 2 and 4 have contended that the Plaintiff was required to hand over 10,120 square meters from larger land to MCGM towards amenity space and road set back area. The Defendant No 4 is in settled possession of the suit property and has been maintaining the building, compound wall, open spaces and appurtenant areas. Though statutorily mandated, the conveyance has not been executed in favour of

Defendant No 4. There was no consent of Defendant No 4 taken for change in layout for development of Lodha Woods. It is pleaded that no communication was received by Defendant No 4 from MCGM pertaining to surrender of setback area. The Plaintiff intends to utilise the additional FSI obtained from surrendering the land for road widening from the White City Project Land for construction of additional buildings.

**8.** On 26<sup>th</sup> February, 2026, Lodha Developers Ltd sought to demolish the portion of the compound wall and surrounding trees which lead to filing of the FIR and in complaint to the MCGM, the Defendant No 4 highlighted the violation of Section 7 and Section 7A of MOFA. It was pleaded that on 17<sup>th</sup> March, 2026, officers of MCGM in connivance with the Plaintiff and Lodha Developers Ltd actually sought to demolish the balance portion of the compound wall compromising the security and safety of the residents. The Plaintiff is not complying with the road widening requirement but is extracting the commercial benefits from the surrender of White City's land and using the benefit for Lodha Woods to the direct detriment of White City's flat purchasers. The Plaintiff has suppressed the fact that they

are other buildings and structures known as Raheja Vello, Apex Hospital as well as MCGM Office abutting the very same road who have not surrendered their respective portions of land for alleged road widening and there is no material to show that the road widening is being implemented uniformly or in non-discriminatory manner.

9. The Trial Court noted that that the Plaintiff is the owner of the suit property and both projects i.e. White City and Lodha Woods are constructed on the larger property admeasuring 45,800 square meters. It observed that the necessity of handing over setback land to MCGM for road widening is as per the sanctioned DP plan and the duty is upon the developer to hand over the setback area. Noting the provisions of Rule 9(2)(iii) of RERA, it opined that as the construction of last building is ongoing, thereafter conveyance needs to be executed by Plaintiff. It noted the communication of MCGM affirming that the road widening sanctioned by the government is increased from 18.30 meters to 27.45 meters and held that as per sanctioned road widening, it is necessary for the developer to handover the setback land to MCGM and that the work of

developer for handing over the setback land to MCGM is legal and proper.

**10.** Mr. Cama, learned counsel appearing for the Appellant would submit that the Plaintiff originally proposed development of 45,800 square meters, with further sub division of larger property to 16,100 square meters as White City project and 10,120 square meters to be handed over to MCGM for amenity space and road setback. He submits that the occupation certificate plan of White City project shows a small sliver of setback on Defendant No.4 Society's plot. He has further taken this Court to the sanctioned plan and the revised sanctioned plan in order to demonstrate that not only is the Plaintiff seeking to surrender portion of land to MCGM for road widening but has also proposed to place RG area upon the Defendant No.4's driveway and proposes to block the entry gates. He would submit that the road abutting the property was subsequently required to be widened from approximately 18.30 meters to 27.45 meters in order to ease traffic congestion. He would submit that on 27<sup>th</sup> February, 2025, a new plan was sanctioned in favour of the Plaintiff or Macrotech Developers, where it is now



proposed to construct 9<sup>th</sup> wing of Lodha Woods.

**11.** He would further submit that the entire litigation is at the instance of Lodha Developers Ltd., who has verified the plaint and notice of motion and is seeking to construct the 9<sup>th</sup> building by utilising the FSI from the setback area.

**12.** He would submit that exchange of emails with Defendant No.4, where strong concerns were expressed on starting work on compound wall till decision of Special General Body would indicate that the Plaintiff was aware of seeking Defendant No 4's consent. To buttress his submissions on Defendant No 4's ownership of 16,100 square meters of plot out of larger land, he points out the memorandum of understating entered into on 14<sup>th</sup> May, 2024 between Defendant No.4 and Macrotech Developers by which Defendant No.4 gave approval for constructing sales office on the society's land which was described as land admeasuring 16,100 square meters or thereabouts, out of the larger land.

**13.** He submits that the Trial Court has erroneously held that the Plaintiff is the owner of the land without noticing the statutory provisions of MOFA, which enjoins the Plaintiff to

convey 16,100 square meters of land to the Defendant No.4 Society. He would submit that the issue as regards the ownership of FSI in view of Sections 7/7A of MOFA is a subject matter of separate suit filed by the Defendant No 4.

