VERDICTUM.IN

2026 INSC 1269

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). OF 2026
(Arising out of SLP (Civil) No (s). 29513 of 2026)

AJIT PATEL ....APPELLANT(S)

VERSUS

EVITA CO-OPERATIVE HOUSING SOCIETY LTD. AND ORS. ....RESPONDENT(S)

J U D G M E N T

Mehta, J.

1. Heard.

2. Leave granted.

3. Respondent No. 5, HGP Community Pvt. Ltd. (formerly known as Lakeview Developers), developed residential and commercial buildings in the name and style of "Hiranandani Gardens" on land bearing C.T.S. Nos. 4/1 to 4/5 and 4/7, Sector IV-A, Village Powai, near IIT, Powai, Mumbai-400076. The present

VERDICTUM.IN

litigation relates to the high-rise building named "Evita" in the Hiranandani precincts. As per the proposed plan, the high-rise residential building was to have a basement, ground floor on stilts, first-floor podium and upper floors from 2nd to 29th floor, with a total height of 95.35 metres, measured from general ground level to the terrace slab.

4. The building plans were submitted to the Chief Fire Officer, Mumbai Fire Brigade, in the year 2002. Fire NOCs dated 24th October, 2002 and 26th March, 2004, issued by the Mumbai Fire Brigade prescribed the fire protection and fire-fighting requirements to be complied with during construction of the building.

5. Condition No. 14 of the NOC dated 26th March, 2004, dealt with refuge areas under two separate clauses. Clause 14(A) specified the refuge area admeasuring 112.84 sq. metres at the 8th, 14th, 20th and 26th floor levels and prescribed requirements governing those areas. Clause 14(B) separately stipulated that "the terrace floor shall also be treated as Refuge area," subject to instructions concerning refuge-area signage, drinking-water facilities and emergency lighting.

VERDICTUM.IN

6. The appellant herein purchased Flat Nos. 2902/A to 2902/D, having an aggregate area of 4,575 sq. ft., under four separate Articles of Agreement dated 26th March, 2004. Under these agreements, the developer undertook to provide additional amenities, including terrace areas corresponding to the respective flats. The total consideration specified in these agreements including the additional amenities was Rs. 3,02,33,125/-. The appellant asserts that the flats and the corresponding terrace areas were allotted/sold to him as an integrated arrangement.

7. The appellant relies upon the subsequent Fire NOC and sanctioned plans to contend that the disputed terrace portion was not retained as a refuge area in the final approved configuration; the respondents seriously dispute this interpretation.

8. The construction was completed in the year 2006, whereafter the architect of respondent No.5 sought an occupation NOC from the Mumbai Fire Brigade preceded by inspection of the fire safety compliances. A senior officer of the Department visited the building to verify compliance with regard to the fire protection and fire-fighting requirements stipulated in the NOC dated 24th October, 2002.

VERDICTUM.IN

9. After inspection, the Department conveyed its no objection to the occupation and use of the building. The Brihanmumbai Mahanagarpalika (Municipal Corporation of Greater Mumbai,[1] respondent No.3 herein) issued the Occupation Certificate for the building, approving the amended plan-cum-full development work, on 15th June, 2007.

10. A specific case is set up by the appellant that this approved plan did not depict the disputed terrace portion as a refuge area. As per the appellant, in the said approved plan, there are two separate sections of the terrace floor, one above Flat No. 2901 and the other above Flat No. 2902. The appellant claims exclusive ownership of the terrace floor above Flat No. 2902, which was purportedly conveyed to him under four separate Agreements dated 31st August, 2007. The remaining part of the terrace, as per the appellant, is open to the sky, intended for common use, and accessible *via* two separate staircases. The appellant claims to be in possession of the said flats and terrace since the year 2007.

[1] For Short "MCGM".

VERDICTUM.IN

11. Respondent No. 1-Evita Co-operative Housing Society Ltd.[2] was registered in November, 2008. As per the appellant, right from the inception, the society was aware about the existence of the two demarcated sections of the terrace as referred to *supra*.

