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

COMMERCIAL ARBITRATION APPEAL (L) NO. 12585 OF 2025
IN
COMMERCIAL ARBITRATION PETITION (L) NO. 38696 OF 2024

Ambit Urbanspace .... *Appellant*

-Versus-

1. Poddar Apartment Co-operative
Housing Society Limited

2. Yogendra J. Poddar
(Being the Executors of the Estate of
Late Smt. Sushilabai Makhanlal Poddar)

3. Pawan J. Poddar
(Being the Executors of the Estate of
Late Smt. Sushilabai Makhanlal Poddar)

4. Raghvendra S. Poddar
(Being the Executors of the Estate of
Late Smt. Sushilabai Makhanlal Poddar)

5. Haresh Doshi

6. Ashu Farooq Sheir Haq Choudhary

7. Dr. Amita Laxmidas Shenoy

8. Dilip K. Limbad

9. Ketki Shantilal Desai .... *Respondents*

WITH
COMMERCIAL ARBITRATION APPEAL (L) NO. 16482 OF 2025
IN
COMMERCIAL ARBITRATION PETITION (L) NO. 38696 OF 2024

1. Yogendra J. Poddar

2. Pawan J. Poddar

3. Raghvendra S. Poddar .... *Appellants*

-Versus-

1. Ambit Urbanspace

2. Poddar Apartment Co-operative Housing Limited

3. Haresh Doshi

4. Ashu Farooq Sheir Haq Chodhury

5. Dr. Amita Laxmidas Shenoy

6. Dilip K. Limbad

7. Ketki Shantilal Desai .... *Respondents*

Mr. Mayur Khandeparkar *with Mr. Vikramjeet Garewal, Mr. Santosh Pathak, Mrs. Namita Natekar and Ms. Archana Karmokar i/b. Law Origin, for Appellant in Commercial Arbitration Appeal (L) No. 12585/2025 and for Respondent No. 1 in Commercial Arbitration Appeal (L) No. 16482/2025.*

Mr. Ashish Kamat, Senior Advocate *with Mrs. Pooja Kane and Mr. Jitendra Jain i/b. Mr. Yogesh N. Adhia, for Appellant in Commercial Arbitration Appeal (L) No.16482/2025 and for Respondent Nos. 2 and 4 in Commercial Arbitration Appeal (L) No.12585/2025.*

Mr. Amogh Singh *i/b. Mr. Nimish Lotlikar, for Respondent No.1 in Commercial Arbitration Appeal (L) No.12585/2025.*

Mr. Vishawajit Sawant, Senior Advocate *i/b. Mr. Narayan G. Samant, Mr. Sandeep V. Mahadik and Ms. Duhita D. Desai, for Respondent Nos. 5, 7 and 8 in Commercial Arbitration Appeal (L) No.12585/2025.*

Ms. Duhita D. Desai *with Mr. Sandeep V. Mahadik and Mr. Narayan G. Samant, for Respondent Nos. 3, 5 and 6 in Commercial Arbitration Appeal (L) No.16482/2025.*

Coram : Alok Aradhe, CJ. &
Sandeep V. Marne, J.

Judgment Reserved On: 24 June 2025.
Judgment Pronounced On : 1 July 2025.

JUDGMENT (Per: Sandeep V. Marne, J.)

1) These Appeals are filed challenging the judgment and order dated 1 April 2025 passed by the learned Single Judge of this Court dismissing Commercial Arbitration Petition (L) No. 38696/2024 filed by the Appellant-Ambit Urbanspace under the provisions of Section 9 of the Arbitration and Conciliation Act, 1996 (**the Act**) seeking interim measures for vacation of premises by Respondent Nos. 5 to 9 for the purpose of carrying out development process of the building in question.

2) The developer-Ambit Urbanspace has filed Commercial Arbitration Appeal (L.) No.12585/2025 challenging the judgment and order dated 1 April 2025. Commercial Arbitration Appeal (L) No.16482/2025 is filed by original Respondent Nos.2 to 4 to the limited extent of some of the findings recorded by the learned Single Judge *qua* about tenancy rights of Respondent Nos. 5 to 8, even though there is no specific direction against them in the operative part of the impugned judgment and order.

3) A very brief factual narration of the case as a prologue to the judgment would be necessary. For ease of reference, throughout the judgment, parties are referred to by their description in the Commercial Arbitration Appeal (L.) No.12585/2025 filed by the developer. By a Deed of Conveyance dated 12 May 1972 between Smt. Sushilabai Makhanlal

Poddar (Vendor) and Poddar Apartment Co-operative Housing Society Limited (Purchaser), plot of land admeasuring 2014.50 sq.mtrs at CTS No.73 and 73/1 to 10 of Village-Malad, Taluka-Borivali, Mumbai Suburban District, S.V. Road, Kandivali (West), Mumbai – 400 067 together with building standing thereon known as 'Poddar Apartment' comprising of ground plus four upper floors consisting of 30 flats and 44 shops on the ground floor and 2 basements and 5 enclosed garages, was purchased by the Respondent No.1-Society. Under the said conveyance, the Vendor-Smt. Sushilabai Poddar, retained the ground floor comprising of 44 shops, basement and 5 enclosed garages as absolute owner thereof and was accordingly admitted as member of the first Respondent-Society. Upon death of Smt. Sushilabai Poddar, Respondent Nos.2 to 4 claim ownership in respect of 44 shops, 2 basements and 5 enclosed garages. Respondent Nos. 2 to 4 inducted tenants in respect of the said 44 shops and 2 basements. They also inducted five persons, including Respondent Nos. 5 to 8, in the 5 enclosed garages. Apart from the said 46 tenants and 5 inductees of Respondent Nos.2 to 4, there are 31 members of the first Respondent-Society.

4) The Society has resolved to undertake the process of redevelopment of the building and appointed the Appellant as the developer to carry out the development process. On 21 May 2024, Development Agreement came to be executed between the Appellant and Respondent No.1-Society with Respondent Nos.2 to 4 as confirming parties. The first Respondent-Society has also executed a Power of Attorney dated 21 May 2024 in favour of the Appellant. The Appellant submitted plans for construction of the proposed building to the Slum Rehabilitation Authority, which issued Letter of Intent (LOI) dated 9 October 2024 and Intimation of Approval (IOA) dated 15 October 2024 approving the building plans. By Supplementary Development Agreement dated 21 October 2024, certain terms and conditions of the Development

Agreement were amended. In the meantime, structural audit of the building was conducted and acting on the report of the structural auditor, Municipal Corporation for Greater Mumbai issued notice dated 10 October 2024 under the provisions of Section 354 of the Mumbai Municipal Corporations Act, 1888 (**MMC Act**) for pulling down the building to avoid mishap and untoward incident.

5) After securing the LOI and IOA, the Appellant called upon the occupiers of flats, shops, basement and garages to vacate the same vide notice dated 21 October 2024. The first Respondent-Society responded by letter dated 8 November 2024 informing the Appellant about the status of members who had submitted the keys of their respective flats/shops to the Society and who were willing to execute Agreement for Permanent Alternate Accommodation (**PAAA**). The Appellant claims that it has accordingly issued cheques towards shifting charges, brokerage, corpus and hardship compensation, as well as rental compensation in favour of members/tenants who have handed over vacant and peaceful possession of their respective premises. By letter dated 16 November 2024, the first Respondent-Society informed the Petitioner that out of the total 81 members/tenants, 29 members and 24 tenants had vacated their respective premises. It appears that Respondent Nos. 5 to 8 have refused to vacate possession of the garages in their occupation. The Appellant learnt from Respondent Nos.2 to 4 that Respondent No.9 is inducted by Respondent No.6 (*inductee of Respondent Nos.2 to 4*) as illegal occupant in respect of Garage No.2. Respondent Nos.5 to 8 as well as Respondent No.9 were not vacating the possession of the premises in their occupation.

6) The Appellant accordingly filed Commercial Arbitration Petition (L.) No. 38696/2024 under the provisions of Section 9 of the Act seeking direction against Respondent Nos.5 to 8 to forthwith execute PAAA. Appellant also sought direction against Respondent Nos.5 to 8 and

Respondent No.9 to immediately vacate Garage Nos.1, 2, 3 and 4. Appellant also sought direction for payment of sum of Rs.10,000/- per day as pre-estimated liquidated damages/penalty by Respondent Nos.5 to 8 and by Respondent Nos.2 to 4 are per Clause-12.3 of the Development Agreement. The Appellant also sought appointment of Court Receiver in respect of Garage Nos.1, 2, 3 and 4 for taking over possession thereof. The Arbitration Petition was supported by the first Respondent-Society by filing Affidavit-in-Reply. A separate Affidavit-in-Reply was filed by Respondent Nos.2 to 4 not seriously opposing grant of any relief against Respondent Nos.5 to 8, but questioning the right of Respondent Nos.5 to 8/9 in respect of the garages in their occupation. Affidavit-in-Reply was also filed by Respondent Nos.5, 7 and 8. After considering the pleadings and after hearing the learned counsel appearing for the rival parties, the learned Single Judge pronounced the judgment and order on 1 April 2025 holding that this is not a fit case of *bonafide* invocation of provisions of Section 9 of the Act. The learned Judge accordingly disposed of Arbitration Petition without grant of any relief in favour of the Appellant. The learned Judge has however directed that the Appellant and the Society shall ensure safety as well as free independent access to the subject garages during the course of redevelopment. It has held that since the Respondent Nos. 5 to 8 are not bound by the Development Agreement, they cannot be directed to comply with it. Aggrieved by non-grant of any relief under Section 9 petition filed by the Appellant, Commercial Arbitration Appeal (L) No. 12585/2025 is filed by the developer-Ambit Urbanspace.

