

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.15071 OF 2022

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City Estate Developers Limited ... Petitioner

V/s.

The Minister, Cooperation, Marketing,
and Textile Department & Ors. ... Respondents

Mr. Bhavin Gada with Ms. Shruti Shirke i/by Dhruv
Liladhar & Co., for the petitioner.

Mrs. V.R. Raje, AGP for respondent No.1-State.

Mr. Dileep Satale with Ms. Saaniya Arfan Sait, Ms.
Padma C., Vedastu Rane i/by Mr. Arya Sapre for
respondent Nos.2 to 4 & 8.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 04, 2025

P.C.:

1. The petitioner has filed this writ petition to challenge the order dated 22 June 2022 passed in Revision Application Nos. 176 to 179 of 2022. By the said order, the Revisional Authority allowed the revision applications filed by respondent Nos. 2 to 4 and set aside the earlier order dated 4 March 2022, which had confirmed the cancellation of registration of the cooperative housing society.

2. The facts stated by the petitioner are as follows. The petitioner is the owner and developer of land bearing CTS Nos. 636 and 636/1 to 6, admeasuring about 4790 square metres. On this land, the petitioner developed a building known as “Devdarshan Cooperative Housing Society” consisting of two

wings, each having ground plus fifteen floors. The petitioner, as the developer, allotted flats in the said building to several purchasers. In the year 2012, the flat purchasers submitted an application to respondent No. 2 for registration of the housing society. On 2 January 2014, respondent No. 6 directed the registration of the society under Section 10 of the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 (MOFA). Accordingly, a registration certificate was issued on 3 January 2014.

3. Thereafter, the petitioner filed an application under Section 21A of the Maharashtra Cooperative Societies Act, 1960 (MCS Act) seeking de-registration of the said society before respondent No. 5. Respondent No. 5, by order dated 4 March 2022, allowed Application No. 2 of 2014 filed by the petitioner and cancelled the registration of respondent No. 8 society. Aggrieved by this order, the society preferred Revision Application No. 179 of 2022 and other connected revisions before respondent No. 1. The Revisional Authority, by order dated 22 June 2022, set aside the order dated 4 March 2022 and restored the registration certificate dated 3 January 2014. Hence, the petitioner has approached this Court.

4. Learned counsel for the petitioner, Mr. Gada, submitted that at the time when the flat purchasers applied for registration of the society, the construction of the building was not complete. He contended that the society falsely represented that 60% of the flat purchasers had signed the proposal for registration. He referred to the Government Circular dated 15 October 2021 and argued that as per the said circular, a completion certificate is a mandatory

document for registration of a tenant co-partnership housing society. He pointed out that such a certificate was not produced at the time of registration of the present society.

5. He also referred to the Government Circular dated 29 November 2010, which requires that at least 60% of the total flat purchasers must sign the registration proposal. He submitted that in this case, there are 108 flat purchasers, but only 56 had signed the application, which falls short of the mandatory 60% requirement. He relied upon the judgment of this Court in *Waghmay Mahila Machhimar Sahakari v. Commissioner of Fisheries & Ors.*, 2020 (1) Mh.L.J. 864, in support of his submission.

6. On the other hand, learned counsel for respondent Nos. 2 to 4 and 8, Mr. Satale, submitted that despite 101 persons having purchased flats in Wings A and B of the Devdarshan Cooperative Housing Society, the petitioner failed to take steps to register the society. Therefore, 75 flat purchasers, including four commercial unit holders, submitted a proposal to register the society under Section 10(1) of the MCS Act read with Rule 8 of the MOFA Rules. He contended that under Section 9 of the MCS Act, the minimum requirement for forming a cooperative housing society is 10 members, which was clearly satisfied in this case. Hence, the registration was lawful and proper.

7. He relied upon the judgments of this Court in *Aurum Avenue Co-operative Housing Society Ltd. and Another v. State of Maharashtra and Others*, 2025 SCC OnLine Bom 709, and

Rameshwar Cooperative Housing Society Ltd. and Others v. Divisional Joint Registrar and Others, 2025 SCC OnLine Bom 2017. He pointed out that this Court, while considering the earlier judgment in *Waghmay Mahila* (supra), has distinguished between two types of cases: (a) challenge to registration on the ground of non-compliance with statutory conditions, and (b) cases of fraud in obtaining registration, where Section 21A of the MCS Act can be invoked.

