



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.9824 OF 2016
WITH
INTERIM APPLICATION NO.1521 OF 2020
IN
WRIT PETITION NO.9824 OF 2016

Nutan Sayali Co-operative Housing
Society Ltd.

...Petitioner

V/s.

The State of Maharashtra and Ors.

...Respondents

Mr. Satyapal Thosar *with Mr. Hrushikesh Durne for the Petitioner.*

Mr. Kishor Patil *with Mr. R.M. Haridas for Respondent No.4.*

Mr. P.G. Sawant, *AGP for Respondent-State.*

CORAM: SANDEEP V. MARNE, J.

DATED: 6 OCTOBER 2026.

Oral Judgment:

1) By this Petition, the Petitioner-Society has challenged the Order dated 18 March 2014 passed by the Hon'ble Minister-Cooperation, allowing Appeal No.96 of 2013 filed by Respondent No.4 and directing de-registration of the Petitioner-Society under Section 21A of the Maharashtra Co-operative Societies Act, 1960 (**the MCS Act**) by setting

aside the Order dated 21 November 2012 passed by the Divisional Joint Registrar, Co-operative Societies, Nashik (**Divisional Joint Registrar**).

2) Petitioner is a cooperative housing society formed in respect of the structures constructed on Plot Nos. 2 and 3. It is formed and registered on 17 November 1995 on the basis of the proposal signed and submitted by the purchasers of units constructed on both the plots. Respondent No. 4 himself was a signatory to the proposal. Respondent No. 4 also functioned as the office bearer of the society. However, Respondent No. 4 applied for deregistration of the society by filing application under Section 21A of the MCS Act on 13 November 1995 alleging that the society was intended to be formed only in respect of the structures constructed on Plot No. 3 and that therefore there was misrepresentation. The Divisional Joint Registrar rejected the application of Respondent No. 4 by Order dated 21 November 2012. The Respondent No. 4 filed appeal before the Hon'ble Minister, who has allowed the Appeal by impugned Order dated 18 March 2014 and has directed deregistration of the society. Aggrieved by the Order dated 18 March 2014, the Petitioner has filed the present Petition.

3) I have heard Mr. Thosar, the learned counsel appearing for the Petitioner, Mr. Patil, the learned counsel appearing for Respondent No.4 and Mr. Sawant, the learned AGP appearing for the Respondent-State. I have considered the submissions canvassed by them.

4) It must be observed at the very outset that Hon'ble Minister has exercised the appellate powers vested in him with material irregularity

while passing the impugned order dated 18 March 2014. Respondent No.4 had sought de-registration of a co-operative housing society formed by unit purchasers, which was registered on 17 November 1995, after 11 long years. By the time, the Hon'ble Minister decided to direct de-registration, a period of 19 long years had elapsed. Also, de-registration was sought by someone, who was a co-promoter and had signed the proposal for registration of the Society. Ignoring this position, the Hon'ble Minister has directed de-registration of the Petitioner-Society in a causal manner without recording any cogent reasons. The terse reasoning of the Hon'ble Minister is as under:

माझ्या समोर सादर झालेली कागदपत्रे तसेच लेखो व तोंडी म्हणणे विचारात घेता असे दिसून येते कि, प्रतिवादी क्र. ३ या संस्थेच्या नोंदणी वेळी सादर केलेल्या योजनेत प्लॉट क्र. २ चा उल्लेख नाही. शिवाय संस्थेची नोंदणी करण्यासाठी प्लॉट क्र. २ च्या मालकांची पूर्वपरवानगी घेतलेली आहे मात्र संस्था नोंदणीच्या ठरावात प्लॉट क्र. ३ चा उल्लेख आहे. तसेच ए व बी फॉर्म / स्टेटमेंटवर दोन्ही प्लॉटचा उल्लेख आढळतो अशा रितीने - नोंदणीच्या वेळी सादर केलेली माहिती परस्पर विसंगत आहे. प्रतिवादी क्र. ३ यांनी सुध्दा अनवधानाने प्लॉट क्र. २ चा उल्लेख राहून गेल्याचे मान्य केलेले आहे, म्हणजेच अर्जदारांच्या प्रतिपादनास प्रतिवादी क्र. ३ यांची एक प्रकारे सहमती आहे असे निदर्शनास आलेले आहे. त्यामुळे संस्था ज्या भुखंडावर नोंदविलेली आहे त्या भुखंडाबाबत नेमकी माहिती सादर केलेली नाही, दिशाभूल करणारी माहिती सादर केलेली आहे म्हणून अर्जदारांचा युक्तीवाद मान्य करण्यात येत आहे व खालीलप्रमाणे आदेश पारित करण्यात येत आहेत.

