AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

COMM ARBITRATION PETITION (L) NO.31481 OF 2026

Anil Sunder Jhangiani ... Petitioner

Vs.

1. Om Sadan Cooperative Housing Society Limited
2. Polo Infra Developers Private Ltd. ... Respondents

ATUL GANESH KULKARNI

Digitally signed by ATUL GANESH KULKARNI
Date: 2026.10.26 17:18:28 +0530

Mr. Shyam Kapadia with Ms. Megha Gupta, Ms. Khushboo Acharya, and Ms. Lavanita Chityala i/by Hedgehog & Fox LLP for the Petitioner.

Mr. Ranjeev Carvalho with Ms. Videsha Rohira i/by Ms. Amrita Lalwani for Respondent No.1.

Mr. Gauraj Shah with Mr. Pratik Jani, and Ms. Princee Vaishnav i/by Prime Legem for Respondent No.2.

CORAM : AMIT BORKAR, J.

RESERVED ON : OCTOBER 21, 2026.

PRONOUNCED ON : OCTOBER 26, 2026

JUDGMENT:

1. The present Petition is filed under Section 9 of the Arbitration and Conciliation Act, 1996, seeking interim relief to protect the Petitioner's rights in Commercial Unit No. A-1, comprising the entire ground floor, admeasuring 2,000 sq. ft., in

Om Sadan CHS, Borivali (West), Mumbai.

2. The facts and circumstances leading to the filing of the present Petition are as follows. On 04 April 2026, the Petitioner's name was entered in the Society's Share Certificate and Form "J", pursuant to the orders passed by the Deputy Registrar on 19 December 2025, 20 February 2026 and 20 March 2026. The Petitioner relies upon title documents dating back to 1968 in support of his claim. He apprehends that the Society and the Developer are proceeding with the redevelopment by wrongly describing and dividing the existing premises. The Petitioner states that notices dated 13 July 2026, 04 August 2026 and 11 August 2026 have been issued calling upon him to hand over possession, without executing an addendum recording his membership and the correct area of his premises. He seeks interim directions, pending arbitration, requiring the Respondents to identify and earmark his 2,000 sq. ft. commercial unit and the corresponding premises in the redeveloped building in all plans. He seeks an order restraining the Respondents from creating third-party rights in respect of the premises and from imposing the penalty of ₹50,000 per day under Clause 15(vii). Further, he seeks directions to execute and register a Permanent Alternate Accommodation Agreement ("PAAA") and an addendum recording his correct details, to disclose the approved redevelopment plans, and to make appropriate provision for the existing strong room. He seeks continuation of transit rent and other benefits on the basis of the correct area of his premises. In addition, he requests that the Respondents be restrained from taking coercive steps to compel

him to vacate the premises until the necessary conditions are fulfilled and his entitlement is recorded. These reliefs are sought without prejudice to his rights and contentions in the proposed arbitration. In these circumstances, the Petitioner has filed the present Petition.

3. On 12 March 1968, Respondent No. 1 Society issued a Share Certificate in respect of five A shares relating to the ground-floor premises. Thereafter, on 18 February 1970, an Indenture was executed with the State Bank of India, treating the entire ground floor as one commercial unit. On 03 March 1978, an Agreement was executed in favour of the Sunder C. Jhangiani Family Trust in respect of premises admeasuring 2,000 sq. ft. On 01 August 1979, the Society issued a Transfer of Property Letter acknowledging the ground-floor premises as measuring 2,000 sq. ft. Subsequently, on 21 February 2002, a Release Deed was executed, under which rights in the premises were vested in the Petitioner. On 05 March 2013, a notice was issued under Section 162(2) of the Mumbai Municipal Corporation Act, 1888, in relation to Assessment Year 2010–2011. The notice recorded the entire ground floor as one commercial premises assessed as a bank. Thereafter, on 31 January 2020, the Society issued a No Objection Certificate (NOC) and an ownership and dues certificate in respect of the entire ground-floor premises.

4. On 29 February 2024, a Registered Deed of Transfer bearing Registration No. BDR-7-4328-2024 was recorded in favour of the Petitioner. Thereafter, on 19 June 2024, a Deed of Lease was executed with the State Bank of India in respect of the said

premises. On 01 April 2025, the municipal authority issued a Property Tax Bill, which, according to the Petitioner, supports the continued existence and municipal recognition of the premises. On 17 October 2025, a Declaration-cum-Ratification was executed between Mr. Mukesh Sunder Jhangiani and the Petitioner, confirming and ratifying the transfer or assignment relating to the five shares and the entire ground-floor commercial premises. Subsequently, on 19 December 2025, the Deputy Registrar, Co-operative Societies, passed an order directing Respondent No. 1 to transfer the membership and shareholding in favour of the Petitioner. On 20 February 2026, the Deputy Registrar passed an order under Section 154B-27(1) of the Maharashtra Co-operative Societies Act, 1960, directing Respondent No. 1 to implement the earlier order and enter the Petitioner's name in the Society's records. Thereafter, on 10 March 2026, the Petitioner, through his Advocates, issued a notice to the Respondents. Among other issues, the notice raised an objection to the alleged wrongful division of the existing 2,000 sq. ft. premises in the Development Agreement and called upon the Respondents to recognise and protect the Petitioner's rights. On 20 March 2026, the Deputy Registrar passed a order appointing or directing an Authorised Officer to implement the earlier orders and make the necessary entries in the Society's records. On 23 March 2026, the Petitioner issued a detailed legal notice to Respondent No. 2, with a copy marked to Respondent No. 1. The notice referred to the title documents, Society records, membership, proceedings and the Petitioner's entitlement in the redevelopment. On 25 March 2026,

Respondent No. 1, through its Advocates, issued a reply denying that the premises had been wrongly divided. It stated that the description, area and configuration mentioned in the Development Agreement were based on the existing records, architectural plans and feasibility of the development. It stated that these matters were subject to verification and reconciliation.