7) Original Respondent Nos.2 to 4 (landlords) are also aggrieved by certain observations made by the learned Judge governing their relationship with Respondent Nos.5 to 9 and they have accordingly filed Commercial Arbitration Appeal (L.) No. 16482/2025. Both the Appeals are taken up for hearing and disposal together.

8) Mr. Khandeparkar, the learned counsel appearing for the Appellant-Ambit Urbanspace in Commercial Arbitration Appeal (L.) No. 12585/2025 would submit that learned Single Judge has erred in not granting any relief to the Appellant in Section 9 petition ignoring the position that Respondent Nos.5 to 8 do not have any independent right in respect of the garages and must vacate the same, the moment premises to which garages are attached are vacated by the members (Respondent Nos.2 to 4). That under Clause-12 of the Development Agreement, the Society, its members and tenants are required to vacate and handover possession of the respective premises to the Appellant-Developer for the purpose of carrying out redevelopment. Since contractual obligation to vacate the premises is not fulfilled, the Appellant is entitled to seek interim measures under Section 9 of the Act. That an order of mandatory injunction can be granted by a Court at an ad-interim stage and reliance is placed on the judgment of the Apex Court in ***Hammad Ahmed Versus. Abdul Majeed***[1]. That Rule 803-E of the Bombay High Court Original Side Rules, *inter-alia* enables impleadment and seeking reliefs against third parties in a petition filed under Section 9 of the Act. Reliance in this regard is placed on judgment in ***Girish Mulchand Mehta and another Versus. Mahesh S. Mehta and another***[2]. That in a Tenant Co-partnership Housing Society, legal ownership of the building vests in the Society and a member merely has a right to occupy the premises. That therefore members are bound by obligations put on the Society in the Development Agreement. Reliance is placed on ***Ramesh Himmatlal Shah Versus. Harsukh Jadhavji Joshi***[3]. That Respondent Nos.2 to 4 are the members of the Society who have primary responsibility of vacating and handing over possession of the premises relatable to their membership and once it is established that they are not co-operating by handing over possession of the premises, they must be

1 (2019) 14 SCC 1

2 2010 (2) Mh.L.J. 657

3 (1975) 2 SCC 105

treated as defaulting party and in such circumstances, there is warrant for grant of interim measures under Section 9 of the Act.

9) Mr. Khandeparkar would further submit that the tenants/occupants of Respondent Nos.2 to 4 (*Respondent Nos.5 to 8 and Respondent No.9*) cannot claim superior right than that of members of the Society. That society has a superior right in the property *vis-a-vis* all concerned. Any right which a member may create *qua* any third party would be subservient to Society's obligation under the Development Agreement. That existence of such subservient right cannot be a reason for the Court not to exercise jurisdiction under Section 9 of the Act by directing tenant/occupant of member to vacate the premises. That since Respondent Nos.5 to 8/9 do not have a superior right than the member, they must walk out of the garages with the member. That a private arrangement between tenants/occupants made behind the back of the Society cannot bind the Society. That the Development Agreement (*Clause-7.4.3*) provides Respondent Nos.5 to 8 with surface car parking spaces on ownership basis in lieu of the garage and if they claim any right to carry on business in such allotted premises, they can seek redressal of such right, but cannot raise a defence in Section 9 petition.

10) Mr. Khandeparkar would further submit that out of the total 81 flats/shops only 4 garage occupants are obstructing and creating hindrance in the entire process of redevelopment. That Appellant has spent huge amounts on rent paid to the members and other tenants. That one of the opposing garage occupant (Respondent No.6) has agreed to handover possession of the garage premises in her occupation and has executed Affidavit agreeing to execute PAAA. That use of garage premises by Respondent Nos.5 to 8 and by Respondent No.9 is otherwise illegal. That the garages were constructed when DCR 1967 was in force which did not make any provision for garages to be included in computation of FSI. As

against this, Regulation 35(3)(i) of DCR 1991 and Regulation 32(2)(i) of DCPR 2034 envisage counting of garages in FSI and therefore Society has rightly agreed to accept mere parking spaces in lieu of the garages. He would rely on judgment in ***M/s. Calvin Properties and Housing Versus. Green Fields Co-operative Housing Society Limited and Others***[4]. Reliance is also placed on Division Bench order in ***Kankubai Harakhlal Jain & Ors. Versus. Muncipal Corporation of Greater Mumbai & Ors.***[5] in support of contention that unauthorized occupants of garages cannot be granted any premises in the redeveloped building. Mere illegal use of garage for commercial use would continue to maintain status of premises as garages and that therefore it is not open for Respondent Nos.5 to 8 to obstruct the redevelopment process. Reliance is placed on judgments in ***Shree Ahuja Properties Pvt. Ltd. Versus. Brij Maraj and others***[6], ***Rajesh Mishra and Mrs. Beena R. Mishra Versus. Shree Ahuja Properties Pvt. Ltd. and Others***[7] and ***Konark Structural Engineers Private Limited Versus. Borivali Samarpan Co-operative Housing Societies Ltd. and Others***[8]. That mere handing over possession of the garage premises for completion of redevelopment process would not extinguish the alleged tenancy claim of Respondent Nos.5 to 8. He would therefore pray for setting aside the order passed by the learned Single Judge.

11) Mr. Singh, the learned counsel appearing for Respondent No.1-Society would support the Appeal filed by the Developer submitting that early completion of redevelopment process is in the interest of all the members of the Society, whose interests are being prejudicially affected on account of obstruction created by Respondent Nos.5 to 8/9 by not vacating the garages in their unauthorized occupation.

4 Arbitration Petition No.638 of 2013 decided on 19 November 2013.
5 Writ Petition No.2351 of 2015 decided on 1 October 2015.
6 Notice of Motion No.1318 of 2019 in Suit No.760 of 2019 decided on 3 May 2021.
7 Appeal (L) No.11941 of 2021 decided on 16 September 2021.
8 (2021) SCC Online 11967

12) Mr. Kamat, the learned Senior Advocate appearing for Respondent Nos. 2 to 4 in Commercial Arbitration Appeal (L) No.12585 of 2025 and for Appellants in Commercial Arbitration Appeal (L) No.16482 of 2025 would submit that his clients are mainly affected on account of findings of tenancy recorded by the learned Single Judge in the impugned judgment and order in favour of the garage occupiers. He would submit that the findings recorded by the learned Judge are likely to be used by the garage occupiers in order to buttress their tenancy claims in other proceedings. That they are unauthorisedly occupying the garages and cannot claim status as tenants. That his clients are entitled to seek eviction of the garage occupiers for unauthorisedly using the garages for purposes other than parking of vehicles. He would therefore submit that all the observations made by the learned Single Judge in the impugned judgment in respect of tenancy status of garage occupiers are required to be set aside.

13) Both the Appeals are strenuously opposed by Mr. Sawant, the learned Senior Advocate appearing for Respondent Nos. 5, 7 and 8 (garage occupants). He would submit that the learned Single Judge has rightly refused to grant any relief in favour of the Appellant-Developer in Petition filed under Section 9 of the Act in the light of well settled law that provisions of Section 9 of the Act can only be in aid of subsequent arbitration proceedings. That the learned Judge has recorded a specific finding about the suggestion made for commencement of arbitration proceedings being spurned by the Appellant-Developer. That the learned Judge has rightly noticed absence of any intention on part of the Appellants to commence or pursue the arbitration against the garage occupiers. Relying on judgments of the Apex Court in ***Sundaram Finance Ltd. Versus. NEPC India Ltd.***[9] and ***Firm Ashok Traders and Another Versus. Gurumukh Das Saluja and Others***[10], he would submit that in absence of an

9 (1999) 2 SCC 479
10 (2004) 3 SCC 155

intention to go to arbitration, no interim measures can be made under Section 9 of the Act. He would submit that the learned Judge has rightly held that there is no real dispute between the Appellants and garage occupiers, or between the Developer and Respondent Nos.2 to 4 or between the Developer and the Society. That in absence of existence of any dispute, which could ultimately be taken to arbitration, no interim measures under Section 9 of the Act can be made. There is no agreement for arbitration between the developer and the garage occupiers, who are actually the tenants of Respondent Nos.2 to 4. That proceedings under Section 9 of the Act are initiated with ulterior objective of putting to an end the tenancy rights of the garage occupants, by adopting a shortcut method. That the rights of his clients are not subservient to the obligations of the Society and they enjoy independent right of occupation of the premises in their possession. Allotment of open/surface parking spaces to his clients would practically bring to an end to their tenancy rights as the Maharashtra Rent Control Act, 1999 (**the Rent Act**) does not apply in relation to open space. That Small Causes Court alone has jurisdiction to decide cases covered by Section 41 of the Presidency Small Causes Courts Act, 1882 and the tenancy disputes cannot be decided in arbitration. In support, he has placed reliance of judgment of Full Bench of this Court in ***Central Warehousing Corporation, Mumbai Versus. Fortpoint Automotive Private Limited, Mumbai***[11]. By relying on judgment in ***Suresh Shah Versus. Hipad Technology India Private Limited***[12], he would contend that the dispute between landlord and tenant is arbitrable only in the event of non-application of special statute such as the Rent Act. So far as the Appeal filed by Respondent Nos.2 to 4 is concerned, Mr. Sawant would submit that the learned Judge has rightly recorded findings relating to tenancy rights of his clients which do not warrant any disturbance by this Court in

11 2010 (1) Mh.L.J. 658
12 AIR OnLine 2020 SC 926

exercise of appellate jurisdiction. He would accordingly pray for dismissal of both the Appeals.