5) Thus, a drastic action of de-registration of Petitioner-Society is ordered by Hon'ble Minister by recording above cryptic findings. Merely because plot No.2 was not reflected in the registration proposal, he has recorded a finding that there is misrepresentation by the Applicants while seeking registration of the Society. While recording the above findings, the Hon'ble Minister has ignored the position that Respondent No.4 himself is a signatory to the registration proposal. He has also ignored the fact that several unit purchasers of structures located on

plot No.2 had also joined in the proposal for formation of the Petitioner-Society. The case does not involve opposition by unit purchasers of plot No.2 for formation of a common society in respect of plot Nos.2 and 3. On the other hand, unit occupiers on plot No.2 were very much willing to form a common society alongwith unit purchasers on plot No.3. Ignoring all these, the Hon'ble Minister has casually passed the impugned order dated 18 March 2014.

6) The appellate powers are vested in the State Government, which are to be exercised by the Hon'ble Minister, only for the purpose of correcting gross errors in the orders passed by the subordinate authorities. The appellate authority needs to consider the findings recorded by the subordinate authority and then examine whether the decision and findings in the order appealed against are correct or otherwise. An appellate authority acting in a quasi-judicial capacity must apply an objective standard rather than subjective satisfaction.

7) In the present case, the Hon'ble Minister has not even appreciated the scheme under the MCS Act for ordering de-registration of the Society. Without appreciating the statutory scheme, the Hon'ble Minister has exercised appellate powers as if he was deciding the appeal against an order of registration of the Society. The Hon'ble Minister ought to have been alive to the position that what he was deciding is an appeal against order passed by the Divisional Joint Registrar rejecting the proposal of Respondent No.4 for de-registration of the Society.

8) Deciding the appeal against registration order and ordering de-registration of already registered society under Section 21A of the MCS

Act are two different and distinct concepts. Parameters, which may apply for deciding appeal under Section 152 of the MCS Act against an order of registration of the Society do not apply to the proceedings filed under Section 21A of the MCS Act, which is a drastic provision under which de-registration of an already registered society can be directed at any point of time provided any four enumerated circumstances under Section 21A are demonstrated. In the present case, Hon'ble Minister has unfortunately not appreciated the manner in which powers under Section 21A of the MCS Act are to be exercised. The appellate authority has causally allowed the appeal and has directed de-registration of a housing society formed 19 years ago in a most cavalier manner. A mere discrepancy in not mentioning Plot No. 2 in the registration proposal is treated as misrepresentation by the applicants by the appellate authority, ignoring the position that the appellant before him was one of the applicants in the proposal. The manner in which the appellate powers are exercised by the Hon'ble Minister in the present case is disquieting. This Court expresses its disapproval.

9) Coming to the merits of order dated 18 March 2014, it is seen that the Divisional Joint Registrar had rejected the application filed by Respondent No.4 under Section 21A of the MCS Act by order dated 21 November 2012 recording a finding that there was no misrepresentation by the Applicants at the time of registration of the Society. As observed above, the Hon'ble Minister has recorded a singular reason of non-reflection of plot No.2 in the registration application for directing de-registration of the Society.