**14.** Drawing attention of the Court to the photographs, Mr. Cama would submit that forcible demolition of Defendant No 4's compound wall is sought to be carried out, whereas the adjacent property owners have not surrendered their portion and neither MCGM has called upon the Plaintiff or Defendant No 4 to surrender the portion of the land for the purpose of road widening.

**15.** He would further point out the relief sought in the plaint and the notice of motion to contend that omnibus prayers have been sought and the Plaintiff is seeking to access Defendant No 4's property, not only for the purpose of carrying out works for handing over portion of the plot for road widening but also for carrying out development activities on the subject property which includes laying of utilities and allied infrastructure. In support, he relies upon the following decisions:

**(i) *Dosti Corporation, Mumbai vs. Sea Flama Co-operative Housing Society Ltd., Mumbai and***

**Ors.<sup>1</sup>**

**(ii) *Aristo Realtors Private Limited vs. District Deputy Registrar, Co-operative Societies, Mumbai and Ors.*<sup>2</sup>**

**16.** *Per contra*, Mr. Khandeparkar, learned counsel appearing for the Plaintiff, on instructions, would submit that the Plaintiff seeks access to the Defendant No 4 Society only for carrying out necessary work of developing the reservation for handing over to the MCGM, even though wider reliefs are sought. Pointing out the interim reliefs prayed for, he submits that the prayer clause specifically mentions development activities upon the subject property including in respect of the works relating to road widening and the laying of utilities, which is for the reason that there are underground sewerage lines which will have to be realigned before the portion of the property can be handed over for road widening.

**17.** He would further point out the specific pleading in paragraph 8 (c) of the plaint that the development of the larger property is subject to the sanctioned development plan provision including the proposal for road widening abutting the

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<sup>1</sup> 2016 (5) Mh.L.J. 102

<sup>2</sup> WP No.12863 of 2025 dated 17<sup>th</sup> July, 2026.

said property which was notified and sanctioned in or around the year 2023. He submits that the road which is required to be handed over is DP road and the issue of entitlement to the FSI arising out of handing over of setback area is the subject matter of separate suit and can be agitated therein. He would submit that in view of the DP reservation, it was necessary to realign and reconstruct certain physical features at site including compound wall. He submits that there is no challenge to the DP reservation by the Defendant No.4. He submits that it is admitted by the Defendant No.4 that there has been increase in the proposed road width upto 27.45 meters, and the portion of the property is required to be handed over for road widening. He submits that it is not necessary for the Corporation to call upon the Plaintiff or Defendant No.4 to hand over the portion, as it is the responsibility of the developer to develop the reservation and surrender the same to the Corporation.

**18.** He submits that the flat purchasers of Defendant No.4-Society were aware of the fact that the transfer in favour of the society shall be of the balance property i.e. after handing over the setback area and that the promoter alone shall be entitled to

receive the amount of compensation or FSI for setback land. He submits that therefore there is an express agreement in the flat purchasers' agreement as regards the FSI for setback land belonging to the promoter. He submits that unless the clause in flat purchaser's agreement is challenged, the same constitutes an informed consent.

**19.** He would further point out that the DP reservation in 2023 increased from about 1200 square meters to 1979.15 square meters and that is why the suit filed by the Defendant No.4, seeks damages in respect of this additional 725 square meters of land by way of setback. He submits that the issue as regards the benefits arising out of handing over of the set back area will be decided in the Defendant No 4's suit and the present injunction is only limited for the purpose of handing over the DP road.

**20.** He submits that the Defendant No.4's application for deemed conveyance is pending and the Defendant no.4 would become the owner only after acquiring the title. He would submit that Rule 9 of RERA would apply and it is only after the last building in the layout receives the occupancy certificate, that

the conveyance can be executed by the Plaintiff. He submits that the Corporation has specifically written to the Samatanagar Police Station about the proposed road widening and it is necessary for handing over the setback area to the Corporation. He submits that the Plaintiff, as owner of the property, is surrendering DP reservation to which there can be no objection by the Defendant No.4-society. He submits that the MoU was entered into with Defendant No 4 as the sales office was to be constructed in the stilt area of the building and therefore, permission was sought. He submits that the Trial Court's order does not decide the issue of benefit of TDR, which can be decided in the Defendant No 4's suit.