8. He submitted that more than ten purchasers had bought flats in 2006 and 2007, and as per Sections 6 and 9 of the MCS Act, the petitioner was under a statutory obligation to form a cooperative society. Since he failed to do so, the purchasers were entitled to file a proposal for registration. He therefore contended that the petitioner cannot claim to be an aggrieved person.

9. He further referred to the Government Circular dated 15 October 2011 issued under Section 79A of the MCS Act and submitted that while a completion certificate is required for tenant co-partnership societies, it is not an essential condition for registration of every housing society. Registration under Sections 6 and 9 of the MCS Act depends on the number of members, not on completion of construction. He submitted that the Revisional Authority rightly exercised its jurisdiction and passed the impugned order. Hence, no interference is warranted under Article 226 of the Constitution of India, and the writ petition deserves to be dismissed.

10. To examine the legality of the registration and subsequent de-registration proceedings, it is necessary to consider the scope and intent of Sections 6, 9 and 21A of the Maharashtra Cooperative Societies Act, 1960, prior to introduction Section 154B, since registration of society is of the year 2014. These provisions together define the process of registration, its conditions, and the limited power of de-registration vested in the Registrar in the year 2014.

11. Section 6 lays down the basic requirement for registration of a society. It states that a cooperative society, other than a federal society, must have at least ten members, each belonging to a different family, who are qualified to be members under the Act and who ordinarily reside in the area of operation of the proposed society. The legislative purpose of this provision is simple, it ensures that the society represents a genuine cooperative effort by a sufficient number of independent persons and not a private arrangement among a few individuals.

12. This section gives the Registrar discretion to fix a higher number of members for a particular class of societies, considering the nature of the society, its financial liability, and the development of the cooperative movement. The threshold of “ten members” is, therefore, the statutory minimum. Any administrative circular requiring a higher percentage of members, such as the 60% requirement in the Government circular, cannot override this statutory minimum.

13. Thus, for registration of a cooperative housing society, once ten or more qualified persons agree to come together and fulfill the conditions under the Act, the Registrar is empowered to register the society.

14. Section 9 provides the operative authority for registration. It authorizes the Registrar to register a society once he is satisfied that the proposal complies with the Act, the Rules, and any lawful policy directions issued by the State Government, and that the proposed by-laws are not inconsistent with the law. The Registrar must then complete the registration within two months from the date of receipt of the application.

15. This provision shows that the satisfaction of the Registrar is administrative in nature but must be based on compliance with statutory conditions. Once the Registrar is satisfied that the proposed members are eligible, the area of operation is defined, and the by-laws are in order, registration must follow. The law does not require the Registrar to examine the physical completion of the building in case of housing societies. The formation of a cooperative society is a matter of collective management, not dependent on construction status.

16. The proviso to Section 9 allows flexibility to the Registrar in framing norms and conditions for registration. However, such norms cannot contradict the main provision. Therefore, the Registrar cannot impose additional requirements such as a completion certificate when the statute itself does not make it a mandatory condition.

17. Section 21A confers a limited and exceptional power on the Registrar to de-register a society. The power can be exercised only when the registration was obtained by misrepresentation, or when the society's work is complete or its object has ceased to exist, or when it has been registered for a purpose no longer served.

18. The phrase "registered on misrepresentation" means deliberate concealment or false statement of material facts at the time of registration. It does not cover minor procedural lapses or differences of opinion. Fraud or misrepresentation must be proved by clear and convincing evidence. The Registrar must also give a fair opportunity of hearing to the chief promoter, committee, and members before passing any de-registration order.

19. The purpose of this section is to prevent fraudulent or redundant societies from remaining on record, not to allow promoters or builders to undo lawful registrations made by genuine purchasers. Where the society fulfills the statutory requirements and operates in furtherance of the objects for which it was formed, de-registration under Section 21A cannot be justified.

20. I have carefully considered the rival submissions and perused the material on record. The issue that arises for determination is whether the Revisional Authority acted within its jurisdiction and in accordance with law while setting aside the order dated 4 March 2022 and restoring the registration of the Devdarshan Cooperative Housing Society.