10) Mr. Patil has taken me through Statement “B” of the application for registration of the Society and in para 2(b) thereof the location of the land was indicated as only plot No.3. According to Mr. Patil, there was conscious exclusion of plot No.2 at the time of submitting application for registration. However, if the list of promoters, who have signed the proposal, is perused, the same appears to have been signed by 14 promoters, which includes the name of Respondent No.4 at Serial No.14. There is no doubt to the position that several unit occupiers of structures located on plot No.2 have also signed the proposal alongwith Respondent No.4. Thus, Respondent No.4 jointly submitted a proposal for registration of a common society in respect of the structures constructed on plot Nos.2 and 3. After 19 long years, Respondent No.4 turned around and questioned validity of registration on the ground that the Society was meant to be registered only in respect of structures located on plot No.3 and unit purchasers of structures on plot no.2 are erroneously included in the registration proposal. While contending so, Respondent No.4 conveniently suppressed the fact that he himself was a co-signatory alongwith 13 other promoters while submitting the application for registration of the Society. He never had any qualms about unit purchasers of plot no.2 joining together in signing common application for registration of the Society in 1995. After 19 long years he took a *volte* face and questioned registration of a common society in respect of plot Nos.2 and 3.

11) In my view, mere non-reflection of plot No.2 in para 2(b) of the Statement “B” to registration proposal did not mean that there was any misrepresentation on the part of the Applicants at the time of

registration of the Society. By now, law is sufficiently settled about the manner in which powers under Section 21A of the MCS Act are to be exercised by the Registrar. In **Auram Avenue Co-op Housing Society Ltd. and Anr. Vs. State of Maharashtra and Ors.**¹ a co-ordinate Bench of this Court has held that mere error in registration of the society is not a ground for exercising drastic power of de-registration under Section 21A of the MCS Act. It is held that mere minor irregularities in the process of registration does not amount to deliberate misrepresentation and suppression of facts within Section 21A of the MCS Act. This Court held in paragraphs 20 and 22 of the judgment as under:

20. In the present case, the invocation of Section 21A hinges upon the allegation that the society was registered in contravention of Section 6 of the MCS Act, which prescribes the minimum number of members required for a society's formation. However, a perusal of the record reveals that there is no categorical finding that the society was established with an intent to mislead or commit fraud. The registration of a cooperative society is a quasi judicial process act, and minor irregularities in the process—unless they amount to deliberate misrepresentation or suppression of facts—cannot justify the extreme recourse of cancellation. Mere procedural lapses do not warrant drastic statutory action unless they are of such nature as to affect the very foundation of the registration process.

xxx

22. In view of the foregoing, the grounds on which the authorities have proceeded, even if accepted as correct, at best indicate that the registration of the society was erroneous but not fraudulent. Consequently, the impugned order of deregistration appears to be legally unsustainable, inasmuch as the appropriate course of action would have been to subject the registration to appellate scrutiny rather than invoking the drastic measure of cancellation under Section 21A. It follows that the order passed by the authorities under the Act is liable to be set aside, and the matter ought to be relegated to the appellate forum for proper adjudication in accordance with law.

1 Writ Petition No.14644 of 2023 decided on 19 March 2025

12) In *Ramchandra M. and Another V/s. State of Maharashtra and Ors.*² this Court has held that allegation of misrepresentation must go to the root of the matter and must be of such a nature that if the same was not made, registration of a society itself would not have been possible. This Court held in paragraphs 17, 18 and 21 as under:

17. ...If the society was otherwise properly formed, members had purchased flats, possession was given, and basic requirements were satisfied, then later disputes about documents cannot automatically make the registration illegal. Therefore, the authority was required to see only whether there was any fraud at the time of registration, and not to examine the entire title history like a civil court.

