

Shabnoor

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

WRIT PETITION NO.10681 OF 2015

Kohinoor Cooperative Housing
Society Ltd. Through
Secretary / Chairman

... Petitioner

V/s.

The Deputy Registrar,
Cooperative Societies & Ors.

... Respondents

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**WITH
INTERIM APPLICATION (ST) NO.8852 OF 2023
WITH
INTERIM APPLICATION NO.668 OF 2021
IN
WRIT PETITION NO.10681 OF 2015**

Deveshkumar Jamnaprasad Vyas

... Applicant

In the matter between

Kohinoor Cooperative Housing
Society Ltd. Through
Secretary / Chairman

... Petitioner

V/s.

The Deputy Registrar,
Cooperative Societies & Ors.

... Respondents

**WITH
WRIT PETITION NO.10682 OF 2015**

Kohinoor Cooperative Housing
Society Ltd. Through
Secretary / Chairman

... Petitioner

V/s.

The Deputy Registrar,
Cooperative Societies & Ors.

... Respondents

**WITH
INTERIM APPLICATION NO.670 OF 2021**

Deveshkumar Jamnaprasad Vyas	... Applicant
In the matter between	
Kohinoor Cooperative Housing Society Ltd. Through Secretary / Chairman	... Petitioner
V/s.	
The Deputy Registrar, Cooperative Societies & Ors.	... Respondents

**WITH
WRIT PETITION NO.10684 OF 2015**

Kohinoor Cooperative Housing Society Ltd. Through Secretary / Chairman	... Petitioner
V/s.	
The Deputy Registrar, Cooperative Societies & Ors.	... Respondents

**WITH
INTERIM APPLICATION NO.672 OF 2021**

Deveshkumar Jamnaprasad Vyas	... Applicant
In the matter between	
Kohinoor Cooperative Housing Society Ltd. Through Secretary / Chairman	... Petitioner
V/s.	
The Deputy Registrar, Cooperative Societies & Ors.	... Respondents

**WITH
WRIT PETITION NO.10685 OF 2015**

Kohinoor Cooperative Housing Society Ltd. Through Secretary / Chairman	... Petitioner
V/s.	
The Deputy Registrar, Cooperative Societies & Ors.	... Respondents

**WITH
INTERIM APPLICATION NO.673 OF 2021**

Deveshkumar Jamnaprasad Vyas	... Applicant
In the matter between	
Kohinoor Cooperative Housing Society Ltd. Through Secretary / Chairman	... Petitioner
V/s.	
The Deputy Registrar, Cooperative Societies & Ors.	... Respondents

**WITH
WRIT PETITION NO.10687 OF 2015**

Kohinoor Cooperative Housing Society Ltd. Through Secretary / Chairman	... Petitioner
V/s.	
The Deputy Registrar, Cooperative Societies & Ors.	... Respondents

**WITH
INTERIM APPLICATION NO.679 OF 2021**

Deveshkumar Jamnaprasad Vyas	... Applicant
In the matter between	
Kohinoor Cooperative Housing Society Ltd. Through Secretary / Chairman	... Petitioner
V/s.	
The Deputy Registrar, Cooperative Societies & Ors.	... Respondents

**WITH
WRIT PETITION NO.10686 OF 2015**

Kohinoor Cooperative Housing Society Ltd. Through	... Petitioner
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Secretary / Chairman

V/s.

The Deputy Registrar,

Cooperative Societies & Ors.

... Respondents

**WITH
CIVIL APPLICATION (ST) NO.19966 OF 2019
IN
WRIT PETITION NO.10686 OF 2015**

Bhawana Ramkrishna Naik & Anr.

... Applicants

In the matter between

Kohinoor Cooperative Housing

Society Ltd. Through

Secretary / Chairman

... Petitioner

V/s.

The Deputy Registrar,

Cooperative Societies & Ors.

... Respondents

**WITH
INTERIM APPLICATION NO.678 OF 2021**

Deveshkumar Jamnaprasad Vyas

... Applicant

In the matter between

Kohinoor Cooperative Housing

Society Ltd. Through

Secretary / Chairman

... Petitioner

V/s.

The Deputy Registrar,

Cooperative Societies & Ors.

... Respondents

Mr. Ashutosh R. Gole, for the Petitioner.

Ms. Mamta Sadh a/w Mr. Ajay Panicker, Binu Karnaithe
i/b Ajay Law Associates, for Respondent No.3.

Mr. P. V. Nelson Rajan, AGP, for the State – Respondent
Nos.1 & 2 in WP/10681/2015.

Ms. V. R. Raje, AGP, for the State – Respondent Nos.1 &
2 in WP/10682/2015.

Ms. S. R. Crasto, AGP, for the State – Respondent Nos.1

& 2 in WP/10684/2015.

Ms. M. S. Shrivastava, AGP, for the State – Respondent Nos.1 & 2 in WP/10685/2015.

Ms. S. D. Chipade, AGP, for the State – Respondent Nos.1 & 2 in WP/10687/2015.

Ms. M. P. Thakur, AGP, for the State – Respondent Nos.1 & 2 in WP/10686/2015.

