

---

**(1991) 09 BOM CK 0020**  
**In the Bombay High Court**  
**Case No : Appeal From Order No. 489 of 1979**

Khatri Builders

APPELLANT

Vs

Mohmed Farid Khan and Others

RESPONDENT

---

**Date of Decision :** 19-09-1991

**Acts Referred:**

Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 — Section 7, 7(1), 7(2), 7A

**Citation :** (1992) 1 BomCR 305

**Hon'ble Judges :** A.V. Savant, J

**Bench :** Single Bench

**Advocate :** K.J. Abhyankar, for the Appellant; C.J. Sawant, R.M. Sawant and V.P. Sawant, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

A.V. Savant, J.—This appeal seeks to challenge the order dated 19th March 1979 passed by the City Civil Court in Notice of Motion No. 4996 of 1978 taken out by the plaintiffs in their Suit No. 6861 of 1978. The suit has been filed on the 26th December 1978 by 17 plaintiffs, who are the Flat Owners in a building called "Aashiana" situate at 22. Club Road (Maratha Mandir Road), Bombay 400 008. The said 17 plaintiffs are respondents Nos. 1 to 17 in this appeal. The appellant in this appeal viz. M/s. Khatri Builders is defendant No. 1 in the said suit. Defendants Nos. 2, 3 and 4 are the other Flat owners, who are respondents Nos. 18, 19 and 20 in this appeal. The suit has been filed for the relief of injunction restraining the first defendant promoter from constructing any additional structure or construction on the terrace of the building "Aashiana".

2. It appears that in 1976 the plaintiffs entered into the usual agreement for purchase of flats in the building to be constructed by "the appellant who is the "promoter" within the meaning of the provisions of section 2(c) of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (for short, the Ownership flats Ltd). The

building was to consist of ground floor stilts and five floors with four flats each, resulting in a total of 20 flats. In accordance with the Agreements entered into in 1976 the construction of the building with ground plus 5 floors was completed around May 1978. There is no dispute that the possession of the Flats was handed over to the plaintiffs and the other flat owners around June, 1978. In the meanwhile, the appellant promoter acquired an additional piece of adjoining land, referred to in the plaint as "house gully" which was about 5 feet wide and as result of the acquisition of the said house gully, the appellant became entitled to an additional F.S.I. of 500 sq. ft. The appellant, therefore, proposed to put up a terrace flat of about 500 sq.ft. and submitted plans for construction of the said terrace flat. The Planning Authority approved the said plans on September 20, 1978. The appellant, therefore, made preparations for constructing the terrace flat, as a result of which the present suit was filed on the 26th December 1978.

3. By the Notice of Motion the plaintiffs prayed for ad-interim reliefs restraining the appellant from constructing any additional structure or putting construction of any nature whatsoever on the terrace of the said building "Aashiana". The learned trial Judge, who heard the motion took the view that-

(a) the Civil Court had the necessary jurisdiction to entertain the suit and that such a dispute did not lie within the exclusive jurisdiction of the Housing Commissioner, as provided in sub-section (2) of section 7 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963; and

(b) the plaintiffs were entitled to an injunction restraining the appellant from putting up any structure or carrying out any construction on the terrace of the said building.

It is this order dated 19th March 1979, which is challenged in this appeal.

4. I have heard Shri Abhyankar for the appellant promoter and Shri Sawant for the respondents plaintiffs. Shri Abhyankar for the appellant has made the following submissions:---

(i) In view of the judgment of the Division Bench of this Court in A.O. No. 159/80 and C.R.A. No. 628/80 decided on 2nd September 1983 and reported in *Ishwar Chinga Shetty v. Jivanji Bhulabhai Patel*, 1987(2), Bombay Cases Reporter, page 371, such a suit cannot lie in the Civil Court in as much as the Housing, Commissioner has got the exclusive jurisdiction to entertain such a suit;

(ii) The ouster of jurisdiction contemplated by sub-section (2) of section 7 would operate even during the construction of the building as also after the construction irrespective of the fact as to whether possession has been given to the flat owners or not;

(iii) The provision of ouster jurisdiction of the Civil Court contained in section 7(2) of the Ownership Flats Act, 1963 would also apply whether the additional construction is complete or not; and

(iv) In view of the insertion of section 7-A by Maharashtra Act No. 36 of 1986 which has amended certain parts of section 7 of the "Ownership Flats Act", the ratio of the decision of Jahagirdar, J., reported in 88, Bombay Law Reporter, page 100:20.F.C. 15 viz., Kalpita Enclave Co-operative Housing Society Ltd v. Messrs Kiran Builders Pvt. Ltd., would no longer be applicable to the facts of the present case.