21. It is not in dispute that the petitioner is the owner and developer of the land on which the building stands, and that several flat purchasers had acquired their respective units long before the year 2014. It is also not in dispute that despite repeated requests, the petitioner did not take steps to form or register the cooperative housing society, as required under Section 10(1) of the Maharashtra Ownership Flats Act (MOFA). The obligation to form a society is a statutory duty cast on the promoter or builder. Failure to perform this duty gives rise to a right in the flat purchasers to form the society on their own. This legal position is well settled.

22. The record shows that more than ten flat purchasers had purchased flats in the building as early as 2006 and 2007. The proposal for registration of the society was signed by 75 members. Even if one accepts the petitioner's contention of 56 members, the fact remains that the statutory minimum required under Section 6 of the Maharashtra Cooperative Societies Act is ten members. Once this requirement is met, the registration cannot be said to be contrary to the Act. The question of 60% signatures, referred to in the circular dated 29 November 2010, is an administrative guideline. It cannot override the clear provision of the statute which fixes the minimum number of members. Administrative circulars must operate within the statute. They cannot curtail a right granted by law.

23. The petitioner's second ground is that there was no completion certificate at the time of registration. The circular dated 15 October 2021 relied upon by the petitioner applies to tenant co-partnership societies. The present society is a flat

purchasers' society. For such societies, the requirement of completion certificate is not a precondition for registration. The provisions of Sections 6 and 9 of the MCS Act are clear. The formation of a cooperative housing society depends upon the existence of members and their willingness to manage the property jointly, not upon the completion status of the building. Non-production of a completion certificate, therefore, cannot invalidate the registration.

24. The petitioner has invoked Section 21A of the MCS Act seeking de-registration of the society. That provision confers a limited power on the Registrar to cancel registration when the registration has been obtained by fraud, misrepresentation, or mistake. Every procedural irregularity or omission does not amount to fraud or misrepresentation. Fraud must be specific, deliberate, and established by cogent evidence. Mere assertion that some signatures were not genuine or that certain documents were not annexed at the time of registration is not sufficient. In the present case, the petitioner has not produced any reliable evidence showing that the society obtained registration by practicing fraud or making false representations.

25. The Revisional Authority examined the material and found that there were sufficient members to justify registration. It also found that the petitioner, despite being under statutory duty to form the society, failed to do so, thereby compelling the flat purchasers to take the initiative. The Revisional Authority has acted within the framework of law. Its finding is supported by the record and is consistent with the provisions of the MCS Act and

MOFA. No jurisdictional error or perversity is shown.

26. The contention that the petitioner is an aggrieved person is also without merit. A builder or promoter who fails to form a society cannot claim prejudice when the purchasers themselves form it. The right to form a society vests in the flat purchasers. Once the promoter has transferred the flats and consideration is received, his role as a developer comes to an end except to the extent of statutory obligations. The petitioner cannot use the machinery of Section 21A to undo what he was legally bound to do.

27. This Court, in *Aurum Avenue Co-operative Housing Society Ltd. v. State of Maharashtra* and *Rameshwar Co-operative Housing Society Ltd.*, has clearly held that Section 21A is to be invoked only in cases of fraud or misrepresentation. The Revisional Authority was right in applying that principle. The decision in *Waghmay Mahila Machhimar Sahakari* does not help the petitioner because that case dealt with the failure to satisfy statutory preconditions at the initial stage, not with a situation where a promoter failed in his own duty to register the society.

28. Upon consideration of the entire record, this Court is satisfied that the Revisional Authority's order dated 22 June 2022 is lawful. It is supported by reasons, consistent with statutory provisions, and does not call for interference in the writ jurisdiction. The petitioner has failed to establish any ground of illegality, irregularity, or perversity warranting interference under Article 226 of the Constitution of India.

29. Hence, I pass following order :

- (i) The writ petition is dismissed.
- (ii) The order dated 22 June 2022 passed by the Revisional Authority confirming the registration of Devdarshan Cooperative Housing Society is upheld.
- (iii) There shall be no order as to costs.

(AMIT BORKAR, J.)