5. On 01 April 2026, Respondent No. 2, through its Advocates, issued a reply calling upon the Petitioner to provide documentary material relating to his ownership and acquisition of the premises. On 04 April 2026, pursuant to the statutory orders, the Petitioner's name was entered in the Share Certificate and Form "J" of Respondent No. 1 in respect of the premises. Thereafter, on 16 April 2026, the Petitioner issued a detailed rejoinder to Respondent No. 2's reply. In the rejoinder, he addressed the objections raised by Respondent No. 2 and furnished or referred to documents in support of his rights and his claim that the entire ground floor constituted one commercial unit. On 22 May 2026, the Petitioner sent an email to Respondent No. 2 informing it of the subsequent statutory developments, the entry of his name in the Share Certificate and Form "J", and the withdrawal of the Society's challenge. Subsequently, on 25 June 2026, a Withdrawal Order was passed in Revision Application No. 530 of 2025, which had been filed by Respondent No. 1 before the Joint Registrar, Co-operative Societies, Mumbai.

6. On 13 July 2026, Respondent No. 2 issued a notice calling upon the Petitioner to hand over vacant and peaceful possession of the premises. Significantly, the notice was addressed in the name

of the erstwhile Sunder Jhangiani Family Trust, despite the subsequent developments concerning the Petitioner's membership. On 20 July 2026, the Petitioner, through his Advocates, issued a letter and email reiterating his objections regarding the description and area of the premises and his entitlement in the redevelopment. Thereafter, on 11 August 2026, Respondent No. 1 issued another notice calling upon the concerned parties to vacate and hand over possession of the premises. This notice referred to the erstwhile Trust and the Petitioner. It is necessary to note that the Petition refers to a notice dated 04 August 2026, whereas the notice annexed to the Petition is identified as dated 11 August 2026. On 24 August 2026, Respondent No. 2 addressed a letter proposing a joint meeting to discuss the outstanding issues concerning the Petitioner's premises and his entitlement in the redevelopment. Accordingly, on 25 August 2026, an online joint meeting was held between the Respondents, their Advocate, the Petitioner and his Advocates to discuss the unresolved disputes. As the issues concerning the identification and area of the premises, the Petitioner's redevelopment entitlement and the proposed handing over of possession remained unresolved, the Petitioner has approached this Court under Section 9 of the Arbitration and Conciliation Act, 1996, seeking interim protection of his claimed rights pending arbitration.

7. Mr. Shyam Kapadia, learned Advocate appearing for the Petitioner, submitted that the Petitioner's title documents, membership records and the Society's own documents show that the entire ground floor is one commercial unit admeasuring 2,000

sq. ft. He relied upon the Deed of Transfer dated 29 February 2024, registered under No. BDR-7-4328-2024, which records the transfer of the entire ground floor, having a carpet area of 2,000 sq. ft., by the Trust in favour of the Petitioner. He submitted that Respondent No. 2 has admitted the Petitioner's ownership in its reply. Learned Advocate for the Petitioner submitted that Share Certificate No. 1 and Form "J" record the Petitioner's name from 04 April 2026 in respect of shares Nos. 1 to 5. These shares are covered by one Share Certificate issued on 12 March 1968 in respect of the entire ground floor. He pointed out that Respondent No. 1 has admitted in paragraph 25 of its reply that the premises are recorded "under one share certificate in the name of a single member".

8. Learned Advocate for the Petitioner relied upon the Society's NOC and certificate dated 31 January 2020. He submitted that the NOC issued for the ATM refers to "your ground floor premises i.e. A-1". The certificate describes the member as the "owner of entire ground floor i.e. A-1". According to him, these documents support the Petitioner's case that the entire ground floor is one unit. He relied upon Bill No. 1 dated 01 April 2025, relating to municipal property tax and maintenance charges. According to him, the bill shows that the property tax and maintenance charges are levied for one unit described as "A-001". He submitted that the Society has never issued separate bills for units described as A-1/A, A-1/B, A-1/C or A-1/D. On the basis of these documents, learned Advocate for the Petitioner submitted that the Society's own records show that the premises comprise one unit admeasuring

2,000 sq. ft. According to him, the division of the premises into four separate units and the area of 1,923.75 sq. ft. appear for the first time in the Development Agreement (DA). He contended that this description is inconsistent with the earlier records.

9. Learned Advocate for the Petitioner submitted that the sanctioned plan relied upon by the Society is of the year 1963 and has been superseded by the later records of the Brihanmumbai Municipal Corporation (BMC). He submitted that the plan relied upon by Respondent No. 1 is described on its face as an “amended plan showing the proposed building” for the builder. According to him, the plan does not contain any readable date or sanction number. The only reference to approval is to plans approved under No. GB/372/III dated 23 January 1963, as mentioned in the completion certificate at Exhibit H1. He contended that the plan shows only the proposed building and does not establish how the premises were subsequently sold or held by the purchasers. Learned Advocate for the Petitioner then referred to the Articles of Agreement dated 31 August 1964, which records the purchase made on 16 January 1964. According to him, this document shows that, about one year after the plan was approved, the Mehta family purchased the entire ground floor from the builder on an ownership basis for a single consideration of Rs. 58,000. The purchase was made “jointly as tenants-in-common”, with the purchasers holding undivided shares in the premises in the proportions of 1/3, 1/3, 1/9, 1/9 and 1/9. He submitted that no separate shop or flat was allotted to any of the co-owners. The agreement records that possession was “yet to be received” and

that the premises could be let to “any person, bank or company”.

10. Learned Advocate for the Petitioner relied upon the Conveyance executed by the builder in favour of the Society on 20 June 1967. He submitted that the schedule of purchasers in the Conveyance lists Flats Nos. 2 to 10 and 13 to 18. However, the ground floor is recorded as one entry in the name of “Shri Deepak Mehta & Others”, for a consideration of Rs. 58,000. According to him, this supports the Petitioner’s case that the entire ground floor was treated as one premises. He relied upon the Lease executed in favour of the State Bank of India with effect from 16 December 1969. He submitted that the entire ground floor was leased to the Bank as one premises, with a carpet area of approximately 2,000 sq. ft. Learned Advocate for the Petitioner next referred to the BMC Inspection Extract for the year 1991–1992. The extract records “Gr. Floor Bk 1 comprising of Entire Gr floor let to M/s State Bank of India”. He submitted that the entire ground floor was thus recorded as one non-residential unit. The residential flats are recorded on the first, second and third floors. He relied upon the BMC Special Notice dated 05 March 2013, relating to Assessment Year 2010–2011. According to him, the notice records the entire ground floor as a single “Unit No. 1”, classified as commercial premises for a bank and ATM. The carpet area is recorded as 198.88 square metres, which is approximately 2,140 sq. ft. Learned Advocate for the Petitioner referred to BMC Annexure “A” for the period 2020–2025. He submitted that this document continues to record the ground floor as one commercial unit used for a bank and ATM, having a carpet area of 198.88 square metres.

