

Pune court stays society resolution banning owners from giving flats on rent to students

By Nadeem Inamdar

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The court ruling came when it was hearing a case between Swapnil Arthamwar versus Vanraj Cooperative Housing Society

In a ruling that could benefit many students who seek flats to stay and pursue education in the city, a co-operative court in Pune has stayed a resolution passed by a residential society which had made it binding for a flat owner to seek written permission from the society management before renting out the flat to a student. The court in its order issued on July 6, although it was made available this week, termed the action by the housing society in Pune as "illegal" to prohibit renting out flats to students.



The court ruling came when it was hearing a case between Swapnil Arthamwar versus Vanraj Cooperative Housing Society. Arthamwar had approached the court seeking temporary injunction against the housing society to restrain it from execution and implementation of a resolution passed in the annual general meeting (AGM) during July 2022 that barred petitioner from renting out flat to students.

Co-operative Court Judge AS Wanve in the judgement stated that Maharashtra Co-operative Societies (MCS) Act, 1960, MCS Rules 1961 and bye-laws of society does not give any power to housing society to decide who will be tenant in its building. The court observed that the residential society has no power to ban a particular person or group of persons to be tenant in its building.

The housing society in its argument had submitted that there are a few members like disputants (petitioner), who are not residing in society but using their flats for commercial purposes by letting it out to outsiders particularly for the occupation by a group i.e. minimum 4-5 students for commercial gains.

The occupation of students in respective flats is otherwise illegal and contrary to the provision of bye-laws of the opponent society, said the housing society in its argument. It had further submitted that even though it is mandatory for flat owners to give details of tenants who occupy the flat, including Aadhaar Card, most of the disputants fail to do so even after demanding for the same by the manager of the society, thereby put the residential society at security risk.

The court, however, observed that, "The opponent society by giving individual notice November 22, 2022, has peremptorily instructed concerned flat holders/disputants that they cannot exploit the prime and peaceful situation of the society for fabulous commercial gain. Such an act is contrary to the co-operative principles and encroaches upon the civil rights of the members and residents in the society."

OPEN APP

MHCO120000102023



IN THE COURT OF HONORABLE JUDGE, CO-OPERATIVE COURT

NO.2, PUNE AT PUNE

(Presided over by – Shri. A. S. Wanve- Judge.)

Dispute No. 08/2023

Mr. Swapnil Dnyanoba Arthamwar & Others

----- Disputants

V/s.

Vanraj Co-operative Housing Society Ltd.

----- Opponent

ORDER BELOW EXH-5

(Dictated and pronounced on 06/07/2023)

1] This is an application filed by the disputant for Temporary Injunction against opponents to restrain them from execution and implementation of resolution No.8 passed in Annual General Meeting dated 17/07/2022. On the grounds more specifically mentioned in dispute application, mainly on the ground that, the disputants are member of opponent society and holding flats in the opponent society. Disputants have given their respective flats on leave and license basis. Since from the taking over of charge by the new Managing Committee, the new Managing Committee giving step motherly treatment to the Non-occupant member of the society. The disputants being owner of their respective flats are free to give their flats on leave and license basis by complying the provision of Bye-laws of the opponent society. As per the bye-laws there is no need of any prior permission of society for leasing and renting of the flat.

2] The Chairman / Secretary of the opponent society without serving the notice, called the Annual General Meeting of the society on 17/07/2022 and

illegal Agenda taken for discussion under subject No.8 about tenants in the society and illegal, arbitrary resolution passed to ban student tenants and also resolved if any member violets the same he / she shall be ceased to be member of the society and suggested to take action on such member. Further resolved that, mandatory prior written permission require for the renting and leasing the flats in the society to any tenant. This resolution is illegal and discriminating. The discrimination by the society is illegal and against the law.

3] The requirement of obtaining the prior permission from the society to give the flat on leave and license basis has been removed from new Model Bye-laws. Members only need to inform the society about the flat being given on rent. Opponent society also threaten the disputants that, they will increase the said penalty from Rs.10,000/- to Rs.50,000/- this penalty and increase of penalty is against bye-laws No.164A.