14) Rival contentions of the parties now fall for our consideration.

15) The issue that arose before the learned Single Judge in Commercial Arbitration Petition (L) No. 38696 of 2024, and which again arises for our consideration, is whether interim measures under Section 9 of the Act can be made *qua* the garages, which are in occupation of Respondent Nos.5 to 8/9, who admittedly do not use the garages for repair of vehicles or for parking of vehicles, but use them for commercial purposes. The position in respect of the four garages is as under :-

Garage No.	Name of Occupant	Respondent No.	Existing carpet area
1	Haresh Doshi	5	194 sq.ft.
2	Ashu Farooq Sheir Haq Chodhury who has allegedly handed over possession to Ketki Shantilal Desai	6 9	194 sq.ft.
3	Dr. Amita Laxmidas Shenoy	7	200 sq.ft.
4	Dilip K Limbad	8	105 sq.ft.

Appellant claims that Respondent No. 6 (Ashu Farooq Sheir Haq Chodhury) has shown willingness to execute PAAA by accepting allotment of surface car parking space on ownership basis. But since Respondent No. 9 actually occupies the Garage No. 2, interim measures were sought both against Respondent Nos. 6 and 9. It appears that Respondent No.6 has not opposed the Arbitration Petition before the learned Single Judge.

16) Respondent Nos. 5, 6 and 8 as well as Respondent No.9 claim that they are inducted as tenants in respect of the above four garages by Respondent Nos.2 to 4, who are the members of Respondent No.1-Society

in respect of 44 shops and 2 basements. So far as the fifth garage (Garage No.5 admeasuring 200 square feet) is concerned, the occupant thereof has not been impleaded as a party Respondent to the present proceedings possibly on account of the fact that the occupant thereof does not have any dispute with the Developer *qua* Garage No.5. Out of the 5 garages, the dispute concerns only Garage Nos.1 to 4. As observed above, in respect of Garage No.2 there are two claimants/occupants viz. Respondent No.6 and Respondent No.9.

17) Development Agreement dated 21 May 2024 has been executed between the first Respondent-Society as party of first part, Respondent Nos.2 to 4 as confirming parties and the Appellant-Developer. The Development Agreement also seeks to join all members of the Society as well as tenants inducted by Respondent Nos.2 to 4 as parties of third and fourth part respectively. However, perusal of copy of the Development Agreement produced before the learned Single Judge does not indicate that the Development Agreement is signed by each of the members or by each tenant. The Development Agreement however includes the names of garage occupiers in the Third Schedule to the Agreement. Under the Development Agreement, rights of members and tenants have been distinctly spelt out. Under Clause 7.4.3 of the Development Agreement, following arrangement is made :-

> "7.4.3. The Developers have further agreed to provide five (5) surface car parking free of cost on ownership basis to the five (5) Tenants of the enclosed garages as mentioned in the annexure being **Annexure "T"** hereto and as shown on the tentative plans annexed hereto as **Annexure "L-2**". Save and except these 5 tenants, no other tenants shall be entitled to any Car parking Spaces. The Car Parking spaces allotted in favour of the Tenants shall be irrevocable and binding on the Society and its Members, their successors and assigns from time to time."

18) Thus, what is agreed to be provided to the five garage occupiers is only five surface car parking slots on ownership basis as against allotment of shops on ownership basis to the other tenants, who were occupying shops/basement units in the old building. It appears that on account of non-allotment of shops to the occupiers of the garages, Respondent Nos. 5, 7 and 8 have refused to give consent in the redevelopment process and have not handed over possession of their respective garages to the Developer. Otherwise, all other members of the Society as well as the tenants inducted by the Respondent Nos.2 to 4 in respect of shops/basement units have already vacated premises in their possession and the building has been pulled down by the Developer.

19) As of today, the structures of Garage Nos.1 to 4 are still standing despite demolition of the entire building. The Appellant-Developer has got plans for construction of new building sanctioned and the portion of land covered by the 4 garages is apparently coming in the way of construction of some portion of the new building. On account of this position, the Developer filed Petition under Section 9 of the Act for seeking possession of the Garage Nos.1 to 4 for their demolition to carry out the redevelopment process.

20) The case presents a unique conundrum, where the occupants of Garage Nos.1 to 4 are not members of Respondent No.1-Society. Respondent Nos.2 to 4 are members of the Society *qua* the 44 shops located on the ground floor of the building as well as premises in the basement of the building. Though Respondent Nos.2 to 4 are also allottees of the five enclosed garages, instead of parking vehicles in those garages, they have inducted Respondent Nos. 5 to 8 in the four garages in addition to one more person in respect of Garage No.5. As members of the first Respondent-Society, Respondent Nos.2 to 4 are bound by the covenants of the Development Agreement and in that sense, they have an obligation to

make available each inch of the premises in their possession for carrying out redevelopment process. However, Respondent Nos.2 to 4 are unable to deliver possession in respect of four garages on account of inductees not cooperating in the redevelopment process on account of Developer not agreeing to allot shop premises on ownership basis to them in the new building.

21) In the light of above unique factual position, the questions that arise for consideration are (i) whether persons using garages for commercial purpose can obstruct redevelopment of the building by insisting that they must be provided shops in the new building on ownership basis; (ii) whether alleged rights of occupants of such garages would be subservient to the obligations of the Society under the Development Agreement and (iii) whether the Court exercising power under Section 9 of the Act can make interim measures to ensure vacation of possession by such garage occupiers, who are not signatories to the Development Agreement containing arbitration clause.

22) Respondent Nos.5 to 9 are not signatories to the Development Agreement and therefore it is contended that there is neither any arbitration agreement between the contesting parties nor Respondent Nos.5 to 9 are under any contractual obligation to handover possession of garages in their occupation to the Appellant for development. However, the first Respondent-Society is a signatory to the Development Agreement. It is ultimately the owner of the land and the building. It is a tenant co-partnership housing society, in which the ownership of the land and the building is retained by the Society and the members essentially have occupancy rights in respect of the flats/shops/units in the building of the Society. Section 154B-1 (17) of the Maharashtra Cooperative Societies Act, 1960, while defining the term 'housing society' classifies a tenant co-partnership housing society as under :-

> "**tenant co-partnership housing society**" means a society the object of which is to allot the flats already constructed or to be constructed to its Members and where both land and building or buildings are held either on free-hold or lease-hold basis by the society

23) In the present case, the land and the building is held on freehold basis by the Society and it owns both. The members (Respondent Nos. 2 to 4) who are allotted the four garages, merely have possessory rights therein. They have inducted third parties (Respondent Nos. 5 to 8) in the garages.

24) The covenants of the Development Agreement are binding on the Society and its members. The issue about a Developer seeking interim measures against a member of the Society who is not a signatory to the Development Agreement, and who have not consented for redevelopment, is no more *res integra*. This Court has repeatedly held that a non-co-operative member of a co-operative housing society is bound by the collective will expressed through the general body resolutions and that therefore the covenants of Development Agreement would bind individual member as well. It is also equally well settled that if a particular member of the Society is not party to the Development Agreement, Court can make interim measures against such non-co-operative member by having recourse to the provisions of Section 9 of the Act.

25) In ***Girish Mulchand Mehta*** (supra), the Division Bench of this Court has dealt with a situation where the Appellants therein were non-co-operative members to the redevelopment process initiated by the Society. They refused to handover possession of their respective flats, *inter alia,* on the ground that they were not parties to the Development Agreement. The

Developer took recourse to petition under Section 9 of the Act before the learned Single Judge of this Court, who found that the two non-co-operative members (*Appellants therein*) were causing obstruction resulting in delay in redevelopment of the Society's building. The Single Judge therefore allowed the petition under Section 9 of the Act appointing Court Receiver with power to take physical possession of the flats in question and handing it over to the Developer for the purpose of demolition and construction of the new building. In the Appeal preferred by the said two non-co-operative members before the Division Bench, one of the issues formulated was whether interim measures could be passed by the Court in exercise of power under Section 9 of the Act only against a party to an Arbitration Agreement or arbitration proceedings. The question so formulated is reflected in para-12 of the judgment which reads thus :-

> **12.** The next question is whether order of formulating the interim measures can be passed by the Court in exercise of powers under section 9 of the Act only against a party to an Arbitration Agreement or Arbitration Proceedings. As is noticed earlier, the jurisdiction under section 9 can be invoked only by a party to the Arbitration Agreement. Section 9, however, does not limit the jurisdiction of the Court to pass order of interim measures only against party to an Arbitration Agreement or Arbitration Proceedings; whereas the Court is free to exercise same power for making appropriate order against the party to the Petition under section 9 of the Act as any proceedings before it. The fact that the order would affect the person who is not party to the Arbitration Agreement or Arbitration Proceedings does not affect the jurisdiction of the Court under section 9 of the Act which is intended to pass interim measures of protection or preservation of the subject-matter of the Arbitration Agreement.