11. On the basis of the above documents, learned Advocate for the Petitioner explained the sequence of events. The plan referred to by the Society relates to the proposed building and carries an approval reference dated 23 January 1963. Thereafter, on 16 January 1964, the builder sold the entire ground floor to the Mehta family for Rs. 58,000, with the purchasers holding undivided shares in the premises. The builder's Conveyance in favour of the Society dated 20 June 1967 records the ground floor as one purchase. From 16 December 1969, the entire ground floor was leased as one bank premises and has continued to be used for that purpose. Further, the BMC records for 1991–1992, 2010–2011 and 2020–2025 show the entire ground floor as one commercial unit. Learned Advocate for the Petitioner submitted that whatever division may be shown in the original proposed building plan, the ground floor was never sold, held, leased or assessed as separate shops or flats. He pointed out that the BMC has treated the entire ground floor as one commercial unit for more than 35 years. He submitted that the Occupation Certificate and the Occupation Certificate Plan, though referred to in Clause 4(b) of the DA, have not been produced by either of the Respondents.

12. Learned Advocate for the Petitioner submitted that no Permanent Alternate Accommodation Agreement (PAAA) has been executed or registered in his favour. Therefore, according to him, the Respondents cannot impose any penalty for his failure to vacate the premises. In support of this submission, he made the following points.

(a) Clause 20 of the DA requires the execution and

registration of a PAAA specifying the carpet area of the new premises to be provided to a member. Clause 20(d) expressly states: “Execution and registration of the PAAA shall be a condition precedent to the Member vacating their respective premises.” He submitted that, under this clause, execution and registration of the PAAA must take place before the member is required to vacate.

(b) Clauses 15(vii), 15(viii) and 22 of the DA provide for a penalty of Rs. 50,000 per day for delay in vacating the premises. According to the Petitioner, this liability can arise only when a member fails to vacate in the manner contemplated by the DA, after the PAAA has been executed and registered.

(c) Learned Advocate for the Petitioner pointed out that these submissions have been raised in the Petition. Section XIII, paragraphs 47 to 51, deals with Clauses 15(vii), 15(viii) and 22. Section XIV, paragraphs 52 to 57, deals with Clause 20 and the requirement of a PAAA. The same reliefs are sought in prayers (c) and (d) of the Petition.

(d) He submitted that no PAAA has been executed or registered in the Petitioner’s favour till date. Even a draft PAAA has not been provided to him.

(e) Learned Advocate for the Petitioner disputed Respondent No. 2’s claim that a draft PAAA was sent along with the notice dated 13 July 2026. He submitted that the notice merely calls upon the members to remain present for

execution of the PAAAs on dates to be communicated later. No draft PAAA was enclosed with the notice. He pointed out that this assertion has been denied in paragraph 36 of the rejoinder filed by the Petitioner in response to Respondent No. 2.

(f) Learned Advocate for the Petitioner submitted that his letter dated 20 July 2026 requested that the PAAA should record his correct name, the proper description and area of the premises, and the time schedule for execution of the agreement. He stated that these issues have been raised in Section VIII, paragraph 29, of the Petition. However, no reply has been received to the Petitioner's request. He relied upon Section VIII, paragraph 22, of the Petition in support of this submission.

(g) Learned Advocate for the Petitioner submitted that the Petitioner is ready and willing to vacate the premises once a PAAA is executed and registered in his name, recording the area of his premises and his entitlement in the redeveloped building.

13. Mr. Ranjeev Carvalho, learned Advocate appearing for Respondent No. 1, submitted that the present Petition has been filed under Section 9 by one of the 18 members of Respondent No. 1 Society. The Petitioner seeks directions against Respondent Nos. 1 and 2 to identify and earmark his existing commercial unit, stated to measure 2,000 sq. ft. on the ground floor, in all redevelopment plans. He seeks directions to identify and earmark

his entitlement in the redeveloped building, which he claims should be situated on the ground floor and/or the first floor. Learned Advocate submitted that the Petitioner alone has invoked the arbitration clause contained in the DA dated 29 January 2026 against both Respondent Nos. 1 and 2. Learned Advocate for Respondent No. 1 opposed the maintainability of the Petition and disputed the Petitioner's entitlement to the reliefs sought. His submissions, in substance, were as follows.

(a) Learned Advocate submitted that the Petition filed by the Petitioner alone is not maintainable. The Petitioner is not a signatory to the DA, yet he has invoked its arbitration clause against both Respondent Nos. 1 and 2. According to Respondent No. 1, such a course is not permissible. Even if the Petitioner is treated as a member who has accepted the redevelopment, he cannot independently initiate arbitration proceedings or seek interim reliefs against the Society and the Developer under the arbitration clause of the DA. Learned Advocate submitted that, once a person becomes a member of a co-operative society, that person's rights and obligations are governed by the legal relationship with the Society. An individual member cannot be permitted to obtain interim orders that may delay or obstruct the entire redevelopment project. He contended that the claim of one member cannot be allowed to hold up the redevelopment affecting all the members.

(b) Learned Advocate for Respondent No. 1 submitted that the Petitioner's claim is contrary to the terms of the DA. The

arbitration clause covers disputes “arising out of or in relation to” the DA. However, according to Respondent No. 1, the Petitioner’s claim is based on his own title documents, the chain of transfers, the Share Certificate and the municipal assessment records, rather than on any right created under the DA. The Petitioner seeks to alter the DA by requiring the Respondents to recognise one commercial unit instead of three shops and one flat. The DA was executed between Respondent Nos. 1 and 2 and was not signed by the Petitioner. Learned Advocate submitted that the dispute raised by the Petitioner falls outside the scope of the arbitration clause and cannot be referred to arbitration under that agreement.