4] The resolution No.8 passed in Annual General Meeting dated 17/07/2022 is illegal and requires to be stayed.

5] Show Cause Notice of this application is duly served to the opponent society. Opponent society appeared through advocate and objected this application on the grounds more specifically mentioned in its reply which is at Exh-13 and written statement which is at Exh-16. The main defense of opponent society is that, the application filled by the disputants are for stay and is not maintainable under Section 95 of the M. C. S. Act, 1960. The application is not verified and not supported by the affidavit. There is no provision in law to adopt the contents of dispute as contents of stay application. The contents of para No.2 & 3 of the dispute application are deny and contents are grammatically incorrect and do not make sense. The prayer of stay application are not mentioned in main dispute application. Therefore, disputants are not entitle for the relief.

6] In the written statement opponent society taken the defense of non joinder of necessary parties. The disputants has not taken permission from the society to give their flat on leave and license basis and committed breach of bye-laws of the opponent society. The Agenda notice of the Annual General Meeting is duly served upon all members.

7] The occupants of the disputed flats are misbehaving to such a extent that, they have surpassed all standards of decency. The concern flat holders where informed from time to time by phone calls or personally when they visited society. The disputants who are not residing in the society would know that occupants occupying the flats peacefully and without any hindrance to the day to day running of the society, such statement is absolutely full of contradiction and far away from truth. The disputants do not have any legal rights to speak on the working of the society as well as peace and tranquility in the society.

8] The opponent society submits that, there are few members like disputants, who are not residing in society but exploiting their flats for commercial purposes by letting out the same to the outsiders particularly for the occupation by group of students i.e. minimum 4-5 students to occupy their flats for aforesaid commercial purpose. The occupation of the students in the respective flats is otherwise illegal and contrary to the provision of bye-laws of the opponent society. It is further submitted that even though it is mandatory for the flat owners to give details of the tenants who occupy the flat including Aadhar Card, most of the disputants even after demanding for the same by the manager of the society. They have put the society at security risk.

9] The opponent society states that, the said occupants are not using the flats quietly and peacefully ultimately causing nuisance to the residents in the society. The opponent society further states that, they are wasting the water to large extent as well as throwing rubbish and there by creating unhealthy atmosphere in the society. Not only this, they and their friends oftenly occupy

the common parking spaces either by sitting on the vehicles or otherwise indulge in indecent acts. The society had received complaints from various members who are mostly senior citizen and have lot of medical problems. It is further submitted that due to heavy egress and ingress of outsiders and their vehicles in the society premises lot of security problems are created from time to time. The said students are also littering in the open space of the society with indecent clothing which has affected decency in the society. There are repeated directions given by the office bearers of opponent society to stop use of the flat by students. However no heed was paid to the requests and the illegalities are being perpetuated. The Office Bearers of opponent society have repeatedly brought to the knowledge of the occupants about their misbehavior but there is no correction in the behavior. Therefore, the society in its General Body Meeting held on 17/07/2022 unanimously decided to authorize the Managing Committee to take necessary steps. The opponent society also tried to contact the flat holders but it was unfortunate that, there was no response from them.

10] The opponent society states that the bye-laws of the society contemplate compliance of certain rules for letting out the flat. It is very sorry state of affairs that the concerned disputants have fragrantly violated the bye-laws of the society. The opponent society states it was unanimously decided in the said General Body Meeting that on or before 30/10/2022 the owner of the flat shall remove the students from his/her flat and if same is not done then penalty of Rs.10,000/- per month will be levied on erring members. The said resolution is well within knowledge of the disputants. All the members of the society have accepted the said resolution and in pursuance of the same the committee has taken steps to implement it.