18. This understanding becomes more clear when one looks at the principle laid down in the case of Rameshwar Cooperative Housing Society Limited. In that case, it is clearly stated that the Registrar must first find a real and clear case of misrepresentation. Not every mistake or omission will do. The misrepresentation must be of such a nature that without that false statement, the society would not have been registered at all. In other words, the falsehood must go to the root. It must be the very reason why registration was granted.

xxx

21. If these events are put in proper sequence, it becomes clear that the society was formed after real transactions had already taken place. The building was standing. People had purchased flats. They had entered into registered agreements. They were in possession. Only thereafter they came together to form a society. This shows that the society has its roots in actual possession and actual enjoyment of property by members. It is not a case where a society was floated first and then used as a device. Because of this, it becomes difficult to accept that the registration itself was obtained by playing fraud on the authority. Fraud, in such matters, must go to the beginning. Here the beginning itself is supported by completed construction, occupation certificate, and possession of members. Therefore, the factual background does not support the case of de-registration.

2 Writ Petition No.10286 of 2014 decided on 8 April 2026

In the present case, even if Plot No. 2 was to be mentioned in the registration proposal, the society was still capable of being registered. Thus, non-reflection of plot No. 2 is not deliberate and was not aimed at securing registration by misrepresentation. Thus, the omission in not mentioning Plot No. 2 in the registration proposal does not go to the root of the matter and does not amount to misrepresentation within the meaning of Section 21A of the MCS Act.

13) More recently, in *Capt. Rajeev Kumar and Ors V/s. The State of Maharashtra and Ors.*³ this Court has held that the remedy under Section 21A of the MCS Act is not intended to be exercised in a routine or casual manner and that mere discrepancies in the registration process can never be a ground for taking a drastic step of de-registration of the society, particularly after a passage of substantial time. This Court further held that mere differences of opinion between the members with regard to the manner of conducting of affairs of a co-operative housing society cannot be a ground for ordering de-registration of the Society. By referring to the judgments in *Elite Diagnostic Center Pvt. Ltd. Vs. Krishna Kunj Co-op. Housing Society Ltd. and Ors.*⁴, *Madhur Naina Co-operative Housing Society Limited Vs. State of Maharashtra and Ors.*⁵ and *Cosmopolitan III Co-operative Housing Society Limited Vs. Hon'ble Minister Cooperation, Marketing Govt. of Maharashtra and Ors.*⁶ this Court has held in paragraphs 10 to 14 of the judgment as under:

3 Writ Petition No.3162 of 2021 decided on 28 September 2026

4 2026 BHC-AS:27059

5 Writ Petition No.850 of 2026 decided on 22 July 2026

6 (2025) 2 High Court Cases (Bom) 363

10) Thus, as opposed to the normal remedy of preferring an appeal against registration of the society under Section 152 of the MCS Act, the remedy under Section 21A of the Act is not intended to be exercised in a routine or casual manner. Mere discrepancies in the registration process can never be a ground for taking the extreme measure of de-registration of a society, particularly after passage of substantial time. In ***Elite Diagnostic Center Pvt. Ltd. Vs. Krishna Kunj Co-op. Housing Society Ltd and Ors***, this Court has held in paragraph 25 of the judgment as under:

25) I am in agreement with the findings recorded by the Hon'ble Minister. The remit of enquiry under Section 21A of the MCS Act is in extremely narrow compass. As observed above, there is a separate remedy of filing Appeal against registration of the society under Section 152 of the Act, which is a much broader remedy. The power of deregistration is to be exercised in rare circumstances where one out of the four enumerated circumstances under Section 21A is made out. The first circumstance of 'misrepresentation' is not to be misunderstood as giving wide or unbridled power on the Registrar of recalling the decision of registration. While exercising the power under Section 21A, the Joint Registrar cannot sit in appeal over the decision of the Assistant Registrar. It is only in a rare case where registration of the society is based on misrepresentation by the Applicants that the power of de-registration can be exercised. The misrepresentation must be of such nature and degree that if not made, the society would not have been registered. Mere giving of inaccurate or incomplete information cannot be a misrepresentation capable of de-registering the society. The misrepresentation must be noticed in the information given while seeking registration. The information on the basis of which registration is obtained must be demonstrated as false or the documents submitted must be demonstrated as forged or fabricated. Misrepresentation cannot be assumed on the basis of events occurring subsequent to the registration of the society.