Mr. Harshavardhan G. Khambete, for the Applicant in CAW(L)/1966/2019.

CORAM : AMIT BORKAR, J.

DATED : JANUARY 28, 2026

PC.:

1. Since all these writ petitions raise identical issues of law and fact, they are being decided together by this common judgment.
2. The petitioner society has challenged the orders passed by the authorities under the Maharashtra Cooperative Societies Act, 1960 exercising powers under Section 23(2), by which the petitioner society has been directed to admit respondent No. 3 as a member.
3. The relevant facts are as follows. The dispute concerns Shop Nos. A1 to A4 and B3 and B4 situated in the petitioner society, which comprises two wings known as Wing A and Wing B. The father of respondent No. 3 was the promoter of the society. Respondent No. 3 contends that as the members of the society were unable to pay the promoter towards the cost of construction undertaken by his father, the shops in question were allotted to his father pursuant to a Managing Committee Resolution dated 9

March 1974 and a General Body Resolution dated 14 May 1980. The petitioner society treated the father of respondent No. 3 as a member and issued one share certificate in his name having regard to the cooperative principle of one person one membership. During his lifetime, the father of respondent No. 3 executed a nomination in favour of respondent No. 3 in respect of the said shops. The nomination was submitted to and accepted by the petitioner society.

4. On 24 December 2009, the father of respondent No. 3, Jamna Prasad, died. On 9 September 2010, respondent No. 3 applied for membership in respect of Shop Nos. A1 to A4 and B3 and B4. By letter dated 7 January 2011, the petitioner society rejected the application on the ground that no share certificate had been issued in respect of Shop Nos. A1 to A4 and that the only share certificate issued pertained to Shop No. B3.

5. Respondent No. 3 thereafter preferred an appeal under Section 23(2) of the MCS Act. By order dated 6 February 2012, the Appellate Authority directed the petitioner society to admit respondent No. 3 as a member and to issue a share certificate in his name. The petitioner society filed Revision Applications Nos. 34 to 39 of 2012 which were dismissed by the Revisional Authority by judgment dated 30 July 2014. Hence the present petition.

6. Mr. Gole, learned Advocate for the petitioner, submitted that respondent No. 3 is not entitled to membership as he does not hold any document of title. He argued that neither the Managing Committee Resolution nor the General Body Resolution can

constitute a document of title. He submitted that Rule 19(iii) read with Bye-law No. 19(iv) requires production of a certified copy of a registered agreement with the promoter or with the Registrar under Section 4 of the Maharashtra Ownership Flats Act. In the absence of a registered document, membership cannot be granted. He further submitted that at best respondent No. 3 could be treated as a nominal member in respect of the shops in Wing B.

7. He further submitted that respondent No. 3 relies upon a bogus completion certificate dated 2 April 1975 and an occupation certificate dated 16 July 1995 to contend that the shops in Wing A were regularised. Upon learning of this irregularity, the Thane Municipal Corporation issued a notice under Section 260 on 5 October 2017. The Executive Engineer thereafter submitted reports dated 24 August 2018 and 16 November 2018 stating that Wing A did not have permission for shops on the ground floor. Although respondent No. 3 has filed a suit and Writ Petition No. 16266 of 2025 challenging the municipal action, no interim relief has been granted. In spite of this, respondent No. 3 persists in seeking membership.

8. In reply, Ms. Mamta Sadh, learned Advocate for respondent No. 3, submitted that the record, including the application filed by the petitioner society under Section 101 of the MCS Act, maintenance bills, and the letter dated 21 January 2021 addressed by respondent No. 3 to the Chief Promoter seeking clarification as to issuance of a single share certificate for multiple premises, clearly establishes the membership of respondent No. 3's father. She submitted that the Chief Promoter clarified that a single share

certificate was issued because the father of respondent No. 3 had only one vote.

9. She further relied on the order dated 3 May 2007 passed by the Deputy Registrar in recovery proceedings under Section 101 of the MCS Act wherein it was recorded that the father of respondent No. 3 was a member of the petitioner society. She also relied upon the nomination form dated 16 April 2009 submitted by the father of respondent No. 3 to the petitioner society by registered post together with the acknowledgment.

10. She further relied upon a release deed executed by the other legal heirs of the deceased father relinquishing their rights in favour of respondent No. 3. She submitted that the father of respondent No. 3 was validly enrolled as a member pursuant to the Managing Committee and General Body Resolutions. Therefore, the application of respondent No. 3 ought to be treated as an application for transmission of membership. She submitted that in proceedings under Section 23(2) of the MCS Act, the inquiry is confined to whether the deceased was a member and whether there is consent among the legal representatives regarding enrollment of one person in his place. The issue of title cannot be examined in such proceedings. She therefore submitted that the petition merits dismissal.

Reasoning and analysis:

11. Section 23(2) confines the appellate jurisdiction to the correctness of the society's decision on membership. The enquiry in transmission proceedings is limited. The court or the Appellate

Authority must determine whether the deceased was a member and whether his legal representatives or nominee are entitled to transmission. The authority does not become a forum to try title disputes which require fuller evidence and different legal processes. Where the record shows membership, transmission may be ordered subject to manifest legal bar or fraud. The Appellate Authority thus acted within its jurisdiction by testing membership and succession rather than holding an inquiry about marketable title to the premises.