5. In order to appreciate these contentions, it is necessary, at the outset, to reproduce section 7 of the unamended Ownership Flats Act, 1963, as it stood on the date of the filing of the suit, which reads as under ;---

"7(1) After the plans and specifications of the building, as approved by the local authority as aforesaid, are disclosed or furnished to the person who agrees to take one or more flats, the promoter shall not make---

(i) any alterations in the structure described therein in respect of the flat or flats which are agreed to be taken, without the previous consent of that, person; or

(ii) make any other alterations in the structure of the building, or construct any additional structures, without the previous consent of all the persons who have agreed to take the flats.

(2) Subject to sub-section (1), the building shall be constructed and completed in accordance with the plans and specifications aforesaid, and if any defect in the building or material used, or if any unauthorised change in the constructions is brought to the notice of the promoter within a period of one year from the date of handing over possession, it shall wherever possible be rectified by the promoter without further charge to the persons who have agreed to take the flats, and in, other cases such persons shall be entitled to receive reasonable compensation for such defect or change. Where there is a dispute as regards any defect in the building or material used, or any unauthorised change in the construction, or as to whether it is reasonably possible for the promoter to rectify any such defect or change, or as regards the amount of reasonable compensation payable in respect of any such defect or change which cannot be, or is not rectified by the promoter, the matter shall, on payment of such fee as may be prescribed, be referred for decision to the Housing Commissioner appointed under the Bombay Housing Board Act, 1948 if the building is situated in the Bombay or Hyderabad area and to the Housing Commissioner appointed under the Madhya Pradesh Housing Board Act, 1950 if the building is situated in the Vidarbha region of the State, or to any officer not lower in rank than a Superintending Engineer as the State Government may by general or special order specify in this behalf, within a period of two years from the date of handing over possession. The Housing Commissioner or such officer shall after inquiry record his decision, which shall be final".

Before the learned trial Judge it was contended on behalf of the promoter that in view of the scheme of section 7 of the said 1963 Act reproduced above, the Civil Court would not be competent to entertain the dispute which can be entertained

by the Housing Commissioner alone. It was then contended that under the Agreements entered into in the year 1976 with the flat owners viz., the plaintiffs, they had initially, while entering into agreements in the year 1976 given their consent authorising the promoter-appellant to make additions, alteration and to raise an additional storey at any time, as may be permitted by the Bombay Municipal Corporation. Reliance was placed by the appellant on Clauses 3 and 12 of the said 1976 Agreement. In particular, the appellant placed reliance on the closing portion of Clause 12 of the said Agreement, which reads as under:---

"The party of the first part shall have a right to make additions, alterations, raise additional storey or structures at any lime as may be permitted by the Bombay Municipal Corporation and such additional structures or storeys shall be the sole property of the party of the first part who shall be entitled to deal or dispose it of in any way they choose".

Relying upon this clause, it was contended before the learned trial Judge that the consent given by the flat owners at the line of entering into agreements was a valid consent for the purpose of section 7 of the Ownership Flats Act and that it was not necessary for the promoter to obtain fresh consent of the fat owners even in a case where the flat owners were put in possession of the flats and as a result of the subsequent developments the promoter had become entitled to put up an additional floor on the terrace of the building. Both these contentions have been rejected by the trial Court. Hence, this appeal.

6. Coming to the first contention of Shri Abhyankar about the exclusion of the jurisdiction of the Civil Court to decide the disputes raised by the plaintiffs, a reference must first be made to the decision of V.A. Naik, J., dated 24th October 1966 in Appeal from Order No. 299 of 1965. That was the case of Shri Kantilal v. Ganesh Sadashiv, In Kantilal 's case, the facts were some what identical with the facts of the present case in as much as the promoter was proposing to construct an additional flat on the terrace. The question was whether the additional flat on the terrace amounted to an additional structure and thus fell within the meaning of section 7(l)(ii) of the Act. V.A. Naik, J., held that construction of an additional flat on the terrace amounted to an additional structure within the meaning of section 7(l)(ii) of the Act.