(c) Learned Advocate submitted that the Petitioner cannot accept one part of the DA while disputing another part of the same agreement. According to him, the Petitioner claims to be an assenting member who supports the redevelopment and seeks the benefit of the arbitration clause. At the same time, he disputes the description of the premises contained in the DA. Learned Advocate contended that the Petitioner cannot claim the benefit of the arbitration clause in an agreement whose terms he does not accept. If the Petitioner is bound by the DA, he must accept the description of the units recorded in it. If he is not bound by the DA, he cannot invoke its arbitration clause.

(d) Learned Advocate for Respondent No. 1 submitted that the dispute between the Petitioner and the Society

concerning the nature and extent of the premises is essentially a dispute between a society and its member. According to him, the appropriate remedy is under Section 91 of the Maharashtra Co-operative Societies Act, 1960, or by filing a civil suit seeking a declaration of title. He contended that such a dispute cannot be decided through arbitration under the DA.

14. Learned Advocate for Respondent No. 1 then submitted that, even if the Petition is held to be maintainable, the Petitioner has failed to establish his entitlement to the reliefs claimed.

(a) He submitted that the Petitioner has not produced the original title document showing the sale of the premises by the builder. The Petitioner has, however, produced the Articles of Agreement dated 31 August 1964, executed between the purchasers. According to Respondent No. 1, this agreement records the respective shares of the purchasers in the ground-floor unit and authorises Mr. Deepak Kumar Mehta to perform certain acts mentioned in the agreement. Learned Advocate referred to recital 1 and Clause 6 of the agreement, which describes the unit as a "Flat". He contended that the failure to produce the original title document prevents the Petitioner from establishing his claim and disentitles him to interim relief.

(b) Learned Advocate for Respondent No. 1 submitted that the sanctioned building plan shows that the ground floor of the Society's building consists of three shops and one

residential premises. According to him, this plan does not support the Petitioner's claim that the entire ground floor was one commercial unit.

(c) He relied upon the registered Indenture dated 20 June 1967, executed between the original developer and Respondent No. 1 Society. Under this document, the developer conveyed and transferred to the Society the land and the building standing on it. Learned Advocate submitted that the Indenture expressly records that the building consists of 18 flats and three shops. The ground floor comprises three shops and one flat. The remaining premises consist of three flats each on the first, second and third floors of Wing A, and two flats each on the first, second and third floors of Wing B. According to him, this document supports the Society's case that the ground floor was not originally recognised as one commercial unit.

(d) Learned Advocate submitted that, on 03 March 1978, Deepak Kumar Mehta transferred the ground-floor units to the Sunder Jhangiani Family Trust. According to him, the agreement executed on that date does not describe the premises as either commercial or residential. It merely refers to ground-floor units admeasuring 2,000 sq. ft. He contended that this document does not establish that the entire ground floor was recognised as one commercial unit.

(e) Learned Advocate for Respondent No. 1 submitted that Respondent No. 2 agreed to undertake the redevelopment on

the basis of the information and representations made available to it. Acting on that basis, Respondent No. 2 entered into the DA dated 29 January 2026 with Respondent No. 1. Under the DA, Respondent No. 2 agreed to provide a new flat to the Petitioner in accordance with the area stated in the statement annexed to the DA. According to Respondent No. 1, the Petitioner cannot now seek an entitlement contrary to the arrangement recorded in that agreement.

(f) Learned Advocate for Respondent No. 1 submitted that the Petitioner acquired the ground-floor units under the Deed of Transfer dated 29 February 2024. However, the fact that the premises were leased to the State Bank of India and that the Petitioner's predecessors paid municipal taxes at commercial rates does not, , establish that the premises were converted from residential use to commercial use. According to him, unless the Petitioner or his predecessor applied for a change of user and the Municipal Corporation passed an order permitting such change, the residential flat shown in the sanctioned plan cannot be treated as having been converted into a commercial unit merely because it was used as a bank or assessed for municipal tax on commercial rates. In support of this submission, learned Advocate relied upon the judgment of this Court in *Rajesh Mishra and Beena R. Mishra v. Shree Ahuja Properties Pvt. Ltd. and Others, reported in 2021 SCC OnLine Bom 2945*. On these grounds, learned Advocate for Respondent No. 1 submitted that the

Petition is liable to be dismissed.

REASONS AND FINDINGS:

15. I have gone through the pleadings and the submissions made by Mr. Shyam Kapadia, learned Advocate for the Petitioner, and Mr. Ranjeev Carvalho, learned Advocate for Respondent No. 1.

16. The first issue which requires consideration is whether the present Petition can be entertained under Section 9 of the Arbitration and Conciliation Act, 1996, even though the Petitioner has not signed the Development Agreement dated 29 January 2026. It is necessary to see whether the documents produced by him establish that he is entitled to have his premises considered as one commercial unit of 2,000 sq. ft. for redevelopment. Another issue is whether the Respondents can force him to vacate or impose a penalty upon him for not vacating when the Permanent Alternate Accommodation Agreement has not been executed and registered in his favour. The Court must consider what protection can be given for the present, without finally deciding the disputed issues of title, lawful use and his entitlement in the redevelopment.

