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

WRIT PETITION NO.9393 OF 2013

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Ghatkopar Parvati Sadan Cooperative
Housing Society Limited

... Petitioner

V/s.

Harshida Bharat Kanabar & Ors.

... Respondents

Mr. Pratik B. Rahade i/by Mr. PN. Joshi for the
petitioner.

Mr. Vijay M. Vaghela for respondent No.1.

CORAM : AMIT BORKAR, J.

DATED : FEBRUARY 17, 2026

P.C.:

1. By the present petition instituted under Article 227 of the Constitution of India, the petitioner invokes the supervisory jurisdiction of this Court to challenge the Judgment and Order dated 26 February 2013 passed by the Divisional Joint Registrar, being respondent No.3, in Revision Application No. 383 of 2009.

2. The factual background giving rise to the present proceedings is required to be stated in some detail. One Ramji Gopal Chavan was the original purchaser and member in respect of Flat No.1. He had acquired the said flat from the builder and promoter under an Agreement dated 22 April 1966 and was duly admitted as a member of the petitioner society. Ramji Gopal Chavan expired on 18 January 1990, leaving behind his widow, Smt. Ratanben Ramji Chavan, and six other legal heirs. By a

declaration of consent executed by the remaining legal heirs on 9 July 1992, Smt. Ratanben was recognized and recorded as a member in place of the deceased Ramji Gopal Chavan. Smt. Ratanben thereafter expired on 14 February 1999. She left behind her legal heirs. It is not in dispute that she had not made any nomination in accordance with law or the bye laws of the society.

3. After the death of Smt. Ratanben, her legal heirs neither sought admission to membership of the society nor obtained any prior consent from the society. Despite this, they executed an Agreement dated 13 September 2005 in favour of respondent No.1 and purported to transfer the shares and interest in respect of the said flat. Under the said agreement, they undertook to hand over vacant and peaceful possession to respondent No.1 on or before 31 October 2005 upon payment of the balance consideration. A separate declaration and indemnity document was also executed by the heirs in favour of respondent No.1. These steps were taken without the knowledge or approval of the petitioner society.

4. The record further indicates that possession of the flat was handed over to respondent No.1 on 7 December 2002 without obtaining any prior permission or no objection from the society. Thereafter, on 14 September 2005, certain heirs addressed a request to the society seeking issuance of a no objection certificate. By its communication dated 22 September 2005, the society informed the heirs that the flat continued to stand in the name of Smt. Ratanben Chavan. It was specifically stated that the legal heirs were first required to have the share certificate transferred in the name of the nominees or legal heirs in accordance with law.

The society also recorded that respondent No.1 had sought permission to use the flat for commercial purposes, which request had been rejected. The heirs were informed that further steps for transfer could be considered only upon receipt of a written undertaking from the proposed purchaser that the flat would not be used for commercial purposes, and after compliance with the requisite formalities for transfer of shares in favour of the legal heirs.

5. In continuation of its earlier correspondence, the society, by letter dated 26 December 2005, conveyed that upon oral request it had agreed in principle to enroll two of the legal heirs as nominees of the deceased Smt. Ratanben Chavan. This was made subject to strict compliance with specified requirements, namely submission of the original death certificate of Smt. Ratanben Chavan, filing of Application Form No.15 along with Rs.100 towards expenses for issuance of no objection from other legal heirs, execution of an indemnity bond in the prescribed Form No.18, and payment of outstanding dues of the society, if any. The society further recorded that the possession of respondent No.1 was unauthorized and that such possession ought not to have been delivered without obtaining prior no objection from the society.

6. On 4 February 2006, the legal heirs submitted certain documents and requested transfer of the flat in the names of two nominees. Subsequently, on 5 August 2008, the society recorded the names of Smt. Ansuya Ramji Chavan and Mukund Ramji Chavan as nominees of the deceased Smt. Ratanben. On 23 February 2008, these two nominees applied to the society seeking

transfer of the flat in favour of respondent No.1. By communication dated 8 March 2008, the society informed respondent No.1 that the said application would be placed before the General Body only upon compliance with certain conditions, namely production of a copy of a duly registered transfer deed, payment of admission and transfer fees, and submission of an undertaking that no repairs would be undertaken until admission to membership and that the flat would be used strictly for residential purposes.