11] The opponent society by giving individual notice on 22/11/2022 has peremptorily instructed concerned flat holders/disputants that they cannot exploit the prime and peaceful situation of the society for fabulous commercial

gain. Such act is contrary to the Co-operative principles and encroaching upon the civil rights of the members and residents in the society. It is further submitted that as the names of the occupants are not known to the society the copy of the notice were pasted outside the each concerned flats at conspicuous place. To the said notices as usual there is no response from any of the concerned flat holder/disputants. It all goes to show that the disputants have no intention to discharge their obligation either as member or as flat holder living in community. It is so because they themselves are not residing in the society, but they just want to exploit their flats for commercial gain as if it is free hold property. Hence serious judicial notice needs to be taken by the court as disputants who are claiming alleged rights as per constitution are not behaving property as responsible citizen of the Nation.

12] Considering the rival pleadings of the parties and documents filed on record following points arise for my determination I give my findings thereon supported with reasons as under.

Sr No.	Point	Findings
1	Whether prima facie case is in favour of the applicant?	In the affirmative
2	Whether the balance of convenience is in favour of the applicant?	In the affirmative
3	Whether applicant will suffer from irreparable loss if, injunction as prayed for is not granted?	In the affirmative
4	What order?	As per final order

REASONS

As to point No. 1 to 3.

13] Heard learned advocate Shri. K. B. Lahane for the disputants/Applicants at length.

14] Heard learned advocate Shri. D. P. Khurjekar for the opponent society at length.

15] Ld. Adv. For the disputant argued that, resolution No.8 passed in A.G.M. dated 17/07/2022 is illegal. As per Bye-law No.100, agenda notice of meeting is to be served before 14 days of the meeting. Opponent society has not issued / served the agenda notice on the disputant 14 days prior to the meeting. As per bye-law No.109 the draft minutes of meeting are not circulated. In the bye-law No.166 the procedure for imposing penalty is prescribed. The opponent society has not complied this procedure. The opponent society had filed on record the complaint along with list Exh-18 at serial No.1. This complaint is filed on 01/07/2022 and the notices was issued to the disputants on 22/11/2022. The resolution No.8 passed in A.G.M. dated 17/07/2022 is illegal and against the provision of law and bye-law. Supporting affidavit of application is at Exh-6 & 7.

16] Ld. Adv. For the opponent argued that, stay application can not be filled under Section 95 of the M.C.S. Act,1960. There is no any pleading in respect of irreparable loss. The prayer of interim application Exh-5 is not incorporated in the dispute application there fore it can not be granted. The disputants has not complied bye-law No.43(1) of the society. Disputants are not residing in their flats they wants to commercially exploit their property. The resolution No.8 gives authority to the committee to take legal action, injunction can not be granted to restrain from taking legal action. Opponent society is having total 86 members out of which 10 are the disputants hence the majority of the members are in favour of the resolution.

17] The present dispute is filled by the disputants under Section 91 of the M.C.S. Act, 1960. Section 95 of the M.C.S. Act, 1960 gives power to the Co-operative Court to pass interlocutory order pending the decision in the dispute. Present application is filled by the disputants for interim relief and the title of this application is mentioned as 'Stay Application'. The interim relief which is prayed by the disputant in this application is read as:- a) *Pending hearing and*

final disposal of the present dispute, the execution and operation, implantation of the said subject No8 of the Annual General Body Meeting dated 17/07/2022 may kindly be stayed. b) The respondents be restrained from taking or from acting on subject No.8 and resolution on the said subject No.8 of the Annual General Body Meeting dated 17/07/2022, during the pendency of this dispute/application.

18] Sub-Section (4) of Section 95 of M.C.S. Act,1960 reads as :---- (4) *The Co-operative Court, the Registrar or the authorized person, as the case may be, may in order to prevent the ends of justice being defeated make such interlocutory orders pending the decision in a dispute refereed to in sub-section (1) as may appear to be just and convenient.*

Application filled by the disputants at Exh-5 is covered under Sub-section (4) of Section 95 of MCS Act, 1960. and this Court can pass the interim order as prayed for if it appeared to be just and convenient to prevent the ends of justice being defeated.