(emphasis added)

11) This Court has repeatedly held that mere differences between the society members about the manner in which affairs of the society are conducted can never be a ground for staking at the very root of existence of the society or for seeking registration of a new society. While dealing with the issue of bifurcation of the society, in

Madhur Naina Co-operative Housing Society Limited V/s. State of Maharashtra and Ors., this Court has held that mere existence of disputes between members relating to redevelopment process cannot be a reason for invoking Section 18 of the MCS Act. In ***Cosmopolitan III Co-operative Housing Society Limited V/s. Hon'ble Minister Cooperation, Marketing Govt. of Maharashtra and Ors.***, this Court has held that mere existence of disputes between the society members, allegations of misappropriation, non-holding of elections, etc. are all capable of being redressed by adopting remedies under the provisions of the MCS Act and that bifurcation of the Society is not the remedy. This Court has held in paragraphs 21 and 22 of the judgment as under:

22. The allegation of misappropriation of Society funds, non- holding of elections, irregular manner in passing of resolutions, maintenance, etc. are all issues which are capable of being redressed by adopting the necessary remedy under the provisions of MCS Act. The enquiry which ought to have been conducted is whether the disputes have the effect of disrupting the effective management of Society. In addition, it was also necessary to consider whether the legislative intent of effective management can be achieved in the facts of present case where there is practical impossibility of division of land in proportion to the built-up area.

(emphasis added)

12) The MCS Act provides for the remedies to adjudicate the disputes relating to the manner of passing of resolutions, taking of decisions by the managing committee, non-following of the provisions of Act/Rules/Bye-laws, etc. The aggrieved members need to exercise those remedies and cannot adopt self-destructive approach by seeking de-registration of the very society of which they are members. If the approach adopted by the Respondent Nos. 5 to 11 is permitted, a defaulter member who does not desire to pay society dues would apply for documents relating to registration of the society and if any discrepancy is noticed, such member would seek de-registration of the society with the objective of avoiding payment of maintenance dues. Thus instead of exercising the remedies provided for in the Act to dispute the maintenance dues, such defaulter member would seek to strike at the very root of formation of the society and get the society de- registered on the ground of misrepresentation for achieving the oblique motive of non-payment of the maintenance dues.

13) In my view therefore, exercise of jurisdiction by the Registrar under Section 21A in the facts of the present case was clearly

unwarranted. The Registrar ought to have appreciated that Respondent Nos. 5 to 11 were fighting a battle against the managing committee of the society in respect of the manner in which decisions were being taken and implemented. Several proceedings were undertaken by Respondent Nos. 5 to 11 against the managing committee. In such circumstances, when the Registrar was presented with application under Section 21A of the MCS Act, the Registrar ought to have rejected such application at the threshold by directing the complainants to remedies under the Act in respect of their grievance with regard to management of affairs of the society. Respondent Nos. 5 to 11 themselves admit that they came across documents relating to registration of society during the course of prosecution of various other remedies with regard to their challenges to the decisions taken by the managing committee. The Registrar ought to have appreciated this position and ought not to have exercised powers under Section 21A of the MCS Act in the facts and circumstances of the present case. Unfortunately, the Hon'ble Minister has also not appreciated this position and has proceeded to approve the extreme measure of de-registration of the society by holding that there were discrepancies in the documents presented at the time of registration of the society.