7. On 12 March 2008, respondent No.1 forwarded a cheque of Rs.500 and expressed inability to produce a registered transfer deed. Thereafter, in the Special General Body Meeting held on 27 May 2008, the society resolved to reject the application of respondent No.1 for membership. The decision was communicated on 6 June 2008 and was supported by several reasons. The society recorded that respondent No.1 had acted contrary to the provisions of the Act, Rules, and bye laws even prior to admission to membership and had failed to furnish the required undertaking. It was further observed that the Agreement dated 13 September 2005 executed with the legal heirs was contrary to the provisions of the Maharashtra Co operative Societies Act and was not binding on the society. The society also alleged that respondent No.1 had carried out permanent alterations and changes in the layout of the flat without permission, thereby causing damage to the property of the society. It was emphasized that the building vests in the society and that occupation without admission as a member was unauthorized. The society further stated that the proposed

transferee was not acceptable to the members and that her conduct and that of her family members was detrimental to the interest of the society. It was also alleged that a portion of a shop premises had been occupied without permission. On these grounds, respondent No.1 was treated as ineligible and undesirable, and her application for membership was rejected. The documents submitted by her were returned.

8. Aggrieved by the said rejection, respondent No.1 preferred an application before respondent No.2 under Section 22(2) read with Section 23(3) seeking a declaration of her entitlement to membership of the petitioner society. The said application came to be rejected by order dated 26 October 2009.

9. Being dissatisfied with the order of respondent No.2, respondent No.1 preferred a revision application before respondent No.3. The Divisional Joint Registrar, by order dated 26 February 2013, allowed the revision application. It is this order which is impugned in the present writ petition filed by the petitioner society.

10. The learned Advocate appearing for the petitioner society submitted that the Deputy Registrar had recorded a categorical finding that the agreement on the basis of which respondent No.1 sought membership was not a registered document. Despite such finding, the revisional authority, placing reliance upon the decision of this Court in *Usha Arvind Dongre vs. Suresh Raghunath Kotwal*, 1990 (3) Bom. C.R. 389, directed that membership be conferred upon respondent No.1. It was contended that the specific

objections and grounds raised by the society while rejecting the application for membership were not examined or dealt with by the authorities functioning under the Act. According to the petitioner, the revisional authority failed to consider the statutory requirements and the factual objections which went to the root of the matter.

11. Inviting attention to Section 154B 12 of the Maharashtra Co operative Societies Act, the learned Advocate submitted that the statutory scheme mandates execution of a registered instrument before a member can transfer his right, title, and interest in the property attached to the shares. It was urged that in the absence of such a registered conveyance, no valid transfer of interest could be recognized and, consequently, the authorities under the Act could not have directed conferment of membership. It was further submitted that although Chapter VIII B was introduced subsequently, even prior to its incorporation the legal position was that a person claiming through transfer must establish lawful transfer of the underlying interest. Mere execution of an unregistered agreement, according to the petitioner, does not create ownership rights in respect of the flat and, therefore, such a person cannot seek transfer of membership as a matter of right.

12. In reply, the learned Advocate appearing for respondent No.1 contended that the society had, in fact, acknowledged that respondent No.1 was in possession of the flat in the capacity of owner. It was argued that the society was aware of the transfer and had treated respondent No.1 as having stepped into the shoes of the original member, yet it sought to deny her membership solely

on the ground that no registered instrument had been produced. Placing reliance upon the judgment of this Court in Usha Arvind Dongre, it was submitted that transfer of shares in a co operative housing society and endorsement on the share certificate does not require compulsory registration under the Registration Act. On that basis, it was contended that absence of a registered conveyance could not, by itself, defeat the claim for membership. It was, therefore, urged that the revisional authority had correctly appreciated the legal position and had rightly directed that respondent No.1 be admitted to membership. On these grounds, dismissal of the writ petition was sought.