19] Ld. Adv. For the opponent society relied upon bye-law No.43 (1)of the bye-laws of the opponent society. Copy of which is filled on record along with list Exh-20. For ready reference this bye-law is reproduced hereunder:-

--- 43 (1) *A member may, with the previous permission in writing of the Committee, sub-let or give on leave and license basis or care-taker basis his flat or part thereof or part with its possession in any other manner under the following circumstances:*

(I) *Where the member is required to go out of the area of operation of the society for a long duration on account of exigencies of service or business or on account of the prolonged illness;*

(ii) *Where the member is unable to occupy the flat owing to absence of facilities for education of his children or is unable to secure admission to the school in the locality for them.*

(iii) Where his employer, with a view to ensure efficient discharge of duties, requires him to stay in the accommodation allotted to him by his employer.

(iv) Where a member satisfies the Committee about his inability to occupy or continue to occupy the flat for any other genuine reasons;

Ld. Adv. For the disputant argued that, as per Model Bye-law No.42 (2) permission of society is not required to sublet the flat. As per the directions of the Hon'ble Registrar of Co-operative Societies it is compulsory for all societies to adopt the Model bye-laws. It is not known to the disputants whether Model bye-laws was adopted or not yet adopted by the opponent society.

20] Resolution No.8 passed in A.G.M. dated 17/07/2022 is challenged by the disputants the copy of this resolution is filled on record along with list Exh-3 at serial No.1 for ready reference this resolution is reproduced hereunder which is in Marathi Script :-

विषय क्रं.8

विषय : सोसायटीमधील भाडेकरूंबाबत

श्री. विलास देसाई, सभेचे अध्यक्ष यांनी सभेपुढे आलेले कॅम्प्लेंट लेटर, 50 लोकांनी सह्या केल्याचे वाचून दाखविले. व सोसायटीचे नियमाप्रमाणे सोसायटीची लेखी परवानगी घेतल्याशिवाय कोणत्याही प्रकारचा भाडेकरी ठेवता येत नाही. असे सुचविले. सोसायटीमध्ये स्टुडंट भाड्याने ठेऊ नयेत असे सुचविले. यावर श्री. आगाशे साहेब यांनी पेपर मधील याबाबतचे विचार वाचून दाखविले. या विषयावर सौ. दामले / अय्यर यांनीही सभेस माहिती दिली. याबाबत श्री. अमित भरते यांनीही आपले विचार मांडले. सोसायटीत शांतता रहावी. शांततेने जीवन व्यतीत व्हावे याबाबत निर्णय घेण्याचे आवश्यकता बोलून दाखविली.

यावर साधक-बाधक चर्चा होऊन सोसायटीत कोणत्याही प्रकारचे स्टुडंट ठेवण्यास बंदी असल्याचे सर्वानुमते ठरविण्यात आले.

दिनांक 30 ऑक्टोबर 2022 पर्यंत स्टुडंट काढण्याची मुदत सभासदांना देण्यात आली व त्यानंतर सोसायटी रुपये 10,000/- प्रति महिना दंड करून बाकी कारवाई करणार असल्याचे सभेने ठरविले.

सोसायटीच्या नियमांचे पालन करणे गरजेचे असल्याचे श्री. खिरे यांनी सांगितले व नियमांचे उल्लंघन केल्यास सोसायटी नियमाने सभासदत्व रद्द करता येते व सोसायटी फ्लॅट ताब्यात घेऊ शकते अशीपण कारवाई होऊ शकते याची माहिती सभेस दिली.

ठराव सर्वानुमते मंजूर करण्यात आला.

सुचक : श्री. कुलकर्णी

अनुमोदक : श्री. भोसले

सोसायटीमधील फ्लॅट भाड्याने देण्यास सोसायटीची कोणतीही अडचण नाही. परंतु सोसायटीची लेखी परवानगी घेणे आवश्यक आहे असे सौ. दामले यांनी सभेस सांगितले.