7. The decision in Kantilal's case was rendered in October, 1966. On 29th June 1976 Apte, J., decided Civil Revision Application No. 185 of 1976 of Shakuntaladevi Purushottam Jogai v. Sunita Traders,. Apte, J., proceeded on the footing that the Civil Court had jurisdiction to deal with the questions of the contravention of the provisions of section 7(1) of the Act. However, it must be conceded that the question of exclusive nature of the jurisdiction of the authority mentioned in section 7(2) viz., of the Housing Commissioner, was not specifically raised before Apte, J., and was, therefore, not decided. Apte, J., however, considered the question as to whether the consent given by the flat owners at the time of entering into agreements with the promoter would be the consent contemplated by section 7(1) of the Act. The learned Judge held that a blanket

consent obtained by the promoter from the intending purchasers of the flats was not the consent envisaged u/s 7(1) of the Act. This decision was rendered on June 29,1976.

8. R.L. Aggarwal, J., had occasion to consider the position again in Smt. Neena Sudarshan Wadia v. M/s. Venus Enterprises, A.O. No. 575 of 1982 with A.O. No. 875 of 1982, decided on February 9,1983, reported in 1984(2) Bom.C.R. 505. Aggarwal, J., came to the conclusion that the promoter cannot under the cloak of the blanket consent obtained under the proforma agreement of sale carry out the work of additional structures thus nullifying the provisions which are made essentially for the protection of the purchasers of flats.

9. S.K. Desai, J., also had occasion to consider the question in A.O. No. 159 of 1980 with Civil Revision Application No. 628 of 1980. On an examination of the judgment delivered by V.A. Naik, J., on 24th October 1966 in A.O. No. 299 of 1965, S.K. Desai, J., was of the opinion that the view that if a dispute of the type which had arisen in Appeal from Order No. 159/1980 and C.R.A. No. 628/1980 was referable to the Housing Commissioner and was held to be exclusively within his jurisdiction, it would make a mockery of the various provisions contained in the said 1963 Act and of the right conferred on the purchasers of flats by the Ownership Flats Act. S.K. Desai, J., therefore, referred the matter to a Division Bench. Ishwar Chinga Shetty and Another Vs. Jivanji Bhulabhai Patel since deceased by his heirs and Others, .

10. The Division Bench came to the conclusion that the exclusive jurisdiction of the authority u/s 7(2) of the Act depended upon the existence of jurisdictional facts viz.

- (i) alteration in respect of the structure of the flat or building without the consent of the flat owners;
- (ii) defect in the building;
- (iii) use of defective material; and
- (iv) unauthorised change in the construction.

The Division Bench, therefore, came to the conclusion that if the facts mentioned in section 7(2) were present and the other requirements as mentioned in section 7(2) were satisfied, then and then alone the authority mentioned u/s 7(2) will have exclusive jurisdiction to deal with those questions mentioned in section 7(2) of the Act. After having said this in Para 16, the Division Bench dealt with the question of ouster of the jurisdiction of the Civil Court either by express provision or by necessary implication. In para 18 of the judgment, the Division Bench considered the arguments of the plaintiffs in the case referred to the Division Bench and at the end of para 18 observed as under :---

"We may repeat that the contention of Shri Walavalkar that the nature of the present suit as a whole claiming declaration and injunction against defendant No.

4 does not fall within the limited scope and compass of section 7 can be raised by him before the teamed Single Judge for consideration".

11. After having said as above, the Division Bench referred to the decision of the Supreme Court in *Dhulabhai and Others Vs. The State of Madhya Pradesh and Another*, on the question of the exclusion of the jurisdiction of the Civil Court. It also referred to the decision of the Supreme Court in the case of *The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others*, on the question of the exclusion of the jurisdiction of the Civil Court. After referring the decision of the Supreme Court in the case of *Income Tax Officer v. M.K. Mohammed Kunhi*, in AIR 1969 SC 430, the Division Bench observed in para 25 of the judgment, at page 381 of the Report as under:---

"A Civil Court, no doubt, can grant relief of declaration and injunction, including interim injunction, but for grant of such reliefs to the aggrieved flat owners, the Civil Court would be required to first decide disputed facts contemplated by section 7 of the Act, which are jurisdictional facts to be determined by the Housing Commissioner for exercising his jurisdiction. There would thus be two forums functioning in the same area resolving similar disputes."