26) The Division Bench answered the question so formulated in paragraphs-16 and 18 of the judgment as under :-

> **16.** In the present case, it is not in dispute that the General Body of the Society which is supreme, has taken a conscious decision to redevelop the suit building. The General Body of the Society has also resolved to appoint the respondent No. 1 as the Developer.

Those decisions have not been challenged at all. The appellants who were members of the Society at the relevant time, are bound by the said decisions. The appellants in the dispute filed before the Cooperative Court have only challenged the Resolution dated 27-4-2008, which challenge would merely revolve around the terms and conditions of the Development Agreement. As a matter of fact, the General Body of the Society has approved the terms and conditions of the Development Agreement by overwhelming majority. Merely because the terms and conditions of the Development Agreement are not acceptable to the appellants, who are in minuscule minority (only two out of twelve members), cannot be the basis not to abide by the decision of the overwhelming majority of the General Body of the Society. By now it is well established position that once a person becomes a member of the Co-operative Society, he loses his individuality with the Society and he has no independent rights except those given to him by the statute and Bye-laws. The member has to speak through the Society or rather the Society alone can act and speaks for him qua the rights and duties of the Society as a body (see *Daman Singh* v. *State of Punjab*, reported in (1985) 2 SCC 670 : AIR 1985 SC 973). This view has been followed in the subsequent decision of the Apex Court in the case of *State of U.P.* v. *Chheoki Employees Co-operative Society Ltd.*, reported in (1997) 3 SCC 681 : AIR 1997 SC 1413. In this decision the Apex Court further observed that the member of Society has no independent right qua the Society and it is the Society that is entitled to represent as the corporate aggregate. The Court also observed that the stream cannot rise higher than the source. Suffice it to observe that so long as the Resolutions passed by the General Body of the respondent No. 2 Society are in force and not overturned by a forum of competent jurisdiction, the said decisions would bind the appellants. They cannot take a stand alone position but are bound by the majority decision of the General Body. Notably, the appellants have not challenged the Resolutions passed by the General Body of the Society to redevelop the property and more so, to appoint the respondent No. 1 as the Developer to give him all the redevelopment rights. **The proprietary rights of the appellants herein in the portion (in respective flats) of the property of the Society cannot defeat the rights accrued to the Developer and/or absolve the Society of its obligations in relation to the subject-matter of the Arbitration Agreement.** The fact that the relief prayed by the respondent No. 1 in section-9 Petition and as granted by the Learned Single Judge would affect the proprietary rights of the appellants does not take the matter any further. **For, the proprietary rights of the appellants in the flats in their possession would be subservient to the authority of the General Body of the Society. Moreso, such rights cannot be invoked against the Developer (respondent No. 1) and in any case, cannot extricate the Society of its obligations under the Development Agreement.** Since the relief prayed by the respondent No. 1 would affect the

appellants, they were impleaded as party to the proceedings under section 9 of the Act, which was also necessitated by virtue of Rule 803-E of the Bombay High Court (Original Side) Rules. The said Rule reads thus:—

> "R. 803-E.*Notice of Filling Application to persons likely to be affected.*— Upon any application by petition under the Act, the Judge in chambers shall, if he accepts the petition, direct notice thereof to be given to all persons mentioned in the petition and to such other persons as may seem to him to be likely to be affected by the proceedings, requiring all or any of such persons to show cause, within the time specified in the notice, why the relief sought in the petition should not be granted".

18. We have no hesitation in taking the view that since the appellants were members of the Society and were allotted flats in question in that capacity at the relevant time are bound by the decision of the General Body of the Society, as long as the decision of the General Body is in force. As observed earlier, the appellants have not challenged the decisions of the General Body of the Society which is supreme, insofar as redevelopment of the property in question or of appointment of the respondent No. 1 conferring on him the development rights. The appellants have merely challenged the Resolution which at best would raise issues regarding the stipulations in the Development Agreement. The General Body of the Society has taken a conscious decision which in this case was after due deliberation of almost over 5 years from August, 2002 till the respondent No. 1 came to be finally appointed as Developer in terms of Resolution dated 2nd March, 2008. Moreover, the General Body of the Society by overwhelming majority not only approved the appointment of respondent No. 1 as developer but also by subsequent Resolution dated 27th April, 2008 approved the draft Development Agreement. Those terms and conditions have been finally incorporated in the registered Development Agreement executed by the Society in favour of respondent No. 1. That decision and act of the Society would bind the appellants unless the said Resolutions were to be quashed and set aside by a forum of competent jurisdiction. **In other words, in view of the binding effect of the Resolutions on the appellants, it would necessarily follow that the appellants were claiming under the Society, assuming that the appellants have subsisting proprietary rights in relation to the flats in their possession.** It is noticed that as of today the appellants have been expelled from the basic membership of the Society. Their right to occupy the flat is associated with their continuance as member of the Society. It is a different matter that the decision of expelling the appellants from the basic membership of the. Society will be subject to the outcome of the decision of the superior authority where the appeals are stated to be pending. If the decision of the Society to expel the appellants is to be maintained, in that case, the appellants would

have no surviving cause to pursue their remedy even before the Co-operative Court much less to obstruct the redevelopment proposal. As a matter of fact those proceedings will have to be taken to its logical end expeditiously. Even if the appellants were to continue as members, they would be bound by the decision of the General Body whether they approve of the same or otherwise. In any case, keeping in mind that the Development Agreement does not absolutely take away the rights of the appellants in the flats in question, as after demolition of the existing building, the appellants would be accommodated in the newly constructed flats to be allotted to them in lieu of the existing flats, on the same terms as in the case of other members, provided the appellants continue to remain members of the Society. Under the Development Agreement, the respondent No. 1 is obliged to complete the project within 18 months from the date of receipt of full Commencement Certificate from the Corporation. The full Commencement Certificate would be issued only upon the vacant possession of the entire building is delivered to the respondent No. 1 who in turn would demolish the same with a view to reconstruct a new building in its place. Significantly, out of twelve (12) members, ten (10) members have already acted upon the Development Agreement as well as have executed separate undertaking-cum-agreement with the respondent No. 1 Developer. They have already vacated flats in their occupation to facilitate demolition of the existing building and have shifted to alternative transit accommodation as back as in February, 2009. The project has been stalled because of the obstruction created by the appellants herein who are in minuscule minority. The said ten members of the Society who have already shifted their premises, they and their family members are suffering untold hardship. At the same time, the respondent No. 1 who has already spent huge amount towards consideration of the Development Agreement and incurred other incidental expenses to effectuate the Development Agreement in addition will have to incur the recurring cost of paying monthly rent to the ten members who have already shifted to transit accommodation. The learned Single Judge has noted that the appellants are not in a position to secure the amount invested and incurred including the future expenses and costs of the respondent No. 1 herein in case the project was to be stalled in this manner. Even before this Court the appellants have not come forward to compensate the respondent No. 1 herein and the other ten members of the Society for the loss and damage caused to them due to avoidable delay resulting from the recalcitrant attitude of the appellants. **Considering the impact of obstruction caused by the appellants to the redevelopment proposal, not only to the respondent No. 1 Developer but also to the overwhelming majority of members (10 out of 12) of the Society, the learned Single Judge of this Court opined that it is just and convenient to not only appoint the Court Receiver but to pass further orders for preservation as well as protection and improvement of the property which is subject-matter of Arbitration**

> Agreement. We have already noticed that the Court's discretion while exercising power under section 9 of the Act is very wide. The question is whether in the fact situation of the present case it is just and convenient to appoint Court Receiver coupled with power conferred on him to take over possession of the entire building and hand over vacant and peaceful possession thereof to the respondent No. 1 who in turn shall redevelop the property so as to provide flats to each of the members of the Society in lieu of the existing flats vacated by them as per the terms and conditions of the Development Agreement, as ordered by the learned Single Judge. For the reasons noted by the Learned Single Judge which we have reiterated in the earlier part of this decision, we find that it would be just and convenient to not only appoint Court Receiver to take over possession of the property but also pass further order of empowering the Court Receiver to hand over vacant possession of the suit building to the respondent No. 1 to enable him to complete the redevelopment work according to the terms and conditions of the Development Agreement.
>
> *(emphasis and underlining added)*

27) The Division Bench in ***Girish Mulchand Mehta*** took note of Rule 803E of the Bombay High Court Original Side Rules under which the Court is empowered to direct issuance of notice to all persons who are likely to be affected by the proceedings. The Division Bench held that Court's powers under Section 9 are very wide and accordingly upheld the order of the Single Judge directing vacation of possession of flats even though the Appellants therein were not signatories to the Development Agreement. What is important are the findings recorded by the Division Bench holding that the proprietary rights all members of the Society in respect of the flats in their possession would be subservient to right acquired by the developer under the Development Agreement and cannot extricate the Society of its obligations under that agreement.

