

Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6211 OF 2021

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St. Anthony Homesh
Cooperative Society Ltd.

... Petitioner

V/s.

Nitin K. Gandhi & Ors.

... Respondents

Mr. Denzil Dimello, for petitioner.

Mr. Aseem Naphade a/w A. P. Singh, Aarif Dhariwala
i/b Law Servo for respondent Nos. 1 and 2.

Ms. Aloka A. Nadkarni, AGP for the State – respondent
Nos.3 to 5.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 7, 2025

ORAL JUDGMENT:

1. Rule.

2. Rule made returnable forthwith.

3. The petitioner is a cooperative housing society registered under the Maharashtra Cooperative Societies Act, 1960. The petitioner has filed this writ petition challenging the judgment and order of the Revisional Authority. The Revisional Authority dismissed the revision filed by the petitioner against the order granting membership to respondent numbers 1 and 2. According to the petitioner, the membership has been granted in breach of the society's bye-laws. The bye-laws restrict membership only to persons belonging to the Roman Catholic community.

4. The relevant facts are as follows. The petitioner society is a registered cooperative housing society. Respondent numbers 1 and 2 claim membership based on an assignment lease deed dated 6 August 1999. The deed contains a clause which states that only persons belonging to the Roman Catholic community can become members of the petitioner society. Respondent numbers 1 and 2 applied for membership. The society rejected their application on the ground that they do not belong to the Roman Catholic community. Respondent numbers 1 and 2 challenged the rejection and ultimately the matter reached this Court. This Court remanded the matter to the Appellate Authority. The Appellate Authority, by its order dated 31 December 2019, allowed the appeal and directed that respondent numbers 1 and 2 be admitted as members. The petitioner society filed Revision Application No. 24 of 2020 challenging that order. The Revisional Authority dismissed the revision. Hence, the petitioner has approached this Court by way of the present writ petition.

5. The learned advocate for the petitioner pointed out bye-law No. 7(a). He submitted that the bye-law restrict membership only to Roman Catholics. He argued that respondent numbers 1 and 2 do not fulfill this eligibility condition. According to him, the authorities under the Act cannot ignore the bye-law of the society and must give effect to them.

6. In support of these submissions, the learned advocate relied upon the judgment of the Supreme Court in *Zoroastrian Cooperative Housing Society Ltd and another versus District Registrar, Cooperative Societies (Urban) and others*, reported in

(2005) 5 SCC 632.

7. The learned advocate for respondent numbers 1 and 2 opposed the petition. He submitted that the petitioner society has lost the right to deny membership to non-Catholics by its past conduct. He pointed out that during the last thirty years, the petitioner society admitted several members who were not eligible under the bye-law. According to him, the petitioner society has followed a consistent practice of admitting non-Catholics. Therefore, the society cannot now take a different stand only in the case of respondent numbers 1 and 2. He submitted that the petitioner is barred from raising such a plea because of the principle of estoppel by conduct. He relied on the judgment of the Supreme Court in *Delhi Dayalbagh Cooperative House Building Society Limited versus Registrar, Cooperative Societies and others*, reported in (2019) 3 SCC 745.

8. I have heard the advocates for both sides. I have examined the record with their assistance. Bye law No. 7(a) is clear. It restricts membership only to persons belonging to the Roman Catholic community. The bye law reads as follows.

“7(a). All persons who have signed the application for registration are original members. Other members shall be elected by the Committee. All members shall be Roman Catholics. Every person shall pay Re.1 on applying for admission. He shall receive a copy of the bye laws. If the application is refused, the entrance fee shall be returned.”

9. This bye-law leaves no scope for doubt. The society has decided that only Roman Catholic persons can be admitted as members. When a bye-law is unambiguous, authorities under the Act must give effect to it. They cannot read into it something which is not written.

10. It is an admitted position that respondent numbers 1 and 2 are not members of the Roman Catholic community. This fact is not challenged by them at any stage.

11. The Supreme Court, in the case of *Zoroastrian Cooperative Housing Society Ltd.*, examined a similar bye-law that restricted membership to persons belonging to a particular community. The Supreme Court held that a cooperative society, being a voluntary association, has the right to decide who can become its member. The Court further held that such a condition does not violate the Cooperative Societies Act or the rules framed under it. The Court reasoned that the law permits a society to frame its bye-laws. Once those bye-laws are approved as per the law, they become binding on all parties, including the authorities acting under the statute.

12. Therefore, where a society has lawfully adopted a bye-law restricting membership to persons of a particular community, the authorities under the Act cannot compel the society to admit a person who does not fulfil the eligibility condition. This principle directly applies here. The restriction in bye-law No.7(a) is valid. It is supported by the decision of the Supreme Court. Only those who fulfil that eligibility criteria can claim membership. Respondent numbers 1 and 2 do not satisfy that requirement.

13. The Supreme Court noted that bye-laws of a society assume a status similar to the Articles of Association of a company. When the highest court of the country has held that such a bye-law is valid and not contrary to the governing statute, authorities under the Act must exercise their discretion accordingly. They cannot compel the society to admit a person who does not satisfy the eligibility condition laid down in the bye-laws.

14. The respondents rely on the judgment in *Delhi Dayalbagh*. In that case, the Supreme Court was dealing with a different situation. In that society there was no bye-law restricting membership to any particular community. In the present case, there is a specific restriction in clause 7(a). Therefore, *Delhi Dayalbagh* does not apply to the facts of the present case.

15. Respondent numbers 1 and 2 do not belong to the Roman Catholic community. Their own assignment deed contains a clause which makes them aware that membership of the petitioner society is restricted only to Roman Catholics. Despite this, they took the assignment with full knowledge of the risk. When parties knowingly enter into such a transaction, they accept the consequences.

16. Authorities under the Act could not have issued directions to the society to admit respondent numbers 1 and 2 as members in the face of an express restriction in bye-law No. 7(a). The impugned orders disregard the binding force of the bye-law. Such orders cannot stand in law.

17. The impugned order is therefore set aside.

18. Rule is made absolute in terms of prayer clause (b).
19. The writ petition stands disposed of in above terms.
20. There shall be no order as to costs.

(AMIT BORKAR, J.)