After having answered the reference thus, the Division Bench directed that the matters be placed before the teamed Single Judge for decision.

12. Pursuant to the above Division Bench decision, the matters were placed before R.A. Jahagirdar, J., and the said decision of the learned Single Judge in *Kalpita Enclave Co-operative Housing Society Ltd.*'s case is the one which is reported in 88, Bombay Law Reporter, page 100. Jahagirdar, J., summed up the facts of the cases before him and observed that the plaintiffs in the three suits were purchasers of flats from the promoter who was required to abide strictly by the provisions contained in the 1963 Act and also to abide by the terms and conditions of the agreement under which the plaintiffs had agreed to purchase the flats. In all the cases before Jahagirdar, J., possession was delivered to the different plaintiffs and the promoter had started some construction more than a year after the possession of the flats was given to the plaintiffs. In all the cases before Jahagirdar, J., the proposed construction started by the promoter was contrary to the provisions of section 7(1) of the Act inasmuch as there was no consent obtained from the plaintiffs for starting the said construction and, at any rate, the said action of the promoter was contrary to the covenants contained in the agreements pursuant to which the plaintiffs had agreed to purchase the flats.

13. Jahagirdar, J., referred to the decision of V.A. Naik, J., rendered on 24th October, 1966, the decision of Apte. J., rendered on 29th June, 1976 and the decision of R.L. Aggarwal, J., rendered on February 9, 1983. After referring the Division Bench decision, Jahagirdar, J., observed, thus, at page 107 :

"This unauthorised construction, if it has already been made before the possession is given, will be completely covered by the provisions of section 7(2) of the Ownership Flats Act. If, however, the unauthorised construction is made or

is being made after the possession has been given, then, in my opinion, the provisions of section 7(2) will not be applicable because, as already mentioned above and it is worth repeating, section 7(2) will apply only to a situation where the possession of completed structure is given to the flat owners or to the body corporate, as the case may be. In all these cases, therefore, where after giving the possession, the promoter has ventured to, with or without the sanction of the Municipal Corporation, construct a new building or a new structure which is not warranted by the promises contained in the agreement with the flat purchasers, obviously there is a contravention of section 7(1) of the Ownership Flats Act. At the same time since it is unauthorised construction which is not covered by the provisions of section 7(2), the authority u/s 7(2) will naturally not have jurisdiction to entertain any complaint from the flat owners in respect of the same. A contravention of section 7(1) of the Ownership Flats Act gives rise to a cause of action to the plaintiffs" in each of these cases and since this cause of action is not within, the Jurisdiction, let alone the exclusive jurisdiction of the authority mentioned u/s 7(2), the plaintiffs" remedy is only in the Civil Court. The contravention of section 7(1) of the Ownership Flats Act gives a cause of action because any construction carried on by the promoter which is not in accordance with the plans and specifications of the building on the basis of which the flat owners agreed to purchase the flats will be an unauthorised construction. A negative obligation placed upon the promoter by section 7, if broken, must necessarily give rise to a civil cause of action, though it has not been a penal offence under the provisions of this Act I do not see how when such a cause of action arises, the Civil Court can be said to have no Jurisdiction to bear and decide the same. It is only when the defect in the building or material of a flat or a building of which possession is given or when possession of a structure is given which is found to be unauthorised, that the question of initiating a process for the purpose of rectification of the defect or of obtaining the compensation as outlined in section 7(2) can be started and that also in respect of the properties of which possession has been given. It is clear, therefore, that when the promoter is proceeding to make alterations or additional structures which are in contravention of section 7(1), he is liable to be proceeded against in a Civil Court which alone has got jurisdiction."

14. Jahagirdar, J., thereafter referred to the arguments advanced on behalf of the promoters at pages 107 and 108 of the Report and rejected the said arguments at page 108. The argument that alternate machinery provided by section 7(2) of the Act was not satisfactory or that at the particular moment the forum was not available to the person aggrieved within the meaning of section 7(2) of the Act was also considered by Jahagirdar, J. In the end, Jahagirdar, J., summarised his conclusions as under:

(1) Section 7 of the Ownership Flats Act, imposes an obligation on the promoter to construct the buildings and otherwise develop the property strictly in accordance with the agreements entered into with the flat purchasers and the plans and specifications upon the basis of which the agreements are entered into.

