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Bombay High Court Rules Maintenance Charges must be Proportional to Apartment Size

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Introduction

The Bombay High Court recently made a significant ruling for condominiums registered under the **Maharashtra Apartment Ownership Act, 1970** ("Apartment Act") under **Sachin Malpani and Ors. vs. Nilam Patil and Ors**.[1] The court has established that maintenance charges must be levied in proportion to the undivided share of each apartment owner, as mandated by the Act, and cannot be changed by a resolution passed by the flat owners general body. This decision, which arose from a dispute in the "Treasure Park" condominium, emphasizes the legal supremacy of the Apartment Act's provisions over internal rules or resolutions. This case has far-reaching implications, providing clarity on a contentious issue for apartment owners and associations across the state.

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Background of the Case

The writ petition filed by Sachin Malpani and others challenges an order from the Co-operative Court, Pune, which dismissed their appeal against a directive from the Deputy Registrar of Co-operative Societies. The dispute concerns the method for calculating maintenance charges at the "Treasure Park" condominium, a property with 356 apartments registered under the Maharashtra Apartment Ownership Act, 1970. Previously, maintenance was charged equally to all apartment owners, regardless of their flat size, with only the sinking fund varying based on the undivided share. In 2020, some apartment owners filed a complaint, leading the Deputy Registrar to order the condominium to levy maintenance charges proportional to each owner's undivided share. The petitioners, who own larger apartments, argue that this order is without jurisdiction, as the power to adjudicate such matters lies with the "Registrar" under the Act. They also contend that maintenance for common amenities should be paid equally by all residents. Conversely, the respondents assert that the Deputy Registrar had the necessary authority through a government notification. They also point to the condominium's Deed of Declaration and voting rights, arguing that maintenance should be proportional to apartment size and undivided interest in common areas.

Legal Reasoning

The legal reasoning of the High Court was built on a careful examination of statutory provisions and the condominium's own governing documents.

1. Jurisdiction of the Deputy Registrar: The petitioners primary argument was that the Deputy Registrar of Co-operative Societies lacked the statutory authority to issue the initial order. They contended that under Section 16A of the Apartment Act, only the "Registrar" is empowered to adjudicate such disputes. The Court, however, rejected this argument. It relied on government notifications issued in 2012 and 2021, which explicitly conferred the powers of the Registrar under the Maharashtra Co-operative Societies Act, 1960 (MCS Act) upon the Deputy Registrar. The Court reasoned that since the Apartment Act links the definition of "Registrar" to the MCS Act, and the government had validly delegated these powers, the Deputy Registrar's actions were well within their statutory authority.

2. Interpretation of Maintenance Charges under Section 10: The petitioners argued that since common amenities like the gym, swimming pool, and gardens are used equally by all residents, maintenance charges should also be levied equally. The Court, however, found this argument to be in direct contravention of **Section 10 of the Apartment Act**. This section unequivocally states that common expenses must be charged to apartment owners "according to the percentage of the undivided interest in the common areas and facilities." The Court held that this statutory provision is mandatory and cannot be overridden by a resolution of the condominium's managing body or by a long-standing but legally incorrect practice.

Judicial Reasoning

The Bombay High Court's judicial reasoning predicated on a comprehensive analysis of statutory law and the specific legal documents governing the condominium. The Court first addressed the procedural challenge to the Deputy Registrar's jurisdiction. It validated the Registrar's authority by confirming that government notifications, issued under the Maharashtra Co-operative Societies Act, 1960, had legally delegated the powers to the Deputy Registrar. This established that the initial order was not ultra vires but was made by a competent authority.

The core of the Court's reasoning, however, revolved around the interpretation and application of **Section 10 of the Maharashtra Apartment Ownership Act, 1970**. The Court definitively ruled that this section's mandate, that common expenses must be shared "according to the percentage of the undivided interest in the common areas and facilities" is mandatory and non-negotiable. The Court held that this statutory requirement overrides any informal understanding, past practice, or even a resolution passed by the condominium's general body.

Furthermore, the Court carefully examined the condominium's Deed of Declaration, a registered and legally binding document. It found that the Deed's provisions were in perfect harmony with the Apartment Act. Specifically, it noted that the Deed itself linked an owner's share of expenses to their contribution to the Maintenance Corpus Fund, which was calculated based on the size of their apartment. Thus, the Court's decision was not merely an interpretation of a single statute but a harmonious reading of the law and the specific legal instrument created for the condominium, which both pointed to the same conclusion, maintenance charges must be proportional, not equal. The Court found no legal basis for the petitioners' claim and upheld the orders of the lower authorities.

Conclusion

In Sachin Malpani and Ors. v. Nilam Patil and Ors., the Bombay High Court delivered a decisive ruling that provides legal clarity for condominium residents. The court's judgment firmly establishes that **maintenance charges must be proportional to an owner's undivided interest in the common areas and facilities**, as mandated by the Maharashtra Apartment Ownership Act, 1970.

The Court held that the reasons provided by the Appellate Court in its May 13, 2022, judgment were "cogent and well- reasoned." This judicial reasoning, which upheld the Deputy Registrar's order, was based on a correct application of the relevant statutory provisions and the **Deed of Declaration**.

The court noted that the petitioners had previously benefited from an "inequality and non-application of the statutory provisions," and therefore could not obstruct the lawful implementation of the Act. The judgment emphasized that accepting the petitioners' argument would render the registered Deed of Declaration a nullity, highlighting the clear distinction between the Maharashtra Ownership Flats Act and the Maharashtra Apartment Ownership Act concerning the levy of maintenance charges. The ruling ensures a fair and legally sound method of calculating maintenance fees, aligning an owner's financial responsibility directly with their share of the property.

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[1] WRIT PETITION NO. 9179 OF 2022

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