12. The material on record supports the conclusion that the father of respondent No. 3 was treated as a member. The Managing Committee and General Body resolutions recorded allotment. The society issued a share certificate to him and the Deputy Registrar recorded his membership in recovery proceedings dated 3 May 2007. Maintenance bills, the society's own application under Section 101, and correspondence including the Chief Promoter's explanation that a single share certificate was issued because the promoter had only one vote, all point to consistent recognition of membership. A nomination submitted by registered post with acknowledgment and a release deed executed by other legal heirs constitute further probative evidence of succession and consent. Taken together these documents satisfy the limited factual threshold for transmission under Section 23(2).

13. On the contention that the society issued a share certificate only for Shop No. B3 and not for A1 to A4, it appears that it is the society's practice of issuing a single share certificate to a person who held multiple premises and who had only one vote accords

with cooperative principle of one person one membership. Documentary irregularity in the form or numbering of share certificates does not, standing alone, negate membership where the society has consistently treated the person as member and where the books and dealings reflect that position. The Chief Promoter's clarification that a single certificate was issued because the promoter had only one vote is direct evidence to rebut the society's later contention. The Appellate Authority reasonably accepted that evidence.

14. On the requirement of a registered agreement under MOFA and Rule 19(iii) read with Bye-law 19(iv). The Rules and Bye-laws prescribe documentary proof for enrolment to prevent false claims. That requirement is material where a claimant seeks fresh admission on the basis of a contract with the promoter. In transmission proceedings the question is different. The claimant asks for continuity of membership from a deceased who was already treated as a member. Where the deceased has been treated as a member and the society's records and conduct buttress that treatment, strict insistence on a registered MOFA agreement as a precondition to transmission would elevate form over substance. The Appellate Authority evaluated the overall matrix and evidence of membership. It did not ignore the rules; it applied them in context. There is no reason to hold that the absence of a registered agreement alone renders the impugned order perverse.

15. On the allegations of forged completion and occupation certificates and municipal action, the society alleges that Wing A lacks lawful sanction for ground floor shops and relies upon

municipal notices and engineer reports dated 2018. Those proceedings address municipal sanction and construction legality. Illegality in municipal permissions may attract separate remedies and penalties; it does not ipso facto determine membership of the promoter in the cooperative society. The Appellate Authority was entitled to treat municipal action as collateral and not decisive on the question of whether the deceased was a member and whether his nominee could succeed. Moreover the society's own conduct in treating the promoter as member, prior to the municipal notices, weakens any contention that municipal irregularity should defeat transmission. The fact that respondent No. 3 has challenged the municipal action in a suit and in a writ petition and has not secured interim relief does not convert that pending controversy into a bar against transmission in the membership context. The municipal controversy concerns building sanction; the membership controversy concerns identity and succession, both are distinct.

16. On the claim that the completion and occupation certificates are bogus, it is an assertion which requires trial evidence and possibly criminal or civil proceedings to determine forgery. In the absence of final adjudication in those proceedings the Appellate Authority could not treat the allegation as established. The existence of municipal notices and reports is relevant. It is not decisive. The Appellate Authority acted within reason in not permitting an unproven accusation of forgery to override the accumulated documentary evidence of membership and succession.

17. The Revisional Authority reviewed the matter and confirmed the appellate decision. The Revisional Authority found no jurisdictional error, no perversity in fact-finding, and no error in law in allowing transmission. This court's jurisdiction under Article 226 is supervisory and not appellate in the strict sense. This petition does not demonstrate that the Appellate or Revisional Authority acted without jurisdiction or in a manner so arbitrary or unreasonable as to require interference.

18. The society's long recognition of the promoter as member, its issuance of share certificate and its conduct in recovery proceedings constitute conduct that estops it from later denying membership in the absence of decisive proof of fraud. Cooperative societies must be able to rely on their own records and settled practice. Where the society itself created the entitlement it cannot lightly retract that position to the detriment of persons who claim by succession and who have secured corroborative documentary support such as nomination, release deed and Deputy Registrar records.

19. The Appellate Authority correctly identified the limited scope of inquiry under Section 23(2). It evaluated the relevant evidence and reached a conclusion that the father of respondent No. 3 was a member and that respondent No. 3 was entitled to transmission. The Revisional Authority found no jurisdictional error. The petition fails to show any jurisdictional defect, perversity of findings, or error of law warranting interference.

20. Hence, for the reasons stated above, the petitions are dismissed.

21. The order dated 6 February 2012 of the Appellate Authority and the judgment dated 30 July 2014 of the Revisional Authority stand confirmed.

22. Pending interlocutory applications stand disposed of.

23. No order as to costs.

24. Learned Advocate for the petitioner seeks extension of the interim relief granted earlier. The ad-interim relief, which has remained in force for the past ten years, is continued for a period of six weeks from today.

(AMIT BORKAR, J.)