(2) The said provision, therefore, also bestows a corresponding right upon the flat purchaser to compel the discharge of this obligation on the part of the promoter.

(3) If a breach of this obligation is noticed in the flats or buildings possession of which has been given to the flat purchaser or to the body corporate representing the flat purchasers, then that breach can be remedied only in the manner provided by sub-section (2) of section 7.

(4) If, however, the breach of the obligation or the contravention of section 7(1) is noticed or apprehended before the possession is given, action for its prevention can be brought in a Civil Court, section 7(2) operates only after the possession is given, apprehended contravention is not covered by that provision.

(5) Since section 7(2) applies to completed structures, any act towards further contravention even after the possession is given can be prevented by filing a suit in the Civil Court.

(6) The contravention contemplated in section 7(1) or in section 7(2) which includes alteration in the structure or the construction of additional structure is not confined to the construction of the buildings only; this contravention may extend to the construction of the additional structure not in the original plans and specifications as approved by the local authority. Thus if the original plans and specifications on the basis of which the persons were persuaded to purchase the flats disclosed that certain areas will be kept open, it would be a clear contravention of the agreements as well as of law if the promoter proceeds to construct additional structures on those open spaces even with the sanction of the Municipal Corporation .

(7) If, however, the property is conveyed to the flat purchasers or to the body corporate representing them, then naturally the promoter cannot and will not meddle with the property because such an act on his part will amount to an act of trespass making him liable for both civil and criminal action."

15. In view of the above, in my view it is not possible to accept any of the contentions raised by Shri Abhyankar I am in respectful agreement with the views expressed by Jahagirdar, J., which have been summarised above and it is not necessary for me to repeat the said discussion over again. In view of the conclusions summarised by Jahagirdar, J., therefore, the first contention of Shri Abhyankar that it is the Housing Commissioner who alone has exclusive Jurisdiction, must be rejected.

16. Similarly, the second contention that the ouster of Jurisdiction contemplated by sub-section (2) of section 7 operates also during construction and after the construction irrespective of the fact whether the possession was given to the flat owners or not must also be rejected.

17. The third contention of Shri Abhyankar that the ouster of jurisdiction would also take effect whether the additional construction is complete or not is also



liable to be rejected. Once it is held that the attempt of the promoter in trying to put up a terrace flat amounts to making any other alteration in the structure of the building or construct any additional structure without the previous consent of all the persons who have agreed to take the flats as contemplated by Clause (ii) of sub-section (1) of section 7 of the said 1963 Act, it must follow that the Civil Court alone has Jurisdiction. As summarised in proposition No. 4 by Jahagirdar, J., the breach of the obligation or contravention of section 7(1), if it is noticed or apprehended before possession is given, action for its prevention can be brought in a Civil Court. Section 7(2) operates only after possession is given; apprehended contravention is not governed by section 7(2). Similarly, assumed up in proposition No. 6 by Jahagirdar, J., the contravention contemplated in section 7(1) or in section 7(2) which includes alteration in the structure or the construction of additional structure is not confined to the construction of the buildings only. This contravention may extend to the construction of any additional structure not in original plans and specifications as approved by the local authority. As far as the present case is concerned, what the appellant proposes to do is to put up an additional flat on the terrace as sanctioned by the Planning authority pursuant to his acquiring additional F.S.I. in the year 1977. In my view, the dispute clearly falls within the mischief of Clause (ii) of sub section (1) of section 7 of the Act. It must be pointed out that when the suit was filed in the year 1978, section 7 stood, as has been reproduced above. As far as section 7(1 )(ii) of the Act is concerned, there is an amendment by virtue of Maharashtra Act No. 36 of 1986, and the provision now reads as under:---

"Section 7(I)(ii) any other alterations or additions in the structure of the building without the previous consent of all the persons who have agreed to take the flats in such buildings".

In my view, the change in the phraseology of Clause (ii) of sub-section (1) of section 7, as amended by Maharashtra Act No. 36 of 1986 would not make any difference in the facts of the present case where the question involved is whether the appellant promoter can be permitted to put up an additional floor on the terrace.