12. The Society lodged a complaint dated 28th October, 2016, with the Mumbai Fire Brigade alleging that the appellant had encroached upon the terrace reserved as a refuge area and had also made impermissible deviations in the flats purchased by him. Pursuant thereto, the premises were inspected and a report dated 8th March, 2017, was prepared by the Deputy Chief Fire Officer, Mumbai Fire Brigade, recording that the terrace was divided into two parts and that the office copy of the NOC for occupation of the building was "under search". On 18th December, 2020, respondent No.1-Society and its Secretary filed a writ petition bearing W.P. No. 254 of 2021 before the High Court of Judicature at Bombay,[3] raising objection to the purported conveyance of the terrace area by the developer to the appellant, claiming that

[2] Hereinafter referred to as "Society" or "respondent No.1-Society".
[3] Hereinafter referred to as the "High Court".

VERDICTUM.IN

the same was earmarked as a common fire refuge area and could not have been sold at all. Pleadings were exchanged in the writ petition, which remained pending for almost five years.

13. On 6th March, 2025, respondent No.3 issued a notice to the appellant under Section 53(1) read with Section 52(1)(b) and (d) of the Maharashtra Regional and Town Planning Act, 1966,[4] imputing that unauthorised works had been carried out contrary to the sanctioned plans in Flat No. 2902 and on the terrace, such as unauthorised covering of a duct, erection of a spiral staircase, construction of wooden platforms/decks, and installation of wooden and glass sliding doors, etc. The appellant was notified that all this was done without permission of the competent authority, and he was asked to show cause or face demolition.

14. The appellant claims that these works pre-existed and predated the Occupation Certificate, and the appellant, being a *bona fide* purchaser, cannot be held responsible for carrying out the alleged unauthorised construction/additions.

[4] For Short "MRTP Act".

VERDICTUM.IN

15. Writ Petition No. 254 of 2021 filed by respondent Nos. 1 and 2, came to be heard and decided by the Division Bench of the High Court *vide* judgment dated 5th August, 2026,[5] with the following observations and directions:

> "10. In the wake of the entire conspectus of the matter, we note that in the affidavit the Developer has adopted a specific stand and the Respondent No.4 is harping upon the said stand, but we are conscious of the fact that arbitration proceedings are ongoing between them and we are not aware as to what is the impression given to the Respondent No.4 by the Developer as it is a specific argument of the learned counsel representing Respondent No.4 that an internal staircase, which is seen in the photographs was already constructed by the Developer himself and he has not taken any steps. He harps on the impression given to him that even the terrace is sold to him and according to the learned counsel he has paid consideration in that regard to the Developer. **In any case, we do not intend to get into the same but at present, we must only note that if the terrace is declared as a refuge area and if the Fire Department has imposed a condition that it shall act as a refuge area and comply with the stipulation like the entrance doors of the refuge areas painted with "REFUGE AREA IN CASE OF EMERGENCY", provision of adequate drinking water facilities as well as adequate emergency lighting facility connected to the electric circuits of staircase, corridor/passage etc., and if this was the condition for grant of Occupation Certificate by the fire department then this facility must be in place.** The occupation of the building itself was permitted subject to the undertaking given by the

[5] Hereinafter referred to as the "impugned judgment".

VERDICTUM.IN

Developer that he has ensured compliance of all the requirements but we really wonder whether any inspection was taken out of the building to ensure that the facilities have been maintained. In any case, now since the Society has expressed apprehension and from the photographs, it is evidently clear that the entry on the terrace is blocked and the only access available on the terrace, which is declared as a refuge area is through an internal staircase, which is constructed through Flat No 2902 A and for this purpose finding it to be unauthorized the Corporation has issued a notice and even had passed a speaking order. The aggrieved party Respondent No.4 has already knocked the doors of the competent court, but has not yet obtained any stay. In such circumstances, we are of the view that it is high time that the Corporation proceed ahead with the action based on the speaking order dated 10/08/2025, which is passed after issuance of notice to Respondent No.4 and on consideration of the response of Respondent No.4 and by following due process of law if the speaking order is passed, then it must be immediately given effect. As far as the dispute between the Developer and the Respondent No.4 is concerned, we have not touched or pronounced upon the entitlement of either party in the said proceedings. We direct the Corporation to immediately proceed with the implementation of the order dated 10/08/2025, as we are informed that there is no stay granted.