17. The Petitioner has relied upon documents which go back to the year 1968. The Share Certificate dated 12 March 1968 concerns five A shares relating to the ground-floor premises. The Articles of Agreement dated 31 August 1964, concerning the purchase recorded on 16 January 1964, show that the Mehta family purchased the ground floor for a single amount of Rs. 58,000. The purchasers had undivided shares in the premises. The Petitioner has relied upon the Agreement dated 03 March 1978

executed in favour of the Sunder C. Jhangiani Family Trust, the Transfer of Property Letter dated 01 August 1979, the Release Deed dated 21 February 2002, the Registered Deed of Transfer dated 29 February 2024 and the Declaration-cum-Ratification dated 17 October 2025. These documents have to be looked into while considering the Petitioner's claim. They support his case that rights in the entire ground floor passed from one person to another through different transactions and that he has acquired his claimed rights through those transactions. The Deed of Transfer dated 29 February 2024, registered under No. BDR-7-4328-2024, is one important document in this regard. According to the Petitioner, Respondent No. 2 has not disputed that he acquired rights under this deed, though he was asked to give supporting documents. The Petitioner has relied upon the later Declaration-cum-Ratification and the records of the Society to support his claim. However, there is a difference between claiming ownership of the premises and proving that the premises are approved as one commercial unit of a particular area. These are not the same thing. Even if the entire ground floor was transferred or held by one person, it does not mean that the Municipal Corporation had approved the whole area as one commercial premises. In the same way, one Share Certificate may show that the Society recognised one person as its member holding the shares, but that alone does not establish the permitted use or the exact arrangement of the premises under the sanctioned building plan.

18. The Petitioner has relied upon the Society's NOC and certificate dated 31 January 2020. These documents describe the

premises as “your ground floor premises i.e. A-1” and the member as the “owner of entire ground floor i.e. A-1”. These documents have importance because they were issued by the Society. The Society had then described the entire ground floor as one premises. Further, in paragraph 25 of its reply, the Society has admitted that the premises are covered by a single Share Certificate “under one share certificate in the name of a single member”.

19. The Petitioner has referred to the property tax and maintenance records. The bill dated 01 April 2025 refers to one unit described as “A-001”. According to the Petitioner, the Society has never issued separate bills for units described as A-1/A, A-1/B, A-1/C or A-1/D. The BMC Inspection Extract for 1991–1992 records the entire ground floor as premises let to the State Bank of India. The BMC Special Notice dated 05 March 2013 shows the ground floor as a single “Unit No. 1”, classified for commercial use by a bank and ATM. The BMC Annexure “A” for 2020–2025 records the entire ground floor as one commercial unit.

20. The Lease executed in favour of the State Bank of India, with effect from 16 December 1969, is a relevant document. It shows that the whole ground floor was given on lease to the Bank as one premises having an approximate carpet area of 2,000 sq. ft. The fact that the premises were used as one bank premises for a long period, along with the Society’s records and municipal assessment records, gives support to the Petitioner’s case that the entire ground floor was treated and used as one unit.

21. In these circumstances, the Petitioner is justified in asking the Respondents to explain why the premises are now being divided into units A-1/A, A-1/B, A-1/C and A-1/D, and why the Development Agreement mentions an area of 1,923.75 sq. ft. The Respondents cannot simply ignore the earlier documents and rely only upon the description in the Development Agreement without considering what the Petitioner is saying. However, these documents do not permit this Court, while deciding a Petition under Section 9, to finally declare that the whole ground floor is one approved commercial unit of exactly 2,000 sq. ft.

22. The reason is that the Respondents have relied upon the sanctioned building plan and the Indenture dated 20 June 1967. According to Respondent No. 1, the sanctioned plan shows three shops and one residential premises on the ground floor. It is its case that the Indenture describes the building as consisting of 18 flats and three shops, with three shops and one flat situated on the ground floor. Respondent No. 1 has pointed out that the Petitioner has not produced the original title document showing the sale of the premises by the builder.

23. The description in the Indenture and the sanctioned plan is relevant for deciding what kind of premises were approved and how they were arranged. Merely because the whole ground floor was purchased for one amount or was later leased to the State Bank of India, it does not follow that the separate premises shown in the original sanctioned plan lost their separate identity. It may be that separate premises were held together or used by one person. The original plan, the later transfers and the Society's

records will therefore have to be considered together after examining the complete documents. At the same time, referring to the sanctioned plan alone does not answer all the objections raised by the Petitioner. The plan relied upon is described as an amended plan showing the proposed building. The Petitioner disputes whether this plan shows the legal position when the premises were transferred and thereafter used. He has pointed out that the Occupation Certificate and the Occupation Certificate Plan referred to in Clause 4(b) of the Development Agreement have not been produced. These documents are relevant for knowing what construction was approved and what was the lawful status of the premises. Their absence becomes important because the Respondents are relying upon the sanctioned arrangement to oppose the Petitioner's claim.

24. The objection of Respondent No. 1 that the original title document has not been produced by the Petitioner requires consideration. In the absence of that document, the complete chain of title cannot be established conclusively at this stage. However, the Petitioner has produced other documents, including the registered Deed of Transfer, the Declaration-cum-Ratification, the Society's records and the municipal records. These documents cannot be left out of consideration only because the original sale document is not produced. Their effect and whether they are enough to establish the exact area and nature of the premises will have to be examined in proper proceedings before the forum which has jurisdiction to decide these questions.

25. I find substance in the submission of Respondent No. 1 that municipal assessment and actual commercial use,, do not prove that the Municipal Corporation approved the entire premises as one commercial unit. Respondent No. 1 has relied upon *Rajesh Mishra*. The principle relied upon is that payment of municipal taxes at commercial rates does not permit a change of user contrary to the sanctioned plan. 40. This principle has relevance because the Petitioner cannot rely only upon commercial assessment and the lease to the State Bank of India to establish that the premises were approved for commercial use. However, his case is not based only on municipal assessment. He relies upon the Society's Share Certificate, the NOC and ownership certificate, the transfer documents and the old records concerning the entire ground floor. All these documents need to be considered together. The legal status of the premises cannot be decided only on the basis of municipal tax records. In the same way, the Petitioner's case cannot be rejected merely by referring to the description in the proposed building plan. At this stage, the material placed before the Court shows that there is a dispute about the description, area and arrangement of the existing premises. However, the material does not establish that the Petitioner can insist that the entire ground floor must be treated as one commercial unit of 2,000 sq. ft. for every purpose of redevelopment. But the Respondents cannot ignore his claim or proceed as if his ownership and membership have not been recorded by the Society.