28) In our view, the judgment in ***Girish Mulchand Mehta*** clearly lays down a law that covenants of Development Agreement would bind even non-cooperative members, who are not signatories thereto and Court can exercise power under Section 9 of the Act to direct handing over of possession of the flats to the developer by such non-cooperative members

for the purpose of demolition and construction of new building. The judgment in ***Girish Mulchand Mehta*** has consistently been followed in various decisions of this Court and in order not to increase the length of this judgment, we find it unnecessary to discuss ratio of all of those judgments. This is how the issue of jurisdiction of Court exercising power under Section 9 of the Act to make interim measures against member of Co-operative Society who is not signatory to the Development Agreement is well settled.

29) In the present case, we need to walk one more step further to find out whether this principle can be invoked in respect of a person who is not only alien to the Development Agreement but is also not a member of the Society. Respondent Nos.5 to 8 are not members of the first Respondent-Society. They claim to be the tenants of Respondent Nos. 2 to 4, who are members of the first Respondent-Society. Respondent No.9 is an inductee by one such alleged tenant (Respondent No. 6). Appellant-Developer claims that Respondent No. 6 is willing to sign the PAAA. We need not delve further into the arrangement/rights *inter se* between Respondent Nos.2 to 4 (alleged landlords), Respondent No.6 (alleged tenant) and Respondent No.9 (Occupant of Garage No.2). What Respondent Nos.5 to 9 possess are mere garages and their alleged landlords (*Respondent Nos.2 to 4*) are members of the Society whose membership is restricted to other units/shops in the building.

30) Therefore, the issue for consideration is whether Respondent Nos.5 to 9 can put a spoke in the redevelopment process of the building of the first Respondent-Society by insisting that they would remain outside the redevelopment process by continuing to hold possession of the garages in their occupation. There is no dispute to the position that though the four garages continue to exist, as of now, despite demolition of the entire building, they are located on such portion of the land, on which part of the

new building would come up. Mere possibility of retention of the four garages despite demolition of the old building would not mean that the garages are not coming in the way of redevelopment process. Thus, retention of structures of the four garages would undoubtedly hamper the construction of the new building on the plot.

31) In ***Shree Ahuja Properties Pvt. Ltd.*** (supra), Single Judge of this Court has considered the issue as to whether an occupier of a garage, who has put the garage to commercial use, can oppose redevelopment process of Society's building. The developer, in whose favour the Society executed the Development Agreement, filed a suit in which Notice of Motion was taken out for appointment of Court Receiver in respect of the flats and garages occupied by Defendants who were not cooperating with the redevelopment process. So far as the garages were concerned, the issue before the learned Single Judge was whether the garage occupiers using the garages for commercial purpose could obstruct the redevelopment by refusing to vacate the garages. The Single Judge of this Court held in para-36 as under :-

> 36. **In my view, garages will and must remain garages unless they are converted within the framework of the law for other uses. Their construction, existence was meant for a particular purpose. If it is not being put to use for that purpose and is intended to be used for some other purpose, a change of user has to be authorized.** That authority is the Planning Authority. The Municipal Corporation in the case at hand has not issued any conversion order and in that behalf **suffice it to say that absent an order for conversion of the motor vehicle garage, merely on the basis of long and unauthorized use for commercial purposes, cannot justify continuance of such use and a demand for being provided with alternate space in a structure that does not exist today and for commercial use which is presently unauthorized.** The case of defendant nos.5 to 7 cannot therefore succeed. They have been offered alternate residential space to the extent of their entitlement and they cannot insist on being allotted commercial space in the new structure in which no provision is made for such space. Any such permanent alternate space would necessarily have to flow from two factors; firstly, the existence of commercial space and with the consent of the society in a new building. Both these aspects are not to be found in the case

> at hand. Thus, in my view, the attempt of the defendant nos.5 to 7 to secure commercial space in the new building to be constructed by obstructing redevelopment through their refusal to vacate the premises cannot succeed.
>
> *(emphasis added)*

The learned Single Judge, while deciding ***Shree Ahuja Properties Pvt. Ltd.***, has relied upon ratio of the judgment of the Division Bench in ***Girish Mulchand Mehta*** (supra).

32) The judgment of the Single Judge in ***Shree Ahuja Properties Pvt. Ltd.*** was carried in appeal before the Division Bench by one of the garage occupiers. The father of the said garage occupier was initially a owner of a flat in the building and also a member of the Society and later purchased Garage No.12. While the flat was sold, only the said garage was retained and put to commercial use. While challenging the judgment of the learned Single Judge before the Appeal Court, the Appellant-garage occupier insisted that since the garage was being put to commercial use by securing several licenses without objection by any party, including the Planning Authority, he must be allotted commercial premises in lieu of the garage in the new building to be constructed by the developer. The Division Bench in ***Rajesh Mishra*** (supra) formulated following two questions for consideration in para-17 of the judgment and set out the rival positions of the parties in para-18 as under :-

> 17. The two issues which arise for our consideration in the present Appeal are as follows :
>
> ISSUE-1
>
> (i) Are the Appellants entitled to claim commercial premises in lieu of the suit Garage in the proposed new building on the suit property?
>
> ISSUE-2

(ii) Was the learned Single Judge justified in directing the Court Receiver to take over possession of the suit Garage for the purposes of demolition of the same ?

18. With respect to the first issue which we have framed above, as we have noted, the Appellants contend that the suit Garage is an authorised commercial unit, whereas the developer and the Trilok Society contend that the same is merely a car parking space which has been illegally converted into a commercial unit by the Appellants and their family members.

33) The Division Bench in ***Rajesh Mishra*** considered the definition of the term '*garage*' in Regulation 2(68) of the DCPR 2034 and upheld the findings recorded by the learned Single Judge by holding in paras-21 and 22 as under :-

21. **In this view of the matter, we find that there is nothing placed on record by the Appellants which would assist us in concluding that they are authorised to use the suit Garage as commercial premises.** On the contrary, the sanctioned plans of the garages on the suit property, the authenticity of which has been confirmed by the MCGM, would prima facie show that the same are constructed as garages. Regulation 2(68) of the Development Control and Promotion Regulations, 2034 for Greater Mumbai define 'garage' as follows :

> "Garage" means a place within a project having a roof and walls on three sides for parking any vehicle, but does not include an unenclosed or uncovered parking space such as open parking areas."

A garage is clearly meant to be a space meant to park vehicles. That is how it is understood in ordinary parlance, as well as under the provisions of the development control regulations. In the face of the same, we do not think that the Appellants can today claim as a matter of right that the suit Garage under their occupation is an authorised commercial unit.

22. At this stage we may note that it was also the stand of the MCGM before the learned Single Judge that the suit Garage is only a car parking space and not a commercial unit. The MCGM has taken action in that regard and has issued a notice and an order under section 351 of the MMC Act, holding the user of the suit Garage as a commercial unit to be unauthorised. These are of course the subject matter of adjudication in L. C. Suit No. 1266 of 2014 filed by the Appellants before the Bombay City Civil Court at Dindoshi.

34) In the present case, the learned Single Judge has distinguished the judgments in ***Shree Ahuja Properties Pvt. Ltd.*** and ***Rajesh Mishra*** by observing that the developer in that case had agreed to provide residential premises to the garage occupants, which is not the agreement in the present case. In our view, the core issue before the Single Judge and Division Bench was about permissibility for a garage occupier to obstruct the redevelopment process and entitlement of a developer to seek interim measures against such garage occupier in proceedings under Section 9 of the Act. The case did not revolve around the issue as to whether the garage occupier's entitlement to receive residential or commercial premises. Allotment of residential premises to the garage occupier was just an additional factor in that case. The core issue however was about grant of interim measures in Section 9 proceedings against a garage occupier who was not Society's member and not a signatory to the Development Agreement. In our view therefore, mere existence of agreement to provide residential premises to the garage occupier in ***Shree Ahuja Properties Pvt. Ltd.*** and ***Rajesh Mishra*** cannot be a reason to depart from the findings recorded in the said judgment that garages must remain garages, unless they are converted within the framework of law for residential/commercial uses. In ***Shree Ahuja Properties Pvt. Ltd.*** the learned Single Judge has held that '*….merely on the basis of long and unauthorized use for commercial purposes, cannot justify continuance of such use and a demand for being provided with* ***alternate space*** *in a structure that does not exist today and for commercial use which is presently unauthorized.*' Thus, the issue decided by the learned Single Judge is about right to receive 'alternate premises' in lieu of a garage. The insistence of the garage occupier in that case, who was allotted residential premises, for a commercial shop, was just an additional factor in that case, and we find it difficult to ignore the core ratio in the judgment about right of a garage occupier to have 'any alternate premises' allotted in lieu of a garage unauthorisedly put to commercial use. These

findings are upheld by the Division Bench and would bind us. We are therefore in agreement with the views expressed by the learned Single Judge in ***Shree Ahuja Properties Pvt. Ltd.*** as confirmed by the Division Bench in ***Rajesh Mishra*** that an occupier of a garage, who has put the garage to commercial use, cannot insist for grant of alternate space in redeveloped building and more importantly, cannot obstruct redevelopment process by refusing to handover possession of garages in their occupation. Also of relevance is the fact that the garage occupier in that case had purchased the garage and was claiming ownership in the same, whereas in the present case Respondent No. 5 to 8 are not even the owners of the garages and merely claim tenancy rights therein. If an owner of a garage, put the garage to commercial use, cannot to obstruct redevelopment of Society's building, we see no reason how a person claiming mere tenancy rights in a garage can be put on a higher pedestal and can be permitted to cause obstruction to redevelopment, especially when the owner of the garage is cooperating with redevelopment process.