14) Both the Registrar as well as the Hon'ble Minister ought to have been alive to the situation that de-registration of the society at this point of time would result in utter chaos with regard to management of the building of the society. Mere existence of disputes and differences between members of the society can never be a ground for taking extreme measure of de-registration of the society. It appears that there are 604 units in the building and as opposed to 604 members, complaints are being made by only about 6 to 7 members who sought de-registration of the society. Mr. Walawalkar claims that Respondent Nos. 5 to 11 are backed by 130 members. Assuming this to be true, even those 130 minority members, who are opposed to the manner of functioning of the managing committee, cannot seek to strike at the very root of formation of the society and their differences with the majority cannot be a ground for exercising extreme powers under Section 21A of the MCS Act.

14) In my view, no case of actionable misrepresentation within the meaning of Section 21A of the MCS Act is made out for directing extreme measure of de-registration of the Society. Non-reflection of plot no.2 in paragraph 2(b) of the application for registration was a

mere inadvertence in view of the fact that unit occupiers of structure constructed on plot No.2 had joined the proposal for registration of the Society. There is no misrepresentation, which really goes to the root of the matter or renders the registration itself invalid.

15) Before parting, the conduct of Respondent No.4 must be observed. Respondent No.4 was not only a signatory in the capacity as a co-promoter for registration of the Society, but he also apparently held the position as chairman of the society. He pressed for de-registration of the society before the appellate authority after 19 long years. If there was any misrepresentation, the same was by Respondent No.4, who himself had signed the proposal for registration of the society mentioning only Plot No. 3 in the proposal. He attempted to take benefit of his own wrong and has ensured that a duly formed registered co-operative housing society is de-registered after a period of 19 long years. In my view, therefore, while allowing the present Petition, exemplary costs are required to be imposed on Respondent No.4. This is necessary so as to nip in the bud a tendency on the part of the members of co-operative housing societies, who have grievance against the Managing Committee or against functioning of the society and who initiate the proceedings under 21A of the MCS Act for de-registration of the very same society of which they are members. If members are allowed to have the society deregistered for settlement of their private grievances, the defaulting members would misuse the provisions of Section 21A of the Act and after securing the copies of documents submitted for registration, seek deregistration of the society for avoiding to pay the maintenance charges.

16) The Registrar as well as the State Government must therefore be mindful of the nature of powers that can to be exercised under Section 21 of the MCS Act. This Court has repeatedly come across cases where jurisdiction under Section 21A of the MCS Act is routinely and casually exercised by the Registrars and by the State Government, which is not the legislative objective. It is unfortunate that the Registrar and the State Government ignore the fundamental difference between exercise of power of appeal under Section 152 of the MCS Act against order of registration of society and jurisdiction to be exercised under Section 21A of the MCS Act for de-registration of the Society, which has already been formed for the purpose of collective management of property of the society. Time has come to give a stern message so as to ensure that the drastic powers under Section 21A of the MCS Act are not casually and routinely exercised, as has been done in the present case.

17) As observed above, the facts and circumstances of the case warrants imposition of exemplary costs on Respondent No.4. However, Mr. Patil submits that Respondent No.4 is 74 years old and is bed ridden. Considering this position, it would be appropriate to impose moderate costs of Rs. 15,000 on Respondent No. 4.

18) In view of the above discussion, I proceed to pass the following order:

- (i) Impugned order dated 18 March 2014 passed by the Hon'ble Minister Co-operation in Appeal No.96 of 2013 is set aside.

(ii) Respondent No.4 to pay costs of Rs.15,000/- to the Petitioner-Society within a period of four weeks. If the costs are not paid by Respondent No.4 within the stipulated time, in addition to the action that may be taken against him for breach of the order, the same shall be included in the maintenance bill and shall be recovered from him in accordance with law.

19) With the above directions, Writ Petition is allowed and **disposed of** with costs as directed above.

20) In view of disposal of the Writ Petition, nothing survives to be adjudicated in the Interim Application and the same is disposed of.

[SANDEEP V. MARNE, J.]