26. The next issue is whether the Petition can be maintained when the Petitioner has not signed the Development Agreement. Mr. Carvalho, learned Advocate for Respondent No. 1, submits that the Petitioner cannot invoke the arbitration clause contained in the agreement between the Society and the Developer. He submits that the Petitioner cannot claim benefits under the Development Agreement while disputing the description of his premises mentioned in that agreement. According to him, the dispute is between the Society and its member and must be raised under Section 91 of the Maharashtra Co-operative Societies Act, 1960, or by filing a civil suit.

27. The legal position on this issue has been explained by this Court in *Pranav Constructions Limited v. Priyadarshini Cooperative Housing Society Limited,* Arbitration Appeal (L) No. 20093 of 2025, decided on 14 July 2025, reported as 2025:BHC-OS:10901-DB. In that case, this Court held that disputes between a member and the Society regarding additional area or other benefits in redevelopment cannot be finally decided in proceedings under Section 9. Such disputes must be decided in proper proceedings under Section 91 of the Maharashtra Co-operative Societies Act, 1960, or in a civil suit, as may be applicable. However, merely because such a dispute exists, the Court is not prevented from granting interim protection under Section 9 if the required conditions for granting that protection are satisfied.

28. In paragraph 17 of the judgment in *Pranav Constructions Limited*, this Court observed:

> "The members of the Society are bound by the covenants of the Development agreement and if they act contrary to the covenants of the Development agreement, the Court exercising power under Section 9 of the Act can step in and make necessary interim measures."

29. The Court explained in paragraph 17 that an individual member's grievance about appointment of the developer, implementation of redevelopment or grant of additional area has to be resolved outside proceedings under Section 9. If the grievance relates to the business of the Society, it may be raised under Section 91 of the Maharashtra Co-operative Societies Act, 1960. Otherwise, the affected member may approach the civil court. The above judgment makes it clear that there is a difference between deciding a member's disputed entitlement and giving temporary protection to preserve the rights arising from the redevelopment arrangement. This distinction applies to the present case. The Petitioner is not asking to be kept out of redevelopment. He wants to take part in it, but he seeks protection of his claimed entitlement and proper identification of his premises. Though he disputes the description and area mentioned in the Development Agreement, he relies upon Clause 20 of that agreement, which requires execution and registration of a Permanent Alternate Accommodation Agreement before the member vacates.

30. In the facts of the present case, the objection that the Petitioner has not signed the Development Agreement cannot be accepted as a complete bar to considering his request for interim protection. The Petitioner's name was entered in the Society's Share Certificate and Form "J" on 04 April 2026, pursuant to the

orders of the Deputy Registrar. According to the pleadings, the Society withdrew its challenge to the earlier membership order. The Respondents have issued notices asking the Petitioner to vacate. For the limited purpose of considering interim protection, the Petitioner has shown that he claims rights through the ownership documents and that his name is now recorded as a member of the Society.

31. In *Pranav Constructions Limited*, this Court considered whether a person who had not signed the Development Agreement could be affected by an interim order under Section 9. The judgment explains that interim orders under Section 9 are not confined only to persons who have signed the arbitration agreement, though the jurisdiction under Section 9 must be invoked by a party to the arbitration agreement. It explains that members of a Society are bound by the terms of the Development Agreement and that an individual member should not be allowed to obstruct redevelopment by raising an individual grievance in proceedings under Section 9.

32. The judgment does not mean that every person who has not signed the Development Agreement can invoke arbitration. It does not permit the Court under Section 9 to decide issues which must be decided by the Co-operative Court or the civil court. However, the fact that the Petitioner has not signed the agreement is not enough to reject his Petition without considering his claim, membership and need for interim protection. He is a recorded member claiming rights in premises forming part of the building being redeveloped. His claimed entitlement is directly affected by

the Development Agreement and the steps being taken by the Respondents under it. I reject the preliminary objection that the Petition must be dismissed only because the Petitioner has not signed the Development Agreement. This finding is only for deciding whether his request for interim protection can be considered. It does not finally declare that every claim made by him comes within the arbitration clause. It does not decide whether he is ultimately entitled to 2,000 sq. ft. of commercial premises in the redeveloped building.

33. The argument that the Petitioner is accepting and rejecting the Development Agreement at the same time requires consideration. If the Petitioner claims benefits available to a member under the Development Agreement, he cannot ignore all the obligations and arrangements contained in it. However, questioning the area or description of his premises does not mean that he is rejecting the whole redevelopment arrangement. He may agree to redevelopment but say that his own premises have not been identified. This claim will have to be examined on its own merits. At the same time, the Petitioner cannot obtain an interim order directing the Respondents to rewrite the Development Agreement or to accept the disputed area of 2,000 sq. ft. as established. The Court has to protect his rights without deciding matters which need detailed examination. Therefore, I do not accept the Petitioner's submission that the documents produced by him conclusively establish his right to new commercial premises of exactly 2,000 sq. ft. on the ground floor or the first floor. This issue must remain open for decision in the proper proceedings.

34. Respondent No. 1 has submitted that the dispute must be decided by the Co-operative Court under Section 91 of the Maharashtra Co-operative Societies Act, 1960, or by the civil court. In this regard, *Pranav Constructions Limited* makes it clear that the validity of decisions taken by the General Body or Managing Committee of a Society, and the individual claims of members regarding additional area or similar benefits, cannot be finally decided under Section 9. This Court cannot act as an appellate authority over the commercial decisions of the Society only because one member is not satisfied with them.

35. However, there is another issue raised in the present Petition. The Petitioner says that the Respondents are trying to compel him to vacate before executing and registering the PAAA required under the Development Agreement. This concerns how the redevelopment arrangement is being carried out and whether the contractual condition which must be fulfilled before vacating has been complied with. This issue can be considered for the limited purpose of interim protection without deciding whether the Society's resolutions are valid or what the Petitioner's final entitlement is. Paragraph 18 of *Pranav Constructions Limited* explains the difference between a person who wants to remain outside redevelopment and an occupant who wants to participate in redevelopment while protecting his claimed entitlement. In the present case, the Petitioner is not asking to be excluded from redevelopment. He wants to participate, but says that his premises and entitlement should be recorded. Therefore, the Respondents cannot rely upon the general principle that one member should

not obstruct redevelopment and use it to deny every kind of protection to him. At the same time, the Petitioner cannot use this Petition to stop redevelopment of the entire building only because his own dispute has not been resolved.