35) The issue of nature of occupation of garage occupier and rights flowing out of such occupation has been dealt with by the Division Bench of this Court in ***Kankubai Harakhlal Jain*** (supra). In that case, the subject structure was a garage from which the business of jewellery was being conducted. It was therefore contended that though the premises were colloquially known as a garage but were essentially a commercial structure. Reliance was placed on categorisation of premises in the municipal assessment as '*non-residential*'. When the garage occupier raised a claim for allotment of commercial structure in lieu of the garage in his occupation and petitioned this Court, the Division Bench observed in para-4 of the order as under :-

> 4. **As far as the structure goes, once it is styled as a garage, then, the user thereof cannot determine the entitlement of the petitioners. The petitioners have failed to establish any legal right in seeking an alternate commercial structure against their occupancy of a garage.** The term "garage" has a specific legal connotation. In the Development Control Regulations, it is either understood as an area or premises for repairing of vehicles or parking of vehicles by enclosing the same. **It is, therefore, understood as a parking space enclosed or unenclosed, covered or open area. In these circumstances, we do not think that any relief can be granted to the petitioners once they have no legal right either to occupy a garage and thereafter use it for commercial purpose and based on such a user in the old building, claim alternate commercial area on a permanent basis.** Neither any law, rule, regulation or scheme has been shown to us which guarantees such entitlement.
>
> *(emphasis added)*

36) The findings recorded by the Division Bench in ***Kankubai Harakhlal Jain*** have been taken note of by the Division Bench while deciding ***Rajesh Mishra*** (supra).

37) In ***M/s. Calvin Properties and Housing*** (supra), the learned Single Judge of this Court has decided the petition under Section 9 of the Act by making interim measures of appointment of Court Receiver *inter alia* in respect of a garage and handing it over for completing the process of redevelopment. The Single Judge relied upon judgment of the Division Bench in ***Girish Mulchand Mehta*** and held that interim measures under Section 9 of the Act can be made even against a party who is not a signatory to the arbitration agreement. It has held in para-28 as under :-

> 28. On perusal of the prayers in the arbitration petition, it is clear that petitioner seeks appointment of Court Receiver and mandatory injunction against respondent Nos.2 to 6C in respect of the premises in their occupation. It is thus clear beyond reasonable doubt that any order if passed in this petition as prayed, respondent Nos.2 to 6C would be affected. Such parties are thus rightly impleaded as parties to the present petition and are given an opportunity of being heard and to oppose this petition. Without going into the larger issue whether respondent No.2 to 6C are party to the arbitration agreement or not, not being signatories to the

development agreement, in view of the fact that each of these respondents are claiming through respondent No.1 society in respect of the properties of the society in which these members have subservient rights and in view of the fact that any orders that would be passed in these proceedings would seriously affect the rights of the respondent Nos.2 to 6C, such interim measure can be granted by this Court under Section 9 of Arbitration Act against such parties even if they are not parties to the arbitration agreement. In my view there is no merit in the submission made by the learned counsel appearing for respondent Nos.2 to 5 and reliance placed by the learned counsel appearing for the respondents on the Judgment of Supreme Court in case of ***Indowind Energy*** (supra) would be thus of no assistance to the respondents.

38) Going further, the learned Single Judge in ***M/s. Calvin Properties and Housing***, has considered the issue as to whether a garage occupier can be granted compensation in the redevelopment process and held that *inter se* disputes between the garage occupier with the developer or Society needed to be decided in appropriate proceedings and that the Court exercising jurisdiction under Section 9 of the Act cannot adjudicate upon merits of all individual claims of members of the Society. This Court held in para-35 as under :-

35. On perusal of the record, it appears that the grievance made by respondent Nos.2 to 6C is regarding the area offered by the petitioner to respondent Nos.2 to 6C in lieu of existing area in their occupation. The dispute has been raised also in respect of the compensation in lieu of the garage occupied by one of the member. In support of this submission, respondent Nos.2 to 5 placed reliance on the Judgment of Supreme Court in case of ***Nahalchand Laloochand Pvt. Ltd. Vs. Panchali Co-operative Housing Society Ltd.*** (supra) on the issue whether flat includes a garage or not. In my view, 31 members of the society not having disputed the provisions of development agreement and the society not opposing the reliefs prayed by the petitioner, dispute if any interse between respondent Nos.2 to 6C with the developer or with the society will have to be decided finally in appropriate proceedings. During the course of argument upon making enquiry from the learned counsel appearing for respondent No.2 to 5 as to whether they were agreeable to appear before the arbitral tribunal and make their claim if any in arbitration proceedings against the developer or the society, respondent Nos.2 to 5 did not agree to appear before arbitral tribunal and to seek redressal of their grievance

against the developer or the society. In my view, in these proceedings under Section 9 of Arbitration and Conciliation Act, this Court cannot adjudicate upon the merits of individual claims of the respondents members of the society and the same can be adjudicated only in appropriate proceedings. In these proceedings only interim measures can be granted by this Court. This Court is thus not adjudicating on the issue raised by respondent Nos.2 to 6C whether they are entitled to any larger area as claimed. In view of the fact that more than 3/4th majority of members have passed resolution and have agreed to appoint the petitioner as developer on the terms and conditions agreed upon and recorded in development agreement, in my view, respondent Nos.2 to 6C cannot stop the redevelopment project.

39) In our view, therefore the principles that can be deduced on combined reading of the judgments in ***Girish Mulchand Mehta***, ***Kankubai Harakhlal Jain***, ***Shree Ahuja Properties Pvt. Ltd.***, ***Rajesh Mishra*** and ***M/s. Calvin Properties and Housing*** are as under:-

(i) An occupier of a garage, who has put the garage to commercial use, cannot insist on allotment of any space in the redeveloped building.

(ii) Occupier of such a garage cannot obstruct the redevelopment process of the building and such obstruction can be removed by the Court by appointing Court Receiver with power of taking over possession of garage and handing it over to the Developer for demolition and construction of the new building.

(iii) The Court exercising power under Section 9 of the Act can make interim measures against a person who is not party to the Development Agreement by directing him to handover possession of his premises for completion of redevelopment process.

(iv) Existence of any dispute *inter se* between members of Society or between a member and his inductee would not deter the Court exercising power under Section 9 of the Act from ensuring that the redevelopment process continues unhindered despite existence of such dispute.

40) In our view, therefore the Court exercising power under Section 9 of the Act would be perfectly justified in making interim measures against an occupier of a garage even though such garage occupier may not be signatory to the Development Agreement.

41) It must also be borne in mind that a garage is usually sanctioned in a building being used as parking facility to the owner of flat/shop in that building. The garages cannot be independently sold to a person not occupying any flat/shop/unit in the building. In the present case, therefore the existence of the five garages in the building are essentially interlinked with the ownership of flats/units by Respondent Nos.2 to 4 in that building. Respondent Nos.5 to 8 claim that they are inducted as tenants in respect of the garages by Respondent Nos. 2 to 4 and in that sense, they admit that Respondent Nos. 2 to 4 continue to possess some rights in respect of the garages in question. By recognising that right, Respondent Nos.5 to 8 have apparently been paying rent to Respondent Nos.2 to 4. This right of Respondent Nos.2 to 4, which is recognised by Respondent Nos. 5 to 8, is clearly interlinked to the other shops/units owned by Respondent Nos.2 to 4 in the Society's building. Thus, the concerned garages are essentially constructed for the purpose of providing parking facility to Respondent Nos.2 to 4, who own other shops/units in the building. Respondent Nos.2 to 4, as members of the first Respondent-Society, are bound by the covenants of the Development Agreement and they do not even dispute this position. They are contractually bound to

handover possession of their premises in respect of which they have right in the building of the Society. Once they handover possession of shops/units, they are also equally bound to handover possession of garages meant for those shops/units. It cannot be that Respondent Nos.2 to 4 would handover only the possession of shops and units but continue to hold possession of the four garages. Respondent Nos.5 to 8 as well as Respondent No.9 claim privity of contract with Respondent Nos.2 to 4. It is their private arrangement, which will not have any impact on the contractual obligation that binds Respondent Nos.2 to 4 *qua* the Society and the developer. Therefore, irrespective of the arrangement which Respondent Nos.2 to 4 may have made with Respondent Nos. 5 to 8, once possession of all the shops/units in the building is handed over for redevelopment, it is inconceivable that either Respondent Nos. 2 to 4, or any party claiming through them, can ever continue to hold on to the possession of the four garages constructed for parking facility of Respondent Nos.2 to 4. In our view, therefore the garages constructed for parking of vehicles must go alongwith shops/units for whose benefit the garages have been constructed. The rights, if any, of Respondent Nos.5 to 8 or of Respondent No.9 in respect of the four garages in question would always remain subservient to the developer's right under the development agreement and also to the contractual obligations of the Society.

