

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

**WRIT PETITION NO. 2900 OF 2009
WITH
INTERIM APPLICATION NO. 13396 OF 2023
AND
INTERIM APPLICATION NO. 4589 OF 2026**

Mohanbhai Khanchandani

...Petitioner

V/s.

The State of Maharashtra & Ors.

...Respondents

Mr. Nitin Gangal *a/w. Ms. Archana Khan, Ms. Namita Mestry, Ms. Prapti Karkera and Mr. Saket Joshi, for the Petitioner.*

Mr. Kishor Patil, *a/w. Ms. Akshada Nagale, for Respondent No.5.*

Mr. N.C. Walimbe *with Ms. Vaishali Nimbalkar, AGP for State.*

CORAM: SANDEEP V. MARNE, J.

DATED: 2 JULY 2026.

P.C.:

1) The petition challenges order dated 11 March 2003 passed by the Assistant Registrar, Co-op. Societies, H-East Ward, Mumbai rejecting Petitioner's application under Section 22(2) of the Maharashtra Co-operative Societies Act, 1960 (**M.C.S. Act**) for membership qua Flat No.B-3, situated in Neel Shantiniketan CHSL, Vidyanagari Marg, Kalina, Santacruz (E). The order passed by the Assistant Registrar has been confirmed by the Divisional Joint Registrar vide order dated 8 December 2008 which is also subject matter of challenge in the present petition.

2) By order dated 27 March 2009, the petition has been admitted. The Petitioner has taken out two Interim Applications in the light of building of the Society being taken up for re-development. In Interim Application No.13396/2023, the Petitioner has prayed for payment of monetary compensation flowing from redevelopment of Flat No.B/3. In Interim Application No. 4589/2026, Petitioner has sought inter-alia, possession of permanent alternate accommodation (**PAA**) (*Flat No.404, 4th Floor of the reconstructed building 'Courtyard'*) constructed in lieu of Flat No. B/3.

3) With the consent of the learned counsel appearing for parties, the petition is taken up for final hearing.

4) I have heard Mr. Gangal, the learned counsel appearing for the Petitioner, Mr. Patil, the learned counsel appearing for Respondent No.5 and Mr. Walimbe, AGP appearing for State. I have considered their submissions and have perused the records of the case filed with the petition.

5) The dispute between the parties is essentially with regard to the exact nature of Agreement dated 17 September 2001. Respondent No.5 is the original owner in respect of Flat No.B/3. He has executed Agreement dated 17 September 2001 which records payment of consideration of Rs.12.5 lacs by the Petitioner to Respondent No.5. Petitioner believes that the document dated 17 September 2001 effects sale of Flat No. B-3 in his favour. On the other hand, Respondent No.5 believes that the document dated 17 September 2001 is merely a Deed of Hypothecation which does not effect sale of the flat in favour of the Petitioner. It appears that Respondent No.5 has already filed Commercial

Suit No.435/2021 seeking declaration of title which is pending before the City Civil Court.

6) On the strength of his belief that he has acquired ownership in respect of Flat No.B/3, Petitioner claimed membership with the Respondent No.4-society. Since the Society did not admit Petitioner as member on account of objection raised by Respondent No.5, he took recourse to the provisions of Section 22 of the M.C.S. Act and filed application for directing Society to admit him as member. By order dated 11 March 2003, the Assistant Registrar has rejected Petitioner's application and the order of the Assistant Registrar has been confirmed by the Divisional Joint Registrar on 8 December 2008.

7) In my view, the Registrars under the M.C.S. Act are ill-equipped to decide the issue of title in respect of Flat No.B/3. Ultimately, the issue of title needs to be adjudicated in a pending Suit instituted by Respondent No.5. As of now, Respondent No.5 continues to be the member in respect of old Flat No.B/3. However, possession of flat No.B/3 was admittedly with the Petitioner. The building of the Society has been demolished and the same has been reconstructed, which is named 'Courtyard'. In lieu of Flat No.B/3, the PAA available for allotment is Flat No.404 on the 4th Floor of the reconstructed building 'Courtyard'.

8) In view of the above circumstances, it would be appropriate to leave the issue of membership dependent on the outcome of Commercial Suit No. 435 of 2021. It is well settled that membership in society does not determine title in a flat. In the event, Respondent No.5 is unable to secure declaration of title in respect of Flat in Commercial Suit No. 435/2021, the Society will have to necessarily admit Petitioner as its member. If on the

other hand, Respondent No.5 is in a position to secure declaration of title in respect of the flat, his membership with the society can be continued.

9) So far as the re-development process is concerned, this Court has repeatedly taken a view that redevelopment process cannot result into loss of possessory rights. Merely because disputes are pending in relation to title and possession, the person actually in possession of old premises cannot suffer loss of possession only on account of redevelopment of the building. This Court has consistently followed the practice of putting back the person in possession of the old premises into possession of new premises. Similarly, any person losing possession of old premises needs to scout for alternate premises during the process of redevelopment. The transit rent therefore needs to be paid to the person actually in possession. Reference in this regard can be made to the Division Bench judgment in *Ritesh Haldar Versus. Elite Housing LLP & Ors.*¹ There is no dispute to the position that possession of Flat No.B/3 was taken from the Petitioner for redevelopment. Following this settled principle, similar arrangement needs to be made in the present case where Petitioner needs to be put back in possession of the reconstructed flat and even transit rent needs to be paid over to the Petitioner.

10) So far as corpus is concerned, the amount of corpus is deposited with the society. Since entitlement to corpus is linked with the issue of title, it would be appropriate that the corpus amount remains deposited with the Society, which needs to invest the same in interest bearing deposits. The amount of corpus can be paid over to the party who ultimately succeeds in the pending suit. In view of the above position, I proceed to pass the following order :

¹ **Commercial Arbitration Appeal (L.) No. 14486/2025 dtd 24.6.2025**

(i) The orders passed by the Assistant Registrar and Divisional Joint Registrar are not disturbed at this juncture. However, it is directed that the issue of membership to the society shall be decided depending on the outcome of Commercial Suit No. 435/2021.

(ii) In the event of dismissal of Commercial Suit No. 435/2021, the Society shall admit Petitioner as member.

(iii) If on the other hand, Respondent No.5 succeeds in Commercial Suit No. 435/2001, its membership with the society shall continue.

(iv) The Petitioner shall be put in possession of PAA (*Flat No.404, 4th Floor of building 'Courtyard'*) subject to the outcome of Commercial Suit No.435/2021.

(v) The transit rent in respect of Flat No.B-3 shall be paid over to the Petitioner subject to the outcome of Commercial Suit No. 435/2001.

(vi) Any other amounts flowing out of the redevelopment process including corpus shall remain deposited with the Society which shall invest the same in interest bearing deposits. Depending on the outcome of Commercial Suit No. 435/2001, the proceeds of such invested amount shall be paid over to the successful party.

(vii) The Petitioner is already restrained by the City Civil Court from alienating, encumbering, handing over or creating third party rights in respect of Flat No.B/3. The said order shall

continue to operate even qua the PAA (*Flat No.404*) except with an exception that the Petitioner shall be permitted to create temporary licenses in respect of the said PAA and shall maintain records of rent and other amounts received through such license agreements.

(vi) All rights and contentions of parties on merits on title issue are expressly kept open. The City Civil Court shall decide the Suit uninfluenced by any observations made by this Court.

11) With the above directions, both, the Writ Petition, as well as the Interim Applications are **disposed of**. Rule is partly made absolute.

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[SANDEEP V. MARNE , J.]