36. The Petitioner has questioned the demand for possession and the proposed penalty for delay in vacating. The main clause relied upon by him is Clause 20(d) of the Development Agreement, which states:

> "Execution and registration of the PAAA shall be a condition precedent to the Member vacating their respective premises."

37. For the present purpose, the meaning of this clause is clear. If execution and registration of the PAAA must take place before the Petitioner vacates, the Respondents cannot insist that he should first vacate and only afterwards execute and register the PAAA. The sequence of steps mentioned in the agreement must be followed. The Respondents have not shown that a PAAA has been executed and registered in favour of the Petitioner. The Petitioner says that no draft PAAA was given to him. Respondent No. 2 claims that a draft was sent along with the notice dated 13 July 2026. The Petitioner disputes this and says that the notice only called upon the members to attend for execution of the PAAAs on dates which would be communicated later. From the material placed before this Court, there is not enough basis to conclude that the Petitioner was given a PAAA containing the necessary details and then refused to execute it.

38. The Petitioner has stated that, by his letter dated 20 July 2026, he asked the Respondents to record his correct name, membership, premises and area and to specify the time for execution of the PAAA. According to him, no reply has been received. These circumstances support his case that the matter is still unresolved. The Respondents have not established that the Petitioner deliberately refused to comply with an agreement which was ready for execution. The dispute about the description and area of the premises must be addressed before coercive steps are taken against him on the ground that he has failed to vacate without any justification. The Petitioner has relied upon Clauses 15(vii), 15(viii) and 22 of the Development Agreement, which are stated to provide for a penalty in case of delay in vacating. However, there is a difference in the amount mentioned in the record. During his submissions, the Petitioner refers to a penalty of ₹50,000 per day, whereas prayer clause (c) refers to ₹2,50,000 per day. It is not necessary to decide this difference at the present stage. The main issue is whether any penalty can be imposed when the contractual condition which must be fulfilled before vacating has not been completed.

39. In my view, the Respondents cannot impose or recover a penalty merely because the Petitioner has not vacated before the PAAA required under Clause 20(d) has been executed and registered. A demand made only on this ground would be premature. This does not mean that the Petitioner can refuse to vacate forever after the contractual requirements have been fulfilled. Nor does this finally decide the meaning of every penalty

clause. It only protects the Petitioner from being penalised for not doing something which, under the Development Agreement, depends upon the PAAA being executed and registered first.

40. The Petitioner has asked for a direction requiring the Respondents to execute an addendum or supplementary agreement recording his name, membership, shareholding and redevelopment entitlement in place of the erstwhile Trust. This request has substance to the extent that the Petitioner's name is now recorded in the Society's records. The redevelopment documents and communications relating to him should not continue to show the erstwhile Trust as the present member while ignoring the later change made in the Society's records. However, the addendum cannot be used at this stage to settle the disputed area or to compel the Developer to accept a commercial entitlement which is still disputed. The proper course is to require the Respondents to prepare the necessary documents in the Petitioner's name and record his membership and the existing premises as described in the Society's records. At the same time, the documents should preserve the competing claims of both sides regarding the exact area and arrangement of the premises. These questions can then be decided in arbitration or other competent proceedings without stopping the steps necessary for redevelopment.

41. The Petitioner has asked for disclosure of the redevelopment plans sanctioned or approved by the BMC, together with the relevant plans, drawings, layouts and documents submitted by Respondent No. 2 to Respondent No. 1, insofar as they relate to his

premises and proposed entitlement. This request appears reasonable. The Petitioner cannot examine whether the description in the Development Agreement is correct if the relevant plans are not given to him. The Respondents rely upon the sanctioned plan to oppose his claim. Therefore, the current sanctioned plans and relevant documents showing how his premises have been dealt with should be supplied to him.

42. The Petitioner has asked that provision should be made for his existing strong room in the redeveloped premises. This requirement may be important for his business. However, the Court cannot direct that a particular room must be constructed or approved without considering the sanctioned plan and building regulations. At this stage, the Respondents should consider this requirement while finalising the plans and PAAA, disclose the relevant plans to the Petitioner and take such steps as are possible before the competent authorities. Whether the strong room can actually be provided, and on what conditions, will depend upon the applicable building regulations and the required approvals.

43. The Petitioner has asked that monthly displacement compensation, transit rent, hardship compensation and other benefits should continue to be paid according to the correct area of his premises. The present record does not permit the Court to finally decide the amount payable by treating the disputed area of 2,000 sq. ft. as established. However, the Petitioner should not be deprived of benefits under the Development Agreement which are not disputed, merely because the dispute about his premises is still pending. The Respondents must continue to pay the benefits which

are admittedly payable under the Development Agreement, subject to adjustment after the dispute is finally decided. This does not mean that the Court has accepted that the Petitioner is entitled to benefits calculated on the basis of a commercial unit of 2,000 sq. ft.

44. The Petitioner has asked for an order restraining the Respondents from creating third-party rights in respect of his premises and redevelopment entitlement. Stopping the entire redevelopment project would be too wide a relief. The Society and the Developer are entitled to continue redevelopment in accordance with the Development Agreement and the sanctioned plans. However, the Petitioner's pending claim must be protected so that the particular alternative accommodation proposed to be given to him is not allotted or committed to someone else in a manner which defeats his claim before the dispute is decided. The proper protection would be to require the Respondents to identify the alternative accommodation proposed for the Petitioner in the relevant plans and documents. That particular accommodation should not be allotted to a third party in a way which defeats the Petitioner's rights under the PAAA or the final decision in arbitration. Such limited protection will preserve the subject matter of the dispute without stopping redevelopment or affecting allotments which are not connected with the Petitioner's claim.

45. The Petitioner has asked for a direction to earmark new premises for him on the ground floor and/or the first floor. This request requires separate consideration. The material available does not establish that he has an absolute right to premises on

either of these floors. His claim is based upon the nature and area which he says his existing unit has. The Respondents dispute this and rely upon the sanctioned plan and the Development Agreement. The Court cannot decide the final location of the new premises without first deciding the entitlement on which the claim is based. Therefore, no interim direction can be issued declaring that the Petitioner is entitled to commercial premises of 2,000 sq. ft. on the ground floor or the first floor.