11. Worth it note that if the Corporation find that the refuge area is not only on the terrace but on the other floor, which is earmarked by the fire department is not compliant with the specifications set out by the fire department in its communication dated 26/03/2024 while granting the NOC stipulating fire protection and fire fighting requirements in construction of the high rise building, the Corporation is at liberty to bring to

VERDICTUM.IN

> the notice of the fire department which shall be then competent to take appropriate action, which may even extend to withdrawal of the Occupation Certificate.
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> 12. It is a contention of Respondent No.4 that the flats on various floors also have enclosed the duct and we expect the Corporation to carry out an inspection in this regard and if according to the Corporation it is an illegality or an unauthorized structure, we direct Corporation to initiate action.
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> 13. As far as the staircase is concerned, the learned counsel for the Respondent No.4 has vehemently asserted that it is provided by the Developer, but Mr. Tamboly specifically deny. From the photographs placed before us the staircase leads to the terrace and we have an objection about the terrace being put to exclusive use by Respondent No.4, but on an inspection being carried out before taking action for implementation of the speaking order, if Respondent No.4 close the access to the terrace and chose to keep the staircase as an architectural marvel in his own flat, we direct that the Corporation shall permit it to be retained, if it do not cause harm to the remaining structure. We also clarify that Corporation shall ensure that the common door which has been closed providing access to the terrace shall be opened. With the above direction, the Writ Petition is made absolute."
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> (Emphasis supplied)

16. Being aggrieved by the aforesaid judgment, the appllent (flat owner) is before us in the instant appeal by special leave.

17. We have heard and considered the submissions advanced by the learned counsel representing the

VERDICTUM.IN

appellant and the learned counsel representing the respondents and have perused the impugned judgment and the material placed on record.

18. The fact that the appellant purchased four flats bearing Nos. 2902/A, 2902/B, 2902/C and 2902/D under four separate registered Agreements for Sale, all dated 31st August, 2007, is not in dispute. There are claims and counter-claims of the parties regarding the status of the terrace floor above the flats purchased by the appellant.

19. While the appellant asserts that the terrace areas corresponding to the four flats were agreed to be provided to him as an integrated conveyance along with the flats, the respondents contest the said claim, alleging that the entire terrace area of the subject building was a part of the refuge area under the original NOC/sanction plan.

20. The Fire Brigade, pursuant to the Society's complaint dated 28th October, 2016, inspected the premises on 4th February, 2017, and issued a report dated 8th March, 2017, which recorded that the office copy of the NOC for occupation of the building was "under search".

VERDICTUM.IN

21. The MCGM issued a notice dated 6th March, 2025 to the appellant, under the MRTP Act, 1966, and, pursuant to the proceedings initiated thereunder, passed an order dated 10th August, 2025, directing the appellant to remove the alleged unauthorised works within 15 days of receipt thereof. The appellant challenged the said notice and order in L.C. Suit No. 102020 of 2025 before the Bombay City Civil Court at Mumbai,[6] which is pending consideration.

22. On going through the impugned judgment passed by the Division Bench of the High Court, we find that the High Court has delved into issues involving seriously disputed questions of fact to decide the competing claims of the parties. Whether or not the terrace portion claimed by the appellant forms a part of the refuge area would require appreciation and sifting of evidence and examination of contemporaneous documents, which are precisely the issues under consideration before the Civil Court seized of L.C. Suit No. 102020 of 2025 filed by the appellant. The observations made by the High Court

[6] Hereinafter referred to as the "Civil Court".

VERDICTUM.IN

(*supra*) have the tenor of conjectures and surmises based on some photographs placed on record during the course of hearing of the writ petition.