42) If we recognise a principle that an occupier inducted by a member of a co-operative housing society can claim independent right against a developer, we would be causing violence to the ratio of the Division Bench judgment in ***Girish Mulchand Mehta***. If the right of independent member of the Society remains subservient to the contractual obligations of the Society towards the Developer, we do not find any reason why a mere occupier inducted by such member would have higher right than the member himself *qua* the Developer. We can site numerous illustrations in support of our finding that every right of a person claiming

through the original member would remain subservient to the contractual obligation of the society towards a Developer. The first illustration can be that of a licensee (*gratuitous or otherwise*) inducted by a member of the Society. If member of the Society agrees to handover possession of his flat in pursuance to a Development Agreement executed by the Society and his licensee refuses to vacate the flat, the Court exercising power under Section 9 of the Act would have the necessary jurisdiction to secure possession of the flat from such licensee and hand it over to the Developer for completion of the redevelopment process, notwithstanding the fact that there is no arbitration agreement between the licensee and developer. The rights, *inter se*, between the member and the licensee needs to be agitated in independent proceedings. The second illustration we can refer to is where there is a dispute between a senior citizen and his child and provisions of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 are invoked or where there is a dispute between husband and wife and provisions of Protection of Women from Domestic Violence Act, 2005 are invoked. If in those proceedings, an injunctive relief is secured protecting occupation of a flat in a Society which has gone for redevelopment, such injunctive order would not obstruct the redevelopment process and while the rights *inter se* between senior citizen and child or husband and wife can be adjudicated independently, the possession of a flat in question needs to be handed over to the Society, who is under contractual obligation with the Developer to complete the redevelopment process. In such cases, the so-called rights of senior citizen or of the spouse would always remain subservient to the developer's right and also to the contractual obligations of the Society and would not extricate the Society of its obligations under the development agreement. Following these principles in our view the alleged tenancy rights claimed by Respondent Nos.5 to 8 or by Respondent No.9 would not extricate the Society of its contractual obligations under the Development Agreement. The Court exercising power under Section 9 of the Act in such cases would be perfectly justified in making interim

measures for securing possession of the premises in question without awaiting resolution of dispute *inter se* between a senior citizen and child or between the spouses.

43) Also of relevance is the fact that no steps have been taken by Respondent Nos.5 to 8 to establish their tenancy rights *qua* the garages in question by filing any proceedings before the Small Causes Court under the provisions of the Rent Act. There is a dispute between Respondent Nos.2 to 4 and Respondent Nos.5 to 8 about existence of such tenancy rights. Respondent Nos.2 to 4 claim that tenancy cannot be created in respect of mere garages, whereas Respondent Nos.5 to 8 claim that having accepted rent for them and having not objected to commercial use for several years, Respondent Nos.2 to 4 are estopped from questioning the tenancy rights. In the light of this dispute, it was necessary for Respondent Nos.5 to 8 to secure a declaration from Rent Court about existence of their tenancy rights. However, no steps have been taken by Respondent Nos.5 to 8 for establishment of their tenancy rights. Mere failure on the part of Respondent Nos.2 to 4 to secure eviction decree against Respondent Nos.5 to 8 cannot be a reason enough to relieve the society of its contractual obligation of handing over every inch of space and constructed portion on the plot of land to the developer for completing redevelopment process as per the Development Agreement. The society would ultimately incur the liability towards the developer for delay in execution of the development process. The Society, being the owner of land and building, must perform the contractual obligation by handing over possession of the entire land and building for completion of the redevelopment process. It is for Respondent Nos.5 to 8 or for Respondent No.9 to initiate such remedies as may be available in law against their alleged landlords (*Respondent Nos.2 to 4*) in respect of the alleged rights created in their favour in respect of the four garages. However, till such right gets established or adjudicated, it will

be too far-fetched to hold that the redevelopment process should be put on hold. What is sought to be done in the present case is that the four garage occupiers, whose right to use the garages for commercial purposes as well as tenancy rights are questionable, continue to hold the redevelopment process of Society's building to ransom. This cannot be countenanced in law and Court exercising power under Section 9 of the Act would not be without jurisdiction in ensuring that possession of the four garages are handed over to the developer for demolition and construction of the new building.

44) The Development Agreement provides for allotment of four surface car parking spaces in lieu of the four garages. Ordinarily, the four car parking spaces would go to Respondent Nos.2 to 4 for use as parking facility in respect of the other flats/shops/units that would be allotted to them in the building. However, the Development Agreement provides for granting possession of such surface car parking spaces to Respondent Nos.5 to 8 and Respondent No. 9. This is an internal arrangement between Respondent Nos.2 to 4 and Respondent Nos.5 to 8, to which apparently Respondent Nos. 2 to 4 have not objected. In other words, Respondent Nos.2 to 4 are agreeable to an arrangement where the garage occupiers would receive allotment of four surface car parking spaces. We need not delve into the legality of this arrangement, which is not the scope of the present Appeal.

45) It is sought to be argued on behalf of Respondent Nos.5 to 8 that allotment of open parking spaces to them under the Development Agreement would ultimately result in extinction of tenancy rights in respect of the four garages. In our view, the alleged *inter se* rights between the members of the society (Respondent Nos. 2 to 4) and their inductees (Respondent Nos.5 to 8/9) *qua* the garages need not hold the

redevelopment process of the building. Whether Respondent Nos.5 to 8 are tenants in respect of the garages and what relief they can seek against Respondent Nos. 2 to 4 is something that must be resolved in some other proceedings. Existence of such dispute would not relieve the Society of its contractual obligations under the Development Agreement. As discussed in an illustration above, if there is a gratuitous licensee who claims tenancy rights against a member of the Society, existence of disputes *inter se* between such licensee and member will not extricate the society of its contractual obligations under the Development Agreement. Similar would be the position governing *inter se* disputes between Respondent Nos.2 to 4 on one hand and Respondent Nos.5 to 8 and Respondent No. 9 on the other. Infact as compared to a mere licensee claiming tenancy rights against the member of the Society, the position of Respondent Nos.5 to 8 is far worse as they have the uphill task of crossing two hurdles (i) to establish that any tenancy can ever be created in respect of a mere garage, which is not sanctioned by the planning authority for use for commercial purpose and (ii) whether such tenancy was indeed created or not. We do not wish to delve any deeper into this aspect as that is not the scope of the present appeal and will leave all the issues concerning the disputes of existence of alleged tenancy rights open to be decided in appropriate proceedings. If indeed Respondent Nos.5 to 8 succeed in establishing tenancy rights *qua* the garages and in the redevelopment process, they loose right of securing alternate premises (although they are being provided with four open car parking spaces) it is for Respondent Nos. 5 to 8 to sue their alleged landlords (Respondent Nos.2 to 4) and seek such reliefs against them as may be permissible in law. But in no case, a garage occupier can ever be permitted to stall the redevelopment process of the Society's building. Mere likelihood of extinction of alleged tenancy rights on account of redevelopment process cannot be a reason to hold up the entire redevelopment process.

46) There is yet another reason why mere threat or possibility of Respondent Nos. 5 to 8 loosing tenancy rights upon allotment of surface car parking spaces in the new building need not detain the redevelopment process. If a person who has purchased a garage can be directed to vacate the same in exercise of power under Section 9 of the Act (as is done in various judgments discussed above), we do not see any reason why Respondent Nos. 5 to 8, whose tenancy rights in respect of mere garages is questionable and who are yet to establish their tenancy rights, can obstruct the redevelopment process of society's building.

47) In a case where there is no dispute about entitlement for allotment of alternate premises in a redeveloped building, necessary arrangements can be made between the warring parties during currency of redevelopment process. In fact, this Court has consistently taken a view that a person who is actually in possession of old premises cannot be dispossessed only on account of redevelopment of the building and it is often ensured that such person is not only put back in possession of the new premises, but is also paid the transit rent for making temporary arrangement during currency of construction of new building. By making such arrangement, the Court ensures that redevelopment process does not result in dispossession. In a typical case between a member of the Society and a licensee/relative in occupation, this Court has repeatedly ensured that while PAAA is executed in favour of the member, possession of new flat/shop is handed over and transit rent is paid to the licensee/relative in occupation by leaving open the dispute of eviction to be decided by a Court of competent jurisdiction. However, this arrangement is possible only where there is absolutely no dispute about grant of alternate premises in lieu of old premises and the only dispute is who would receive possession thereof. In the present case however, the whole dispute is whether any alternate flat/shop/unit can be allotted in lieu of mere parking space/garage. *Prima facie*, a garage occupier putting the garage to

unauthorised commercial use, cannot be provided with alternate premises in the new building. Therefore development of Society's building cannot be held up till dispute between the garage occupiers and their owners (members) is resolved and it would be for garage occupiers to adopt appropriate remedies by suing their inductor/member of the Society for appropriate reliefs for grant of alternate premises or for damages. However, under no circumstances, such garage occupiers can withhold the process of redevelopment of the building of the Society.