46. This does not prevent the Petitioner from establishing his entitlement in appropriate proceedings. The Respondents must preserve his claim and ensure that the PAAA and redevelopment documents do not wrongly record that he has surrendered or given up the claim. The PAAA may record the existing premises and membership as shown in the Society's records and the proposed alternative accommodation under the Development Agreement. It should state that the parties dispute the final area and character of the existing premises and that their rights and contentions on these issues remain open. In this manner, the contractual process can go forward without finally deciding the disputed claim.

47. The Respondents have submitted that the majority of the Society's members have agreed to redevelopment and that one member should not be allowed to obstruct the project. There is substance in this submission. The Court has to consider that redevelopment affects all the members and that delay may cause hardship to the other occupants. *Pranav Constructions Limited* makes it clear that an individual member's grievance about additional area or the manner of redevelopment cannot ordinarily

be used to stop the entire project. At the same time, the decision of the majority does not allow the Society or the Developer to ignore the recorded rights of a member or avoid an express contractual condition concerning surrender of possession. The proper balance is to allow redevelopment to continue while protecting the Petitioner from being compelled to vacate without the agreed documents and from losing any entitlement which he may ultimately establish. Such an order does not interfere with the commercial decision of the Society. It only ensures that the contractual steps relating to the Petitioner are completed in the manner agreed.

48. The Petitioner's request to restrain every action under the redevelopment plan is too wide. This Court is not deciding whether the Society's resolution is valid or declaring that the Development Agreement is invalid. It is not deciding whether the description in the agreement must be changed to show one commercial unit of 2,000 sq. ft. The protection must be limited to the Petitioner's own premises, his PAAA and the interim steps necessary to preserve his claim until it is decided.

49. I find that the Respondents must not take coercive steps against the Petitioner before the PAAA is executed and registered in accordance with Clause 20(d). The Respondents may continue the redevelopment work. However, they cannot treat the Petitioner as having refused to vacate in breach of the Development Agreement when the document required before vacating has not been executed and registered. After the contractual requirements are fulfilled and the PAAA is registered, the Petitioner will have to

act according to it, without affecting his right to pursue the dispute about the area and character of the existing premises.

50. The interim protection must meet the requirements of the Arbitration and Conciliation Act, 1996. If the arbitral proceedings have not yet started, they must be commenced within the period provided under Section 9(2) of the Act, or within such time as this Court may permit. The purpose of the interim protection is to preserve the Petitioner's rights until arbitration takes place. It cannot take the place of a final decision on the dispute by the arbitral tribunal or any other competent forum.

51. For these reasons, the Petition deserves to be partly allowed. The Petitioner cannot be granted all the reliefs in the form in which he has asked for them, because this Court cannot declare that he has a final right to 2,000 sq. ft. of commercial accommodation in the redeveloped building. However, he is entitled to limited interim protection concerning his recorded membership and the contractual procedure which must be followed before he vacates. The disputed questions concerning the area and lawful use of the premises will remain open for decision in the appropriate proceedings.

52. The Petition is partly allowed in the following terms:

(a) Respondent Nos. 1 and 2 shall, within two weeks from the date of this order, provide the Petitioner with copies of the current redevelopment plans sanctioned or approved by the BMC, together with the relevant drawings and documents showing the description, area and proposed

alternative accommodation relating to the Petitioner's premises;

(b) Respondent Nos. 1 and 2 shall prepare and furnish to the Petitioner a draft Permanent Alternate Accommodation Agreement ("PAAA") in his name, recording his present membership and shareholding and identifying the existing premises with reference to the Society's records. The draft shall record that the parties dispute the precise area, configuration and legal character of the existing premises, and that their respective rights and contentions on those matters remain open for determination in the appropriate proceedings;

(c) The Respondents shall take steps to execute and register the PAAA in accordance with the Development Agreement and the applicable law, without treating the Petitioner's disputed claim regarding the area and configuration of the existing premises as determined by this order;

(d) Until the PAAA is executed and registered in accordance with Clause 20(d) of the Development Agreement, the Respondents shall not take coercive steps to compel the Petitioner to vacate the premises or impose or recover any penalty on the ground that he has not vacated before the said contractual condition has been fulfilled;

(e) The Respondents shall continue to pay or provide the undisputed contractual transit rent, displacement

compensation, hardship compensation and other redevelopment benefits payable to the Petitioner under the Development Agreement, subject to the rights and contentions of the parties regarding the area and entitlement;

(f) The Respondents shall identify the proposed alternative accommodation to be provided to the Petitioner under the Development Agreement and shall not allot that particular accommodation to any third party in a manner which would defeat the Petitioner's rights under the PAAA or the final decision in arbitration;

(g) It is clarified that this order does not declare that the entire ground floor is conclusively one commercial unit admeasuring 2,000 sq. ft. It does not declare that the Petitioner is entitled to a commercial premises of that area on the ground floor or first floor of the redeveloped building. All such rights and contentions are kept open for determination in the appropriate proceedings;

(i) The redevelopment project shall not be stayed merely because of the disputes raised by the Petitioner. The Petitioner shall not obstruct the redevelopment in a manner contrary to the Development Agreement and the lawful steps taken by the Society and Developer, subject to the interim protections granted by this order;

(j) If arbitral proceedings have not already commenced, the Petitioner shall take steps to commence them within the

period prescribed under Section 9(2) of the Arbitration and Conciliation Act, 1996, subject to any time permitted by this Court;

(k) All other prayers are kept open for determination by the arbitral tribunal or the competent forum, as may be permissible in law.

(l) Despite Respondent Nos.1 and 2 complying with clauses (a) and (b) of this order, and if the Petitioner fails to execute PAAA, the Court Receiver shall stand appointed, and the Court Receiver shall execute PAAA for and on behalf of the Petitioner.

53. The Petition is disposed of in the above terms. There shall be no order as to costs.

(AMIT BORKAR, J.)