**21.** In rejoinder Mr. Cama would submit that in the flat purchasers agreement, the setback area was quantified at about 1200 square meters, which was the consent, if any, given by the flat purchasers and not the area which is now sought to be surrendered.

**22.** I have considered the submissions, perused the record and order of Trial Court.

**23.** The suit filed by the Plaintiff is in the nature of mandatory

injunction seeking access to the subject property, which is described in the plaint, as land on which the Defendant No 4 Society has been constructed. By the notice of motion, the Plaintiff had sought wide-sweeping interim reliefs *qua* the suit property, which suit property has not been described in the plaint, for carrying out works of development and allied activities including relating to road widening, laying of utilities, allied infrastructure etc. There is serious dispute about the Plaintiff's ownership rights in the subject land, described as the land on which Defendant No 4 has been constructed, and would require evidence to be led. Mr. Khandeparkar, on instructions, has narrowed down the reliefs and now seeks access only for the purpose of carrying out works for setback compliance.

**24.** The Defendant No 4 Society is a development carried out by the Plaintiff on portion of the larger land and till date, there is no conveyance in favour of the Defendant No 4. The plaint reiterates the aspect of separate and independent development of the Defendant No 4 and Lodha Woods. The pleading in paragraph 5 of the plaint is that the balance portion of the said larger property, including the development potential arising

therefrom, continues to vest with the Plaintiff and is being developed as part of Lodha Woods project.

**25.** *Prima facie*, the Plaintiff excludes from its ownership claim the land on which the Defendant No 4 has been constructed by referring to the balance portion of the larger property. In light of such pleadings, the omnibus prayers seeking access to Defendant No 4's plot for carrying out development and allied activities could not have been granted. Mr. Khandeparkar, has rightly scaled down the reliefs to relief of access only for purpose of setback compliance.

**26.** Though contentions were raised as regards the entitlement to the development potential arising from the land, the present proceedings do not require consideration on that aspect. Today, the only question is whether the Plaintiff should be permitted access to the Defendant No 4's property for the purpose of carrying out work relating to road widening and setback compliance.

**27.** It is not disputed by Mr. Cama that in the sanctioned development plan of 2023, the proposal for road widening abutting the suit property was notified pursuant to which the



road abutting the Defendant No 4 Society is required to be widened from 18.30 meters to 27.45 square meters. There is admittedly no challenge to the sanctioned development plan of 2023. The initial setback area depicted in the occupation plan has been increased in the sanctioned development plan mandating compliance.

**28.** In view of the road being a DP road, there can be no opposition to the development of the DP reservation and handing over the same to MCGM. The real dispute is in respect of ownership of the FSI/TDR generated from handing over the road setback land to MCGM, as the apprehension of Defendant No 4 is that the benefits arising therefrom are proposed to be utilised by the Plaintiff for the additional construction, which benefit is the entitlement of Defendant No 4. The Defendant No 4 has adopted independent proceedings seeking deemed conveyance and claiming ownership rights in respect of 16,100 square meters and benefits of FSI/TDR arising out the Society's setback area. The recognition of Defendant No 4's rights, by reason of the execution of MOU seeking consent of Defendant No.4, in respect of road setback area are all issues which can be agitated

in the Defendant No 4's suit.

**29.** It is Mr. Khandeparkar's submission that entitlement to the accrued benefits of handing over setback area is to be adjudicated in Defendant No 4's suit, which takes care of the Defendant No 4's apprehension. The refusal of Defendant No 4 arises from grant of blanket access by the Trial Court for carrying out varied works on Defendant No 4's plot of land. In view of Mr. Khandeparkar's submissions and considering that the sanctioned DP is in public domain, the works to be carried out by the Plaintiff will necessarily have to be in conformity with the sanctioned DP.

**30.** Though submissions were canvassed on the consent given in the flat purchaser's agreements, the same is an issue to be adjudicated in the Defendant No 4's suit.

**31.** Mr. Khandeparkar would confine his relief of access only to the aspect of handing over the road setback area to MCGM, without claiming benefits arising therefrom, in these proceedings, which simplifies the position. The contention of Mr. Cama that adjacent properties have not handed over their portion of the area for the purpose of road widening cannot be a

ground to refuse the development of the reservation and surrendering the same to the Corporation as the road is a DP road.