48) It is strenuously contended on behalf of Respondent Nos. 5 to 8 that interim measures under Section 9 of the Act cannot be made where there is no intention on the part of the Appellant-Developer or Respondent Nos.2 to 4 to proceed with arbitration. Reliance is placed on judgments of the Apex Court in ***Sundaram Finance Ltd.*** (supra) and ***Firm Ashok Traders*** (supra). No doubt the law is well settled that the Court must be satisfied before passing interim order under Section 9 of the Act that there is intention on the part of the parties to go for arbitration and such intention must be manifest from the beginning. In para-9 of the impugned judgment, the learned Single Judge has observed that upon a suggestion made by the Court about willingness of parties to proceed with arbitration, the same was turned down. Though para-9 of the judgment does not attribute expression of such unwillingness to any particular party, the learned Single Judge has observed that there is no *inter-se* dispute for which arbitration can be invoked. While there can be no dispute about the proposition that power under Section 9 of the Act for making interim measures can be exercised only where parties ultimately proceed for arbitration, however, in the present case it is difficult to hold that there is no possibility of any arbitration between the parties. There is a contractual clause for recovery of damages for delay in handing over of possession. Whether such damages are indeed payable in the present case and which party is liable to

pay such damages is something which needs to be decided in the arbitration. However, what needs to be ensured as of now is that the entire redevelopment process is not held up only on account of existence of alleged disputes between the members (Respondent Nos.2 to 4) and their inductees (Respondent Nos.5 to 8 and Respondent No. 9). We are therefore not impressed by the submissions made on behalf of Respondent Nos. 5, 7 and 8 that the arbitration petition deserved dismissal on account of unwillingness shown by the parties before the learned Single Judge to go for arbitration. The Appellant-Developer has expressed willingness to commence arbitration for seeking damages for delay in execution of the project.

49) Respondent Nos.2 to 4 have also filed their own independent Appeal [Commercial Arbitration Appeal (L) No.16482/2025] challenging the impugned judgment of the learned Single Judge to the limited extent of the observations made and findings recorded relating to tenancy rights of Respondent Nos. 5 to 8 and Respondent No.9 and need for their eviction only through the Rent Court. As observed above, neither the learned Single Judge while exercising jurisdiction under Section 9 of the Act nor this Court while exercising appellate jurisdiction needs to decide dispute relating to tenancy rights between Respondent Nos.2 to 4 and Respondent Nos.5 to 8/9. The same needs to be adjudicated by a Court of competent jurisdiction. Therefore it needs to be clarified that nothing observed by the learned Single Judge in the impugned judgment and order dated 1 April 2025 would be read to mean as if tenancy rights of Respondent Nos. 5 to 8 *qua* the garages is upheld. The issue is left open to be decided in appropriate proceedings and the Court deciding such objections would not be bound/influenced by any of the findings recorded in the impugned judgment.

50) Mr. Sawant has relied on judgment of Full Bench of this Court in ***Central Warehousing Corporation, Mumbai*** (supra) in which it is held that the Court of Small Causes has the exclusive jurisdiction to try and decide the case covered by Section 41(1) of the Presidency Small Causes Courts Act and that mere existence of arbitration agreement between the parties as well as non-obstante clause in Section 5 of the Arbitration Act does not oust exclusive jurisdiction of the Court of Small Causes. All that is held by the Full Bench of this Court is that issues relating to tenancy, eviction etc. cannot be decided in arbitration, when premises are protected under special statute. The judgment, far from assisting the case of Respondent Nos.5 to 8, actually militates against them. What they need to do is to file a declaratory suit in the Court of Small Causes seeking declaration of their tenancy rights in respect of the four garages and claim appropriate reliefs against their alleged landlords. As observed above, mere existence of disputes *inter-se* between the owner of garages (Respondent Nos. 2 to 4) and their inductees (Respondent Nos. 5 to 8) to claim their tenancy rights, cannot be a reason for obstructing redevelopment process of Society's building. Reliance by garage occupiers on the judgment of the Apex Court in ***Suresh Shah*** (supra) is again inapposite. In that judgment, it is held that a dispute is non-arbitrable where the matters relating to eviction or tenancy are governed by special statute and where tenants enjoy statutory protection against eviction. The judgment is cited in support of the submission that proceedings under Section 9 of the Act cannot be invoked to seek eviction of a statutory tenant. However, in the present case, there is dispute about tenancy rights of Respondent Nos.5 to 8. That dispute needs to be adjudicated. Infact, the dispute is of twin nature, as held above, viz. (i) whether there can be tenancy in respect of a parking garage and (ii) whether the tenancy has indeed been created or not. It is only after a declaration of tenancy in favour of Respondent Nos.5 to 8 is made by a Court of competent jurisdiction that eviction of such protected tenant can be effected through a

Court of competent jurisdiction. As of now, what is being effected is mere temporary displacement of every member, tenant and occupier of flats/shops/units/premises/garages so as to undertake redevelopment process of the building. The tenants, whose tenancy is not disputed, are already provided alternate premises in the newly constructed building. As of now, since there is dispute about tenancy rights of Respondent Nos.5 to 8 on account of their occupation of mere garages and therefore a provision is made for surface car parking spaces to them in the newly constructed building. Respondent Nos. 5 to 8 need to get their rights adjudicated against Respondent Nos.2 to 4 in appropriate Court of law. All that is being ensured, as of now, by exercise of power under Section 9 of the Act, is to ensure that occupancy of Respondent Nos.5 to 8 in respect of the garages does not come in the way of redevelopment of the Society's building. This can, by no stretch of imagination, be termed as eviction of Respondent Nos.5 to 8.

51) The building of the Society was in a dilapidated condition. The MCGM had issued notice under Section 354 of the MMC Act for pulling down the building. The entire building has accordingly been pulled down except the four garage structures. Merely because the Appellant-Developer was in a position of demolishing the entire building without disturbing the four garages, it would not mean that the redevelopment of the building can be carried out by retaining the structures of the said four garages. As observed above, the plans for new building are to be prepared in such a manner that some portion of the new building will have to be constructed on the land on which the garages currently stand. In our view therefore handing over possession of the four garages to the Appellant for demolition is necessary so as to ensure that the Society and its members fulfill their contractual obligations under the Development Agreement. The learned Judge has repeatedly made reference to the attempts made by the Court to ensure that some premises in the new building could be

reserved for Respondent Nos.5 to 8 and Respondent No. 9 and such attempts have not fructified in positive outcome. If that was the position, the Court could have made appropriate interim arrangements by exercising jurisdiction under Section 9 of the Act rather than disposing off the petition without grant of any relief and by directing the Appellant-Developer and the Society to carryout construction of the new building without affecting the structure as well as free independent access to the four garages. While doing so, it appears that the Court has not noticed the fact that the construction of the new building is not possible without demolition of the four garages.

52) In our view therefore case was made out by the Appellant-Developer for grant of interim measures under Section 9 of the Act. If the interim measures are not made in the facts and circumstances of the present case and if the structures of the four garages are permitted to be retained at the site, the same would seriously hamper construction of the new building, some portion of which needs to be constructed at the site where the garages are located. The course of action of construction of new building on the balance portion of the land by retaining the four garages and independent access thereto, envisaged by the learned Judge in the impugned order, would put the entire construction of the new building in jeopardy where the plans will have to be modified completely and it might then become difficult for the Appellant-Developer to accommodate such large number of members and tenants. On the contrary, if Respondent Nos.5 to 8 and Respondent No. 9 are directed to handover possession of the premises in their occupation, their rights, to some extent, would still stand protected as they would receive four surface car parking spaces in the newly constructed building. They can either bargain with Respondent No. 2 to 4 or with the society to monetise such car parking spaces. Alternatively, they can initiate necessary proceedings against Respondent Nos.2 to 4 for alleged denial of their rights under the redevelopment

process based on their alleged tenancy claims. If interim measures are not made in favour of the Appellant-Developer, the entire project would get stuck. Appellant carries the responsibility of paying transit rent to over 80 members and tenants. Thus, for protecting the interests of the four garage occupiers, who are yet to establish their claim of tenancy and whose commercial use of garages is questionable, over eighty members and tenants of the building would ultimately suffer. Therefore grant of interim measures in the present case is warranted.

53) The Appeal accordingly succeeds, and we proceed to pass the following order :-

(I) Judgment and order dated 1 April 2025 passed by the learned Single Judge in Commercial Arbitration Petition (L) No. 38696/2024 is set aside.

(II) Commercial Arbitration Petition (L) No.38696/2024 is partly made absolute in terms of prayer Clause (b) which reads thus :-

> (b) That pending the culmination of Arbitral Proceedings and till such time the Award passed therein becomes enforceable, this Hon'ble Court be pleased to pass an order directing Respondent No. 5 to 8 and Respondent No. 9 (illegally occupying Garage No.2) to immediately vacate their respective Garages viz, garage No.1, 2, 3 and 4 situated at Poddar Shopping Centre, S. V Road, Kandivali (West), Mumbai –400 067 and handover the quiet, vacant and peaceful possession to the Petitioners and if required the Petitioners be provided with police assistance at the time of taking over the vacant possession of their respective Garages by directing the local police station/official to provide required police assistance for eviction of the Respondent No. 5 to 8 and Respondent No.9.

(III) Respondent Nos. 5 to 8 would be at liberty to execute and register the Agreement for Permanent Alternate Accommodation with the Appellant.

(IV) It is clarified that nothing observed by the learned Single Judge in the impugned judgment and order dated 1 April 2025 as well as by this Court in the present judgment shall affect the alleged tenancy claims between Respondent Nos.2 to 4 and Respondent Nos. 5 to 8 or Respondent No. 9 in respect of the four garages in question and the said issue shall be decided independently in appropriate proceedings.

54) With the above directions, both the appeals are **disposed of**.

[SANDEEP V. MARNE, J.] [CHIEF JUSTICE]

NEETA SHAILESH SAWANT

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