सभेने सर्व प्रकारची कारवाई करण्याचे सर्व अधिकार कमिटीला देण्यात आलेले आहेत असे सभेने ठरविले.

सुचक : श्री. देसाई

अनुमोदक : श्री. भोसले

From perusal of this resolution it is seen that by this resolution opponent society banned members from giving their flats on leave and license basis to the students and society also directed to the members to remove the students from their flats by date 30/10/2022 and there after society will charge the penalty of Rs.10,000/- per month and also society will proceed to cancel the membership of the member and take over the possession of flat. The submissions of Ld. Adv. For the opponent society that, by the disputed resolution only powers are given to the committee to take legal action and the opponent society can not be prevented from taking legal action, is not acceptable as from plain reading of the resolution it is seen that the opponent society has already decided not to allow the students as tenants and existing tenant student shall be removed and also penalty is proposed on the members who fell to remove the students.

21] From perusal of the bye-laws of the society it is seen that, the society has no right to decide who will or will not be the tenant. The owners of the flat who are also members of opponent society are free to choose their tenants and they may give their flat on leave and license basis as per their wish subject to the compliance of existing bye-laws.

22] It is prima facie seen that the M.C.S. Act, 1960, M.C.S. Rules, 1961 and Bye-laws of the opponent society does not give any power to the opponent society to decide who will be the tenants in its building also the opponent

society has no power to ban particular person or group of persons to be tenants in its building. The resolution of opponent society will affect the entire students who are willing to stay as tenant in the opponent society without being any fault on their behalf. The resolution No.8 passed in A.G.M. dated 17/07/2022 is prima facie is illegal and opponent society is not permitted to pass any resolution which is not in consonance with its bye-laws and the existing laws. Opponent society is not permitted to impose unreasonable restrictions upon the minority member on the strength of majority.

23] In the written statement opponent No.1 society has pleaded some of the incidents with intention to show that, the tenant student are using flats in a such way that, the other members are unnecessarily compel to suffer the nuisance of the student. In my view these pleadings / allegations can not permit the opponent society to ban the members from giving their flats to the students on leave and license basis as, law or bye-law does not permit the opponent society to make such discrimination between the tenants and opponent society has no right to choose the tenants of its members. If any tenant / member of the opponent society is causing nuisance then the society has to deal it with as per existing civil and or criminal laws by following due procedure of law and opponent society is not permitted to create new rule which is not in consonance with the existing laws.

24] In view of above discussion it is prima facie held that, resolution No.8 is passed in AGM dated 17/07/2020 is illegal and its implementation and execution is require to be stayed.

25] The resolution No.8 passed in A.G.M. dated 17/07/2020 is prima facie illegal hence, prima facie case is in favour of the applicant and if this resolution is not stayed then on the basis of this illegal resolution opponent society will charge penalty upon the disputants and also opponent society will compel the disputants to remove the students from their flats as such the balance of

convenience is in favour of disputants and if the resolution is not stayed then the disputants and the tenant students will suffer due to illegal resolution of the society which amounts to irreparable loss to the disputants.

26] India's first Prime Minister Shri. Pandit Jawaharlal Neharu gave Pune the sobriquet of "Oxford of the East" during visit to the Pune city. It is no doubt true that Pune is the city of Knowledge and in view of this many students from all over the India came to Pune for learning and taking education. In order to get education in Pune accommodation is required for such students and if all Co-operative societies prevent their members to give the flats to the students on rent then the purpose city of Knowledge will not be served.

27] In view of above discussion, I answer point No.1 to 3 in the affirmative and in answer to point No.4, I proceed to pass following order.

ORDER

- 1] Application Exh-5 is allowed with cost.
- 2] Opponent society is restrained by an order of temporary injunction from implementation, execution and giving effect to the resolution passed on subject No.8 in its AGM dated 17/07/2022, till disposal of this dispute.

Date :- 06/07/2023

Pune

(A. S. Wanve)

Judge

Co-operative Court No.2, Pune