18. Shri Abhyankar's last contention is based on section 7-A which has been inserted by Maharashtra Act No. 36 of 1986. Section 7-A reads as under:---

"7-A. For the removal of doubt, it is hereby declared that Clause (ii) of sub-section (1) of section 7 having been retrospectively substituted by Clause (a) of section 6 of the Maharashtra Ownership Flats (Regulation of the promotion of construction, sale, management and transfer) (Amendment) Act, 1986 (hereinafter in this section referred to as "the Amendment Act"), it shall be deemed to be effective as if the said Clause (ii) as so substituted had been in force at all material times, and the expression "or construct any additional structures" in Clause (ii) of sub-section (1) of section 7 as it existed before the commencement of the Amendment Act and the expressions "constructed and completed in accordance with the plans and specifications aforesaid" and "any

unauthorised change in the construction" in sub-section (2) of section 7 shall, notwithstanding anything contained in this Act or in any agreement, or in any judgment, decree or order of any Court, be deemed never to apply or to have applied in respect of the constructions of any other additional buildings or structures constructed or to be constructed under a scheme or project of development in the layout after obtaining the approval of a local authority in accordance with the building rules or building bye-laws or Development Control Rules made under any law for the time being in force"

According to the learned Counsel, the insertion of section 7-A was to get over the difficulty created by the Judgment of Jahagirdar, J., in the case of Kalpita Enclave Co-operative Housing Society Ltd. v. Messrs Kiran Builders Pvt Ltd., reported in 88 Bom LR100 referred to above. However, the Statement of Objects and Reasons of the Amending Act No 36 of 1986 reads as under:

"The prohibition of making additions and alterations under this provision is in relation to a building wherein the purchasers of the flats have taken or to take flats. It was never intended that this provision should operate even in respect of construction of additional buildings according to a scheme or project of development of total layout. In Kalpita Enclave Co-operative Housing Society Ltd. v. Kiran Builders Private Ltd 1986 M.L.J. 110, the High Court of Bombay has held that the contravention contemplated in section 7(1) or in section 7(2) which includes alterations in the structure or construction of additional structures, is not confined to the construction of the buildings only; and this contravention may extend to the construction of any additional structure not in the original plans and specifications as approved by the local authority. Such an interpretation of these provisions would result into the flat purchasers in one building objecting to the additions and alterations being made in any other buildings, although such alterations and additions are consented to by the persons who have taken or who are to take flats in such other buildings or even if they are permissible under the building rules or building bye-laws or Development Control Rules and are approved by the local authority. This would further result into retarding the growth of construction of buildings and increasing the housing stock. If the total layout permits construction of more buildings in accordance with the building rules or building bye-laws or the Development Control Rules, made under any law for the time being in force, there should be no impediment in construction of the additional buildings. While approving any proposals for construction of additional buildings in the layout the local authority will, no doubt, see to it that the open spaces, etc., to be provided under the building rule or building bye-laws or Development Control Rules are, in fact provided. It is, therefore, proposed to amend section 7(I)(ii) suitably and also to make a suitable provision for removal of doubt in respect thereof."

In view of the above, in my view, the amendment would not make any difference to the point involved in the present appeal. If in a given case, the layout permits the construction of more building or buildings in accordance with the Building

Rules and Bye-Laws, it is possible to say that there should be no impediment to the construction of additional building or buildings. While, therefore, in a given case, if on a plot of land, buildings "A" & "B" existed, which have been occupied by the flat owners and if a third building "C" is being put up the question would be as to whether despite the third building "C" being permissible in accordance with the Building Rules and Bye-Laws, can the flat owners in Buildings A & B raise an objection. I need not go into this question in this case since I am only concerned with the question of a terrace flat being constructed on an existing structure. In my view, in the facts of this case, the insertion of section 7-A by the Amending Act 36 of 1986 would not make any difference to the ratio of the judgment of Jahagirdar, J. If, therefore, the plaintiffs have objected to the terrace flat being constructed, in my view the Civil Court would have jurisdiction to entertain the suit of the plaintiffs and the plaintiffs would be entitled for an injunction prayed for.

19. The conclusions reached above would also be in tune with the Preamble of the Ownership Flats Act and the object of protecting the interests of the flat owners who are normally unorganised. It is for the protection of this class of persons that the Ownership Flats Act has been passed. Keeping this in mind, therefore, all the four contentions raised by Shri Abhyankar must fail.

20. Accordingly, the appeal fails and the same is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.