23. In view of the competing claims of the parties regarding the status of the said terrace area and the specific plea raised by the appellant that apart from the portion claimed by him, another portion of the terrace is open to the sky, intended for common use and accessible through both staircases, we are of the firm opinion that the High Court erred in exercising the extraordinary jurisdiction under Article 226 of the Constitution of India in the petition preferred by the respondents to adjudicate a *lis* which involves seriously disputed questions of fact. The findings in the impugned judgment being based on conjectures and surmises, cannot be affirmed.

24. The High Court, *vide* the impugned judgment, directed the Corporation to proceed with the action pursuant to the order dated 10th August, 2025 and to give immediate effect thereto. While doing so, the High Court observed that it was not touching or pronouncing upon the entitlement of either party to the proceedings. However, in spite thereof, the Corporation was specifically mandated to

VERDICTUM.IN

immediately implement the said order. The High Court further issued directions in paragraph 13 concerning the staircase leading to the terrace and, in its concluding direction, required the Corporation to ensure that the common door providing access to the terrace is opened for easy access of all the residents. The said direction appears to be justified insofar as it would ensure clear and unhindered access to the terrace to all occupants of the building in case of an emergency situation. Thus, to that extent, the impugned order is sustained without prejudice to the judicial discretion of the trial Court in the pending civil suit filed by the appellant.

25. Law is well settled that a Court examining a *lis* under Article 226 of the Constitution of India is not obliged to entertain a challenge involving seriously disputed factual aspects. Such issues may more appropriately be examined by the competent Civil Court or the prescribed statutory authority, as the case may be. Indisputably, the civil suit preferred by the appellant, challenging the notice dated 6th March, 2025, and the consequential speaking order dated 10th August, 2025, issued by the MCGM in respect of the alleged unauthorised works in Flat No. 2902 and

VERDICTUM.IN

the terrace area, is pending consideration before the Civil Court.

26. Suffice it to say that once the appellant had availed the jurisdiction of the Civil Court by challenging the order of the Corporation dated 10th August, 2025 before the Civil Court, any direction issued by the High Court requiring the Corporation to implement the said order would necessarily have an adverse bearing on the adjudication of the pending suit, virtually making the remedy redundant.

27. We may note that the High Court for passing the above directions placed reliance on the fact that the appellant had not been granted any injunction in the civil suit. In that situation, the onus would be upon the MCGM to take necessary steps for implementation of the order dated 10th August, 2025.

28. By effect of the mandatory directions issued by the High Court *supra* for immediate implementation, the remedy before the Civil Court would be overshadowed, leaving hardly any scope for the Civil Court to take an independent view on the legality and validity of the order dated 10th August, 2025. In our opinion, the directions issued by the High Court have the effect of pre-empting adjudication of seriously

VERDICTUM.IN

disputed questions of fact which completely overlap with the issues pending before the Civil Court. Clearly, thus, the dispensation made by the High Court in the impugned judgment prejudices the pending civil suit filed by the appellant.

29. Consequently, the impugned judgment to the extent indicated above is hereby set aside. The appellant is permitted to raise all his defences and contentions in the pending civil suit instituted by him. The respondent No.1-Society shall also be entitled to contest the suit, if it so desires.

30. Considering the fact that the issues raised before the Civil Court involve the interpretation of rival claims over the refuge area, meant for safety and security of the residents of the building, we hereby direct the Civil Court to expedite the proceedings and to try and conclude the same preferably within six months from the date of presentation of a copy of this order. Needless to say that the Civil Court shall decide the suit uninfluenced by the observations made in the impugned judgment and all parties shall cooperate in the expeditious disposal of the suit.

31. The appeal is allowed in these terms.

VERDICTUM.IN

32. Pending application(s), if any, shall stand disposed of.

.....J.
(VIKRAM NATH)

.....J.
(SANDEEP MEHTA)

.....J.
(APARESH KUMAR SINGH)

NEW DELHI;
NOVEMBER 25, 2026.