**32.** The tussle between the parties is not in the context of handing over the road set back area but the entitlement to the benefits arising therefrom. Accepting the submission of Mr. Khandeparkar that as of today, the Plaintiff is only developing the reservation and surrendering the same and the issue as to whether the Plaintiff is entitled to the benefits accrued thereof will be considered in the suit of the Defendant No 4, there cannot be any opposition by the Defendant No.4-Society to the Plaintiff's access limited for carrying out works of road widening and setback compliance. It is clarified that even if the DP road reservation is developed and handed over by the Plaintiff, no equities can be claimed by the Plaintiff on that basis, as serious dispute is raised as regards the ownership of FSI/TDR generated from the setback area. Even if, the flat purchasers agreement refers to consent given by the flat purchasers, the issue as regards Section 7/7A of the MOFA would still survive for consideration in the Defendant No 4's suit.

**33.** The Plaintiff as a developer would be in a better position to develop the reservation and hand over the same to the Corporation, which road widening is required to ease traffic congestion and would therefore require to be surrendered expeditiously. Without claiming any equities, only for the limited purpose of developing the reservation and surrendering the same to the Corporation, limited injunctive relief can be granted against the Defendant no.4 against obstructing the Plaintiff's access to the Defendant no.4 society for the purpose of carrying out the works relating to road widening and setback compliance and for no other purpose.

**34.** The observations of the Trial Court on Rule 9(2)(iii) of RERA Act are *prima facie* observations rendered in the context of considering the contentions of the Defendant Nos.1 to 4 as regards the ownership of 16,100 square meters of land, raised to obstruct the Plaintiff's access for the purpose of handing over the setback area. It is also clarified that permitting the access of the Plaintiff for purpose of carrying out works relating to road setback compliance should not be construed as recognition of the Plaintiff's rights in any manner in respect of the the

Defendant No 4's plot of land, which will be considered in the Defendant No 4's suit.

**35.** Insofar as the decision in the case ***Dosti Cororation vs. C. Plaza Cooperative Housing Society Ltd.*** (supra) is concerned, the Learned Single Judge of this Court considered the issue as to whether the Defendant No.1 developer therein could have taken a blanket consent of the members of the society to carry out any development in future, to hold the same against the developer. The decision would assist the case of the Defendant no.4 in the separate suit which has been filed seeking declaration of ownership in respect of 16,100 square meters and while deciding the issue as regards the FSI generated from the road setback area. In the present case, even if, the Trial Court has based its reasoning on the ownership of the Plaintiff, considering that this Court has held that no equities can be claimed on the basis of the Plaintiff surrendering the DP reservation to MCGM, the rights of the Defendant No.4 are substantially protected.

**36.** In the case of ***Aristo Realtors Pvt. Ltd.*** (supra), it was held that after the housing scheme is implemented on the land, the building is constructed by consuming the sanctioned FSI and the

flats constructed therein are sold, with sale of every flat, the title of the land owner and promoter gets diluted and only a formal act of conveyance need to be executed. Again this is an issue which is required to be agitated in an independent suit filed by the Defendant no.4. Considering the submissions canvassed by parties, in my view, the impugned order granting blanket access is required to be modified to permit the Plaintiff access to Defendant No.4's plot only for the purpose of carrying out works for road setback compliance, without claiming any equities.

**37.** In light of the above, the following order is passed:

**: ORDER :**

- (a) The Appeal from Order is partly allowed.
- (b) The impugned order dated 2<sup>nd</sup> May 2026 passed in Notice of Motion No.1262 of 2026 in L.C.Suit No.770 of 2026 is modified to read as under :

The Defendants are restrained by an order of temporary injunction from denying access to the Plaintiff, its employees, contractors and its agents to the subject property, which is the plot of land admeasuring 16,100

square meters out of the larger land on which the Defendant No.4 has been constructed, for the purpose of carrying out works relating only to road widening and setback compliance, without claiming any equities by reason of surrender of DP reservation by the Plaintiff to the Corporation. The issue as regards the entitlement of the FSI/TDR or any other benefits accruing from handing over the road setback area is expressly kept open to be decided in the suit filed by the Defendant no.4 and the grant of injunction is only for the purpose of enabling the Plaintiff to hand over the DP reservation to the Corporation.

**38.** The Appeal from Order is disposed of in the above terms. The interim application does not survive for consideration and stands disposed of.

**[Sharmila U. Deshmukh, J.]**