Legal analysis:

13. The Maharashtra Co operative Societies Act lays down a clear procedure as to how rights in a flat held through a co operative housing society are to be transferred and how a person can be admitted as a member. Membership in such a society is not a stand alone status. It is closely tied to the rights in the flat which are represented through the shares of the society. One cannot separate the two. The share certificate reflects the member's interest in the property. Therefore, whenever a person claims that the right, title, or interest in a flat has been transferred to him, the law governing transfer of immovable property must also be examined.

14. Transfer of immovable property is not left to oral understandings. The Registration Act requires that such transfer must be through a registered instrument, if it creates or transfers

rights in immovable property above the prescribed value. Registration gives legal sanctity to the transaction. It provides public notice. It protects third parties. It prevents disputes about title. Once a document is registered, it becomes enforceable not only between the parties but also against others. In contrast, a private agreement, not registered, may create certain personal obligations between the parties to that agreement. However, it does not, by itself, complete the transfer of ownership in the eye of law.

15. In the context of a co operative housing society, this distinction becomes crucial. When a flat is transferred, what is transferred is not merely the physical possession of the premises. The transfer affects the proprietary interest attached to the shares of the society. It affects the rights and obligations within the collective body of members. Therefore, if the proprietary interest has not been validly conveyed through a registered document, the society cannot be compelled to treat the transferee as a lawful successor to the member. Mere execution of an unregistered agreement between legal heirs and a third party cannot bind the society, especially when the statutory framework prescribes a different mode of transfer.

16. The society, in the present case, took the stand that any person seeking admission must first establish lawful entitlement. That stand is in accordance with the scheme of the Act. A co operative society functions on mutual confidence and legal certainty. If membership were to be granted without proper transfer of title, it would expose the society to competing claims,

internal disputes, and possible litigation from other heirs or third parties.

17. The requirements insisted upon by the society, such as production of a registered deed, death certificate of the deceased member, indemnity bond, undertakings to abide by the bye laws, payment of admission and transfer fees, and clearance of outstanding dues, flow from the Act and the bye laws. They ensure that the society records are accurate and that the incoming member accepts the discipline of the society. The indemnity protects the society from future claims by other heirs. The death certificate confirms succession. The registered deed confirms lawful transfer. Each requirement has a purpose.

18. The revisional authority, however, did not examine the consequence of the absence of a registered instrument. It did not address whether, in the absence of such document, the respondent could claim to have acquired legal title to the flat. It also did not analyze how membership could be directed when the foundational transfer itself was incomplete in law. The question of title goes to the root of entitlement. If the respondent did not acquire lawful title in accordance with the Registration Act and the MCS Act, the direction to confer membership rests on unenforceable right.

19. Possession alone does not automatically create title. The society's temporary dealings, or even knowledge of occupation, cannot be treated as full acceptance of ownership when statutory formalities are absent. The revisional authority treated the society's awareness of occupation as acceptance of ownership. A

cooperative society holds property and manages membership by rules. It can insist on compliance before admitting a transferee. The society's insistence on formalities is consistent with the statutory scheme. Where occupation began without NOC and without transfer formalities, the society was entitled to treat that occupation as unauthorized.

20. In *Usha Arvind Dongre*, the controversy before the Court was of a different nature. The dispute arose out of an arbitration award passed under the framework of the co operative law. The award directed transfer of share certificates in a housing society. The question that fell for consideration was whether such an arbitration award, which directed transfer of shares, required compulsory registration under the Registration Act before it could be acted upon by the society.

21. The Court examined the character of the award and the nature of the right flowing from it. The emphasis was on whether the award itself created or declared rights in immovable property so as to attract the requirement of registration. The context was confined to the implementation of an adjudicated award between parties who were already regulated by the society. The Court was not confronted with a situation where a third party, claiming through an unregistered private agreement with legal heirs of a deceased member, sought admission as a fresh member without completing statutory formalities.

22. It is important to bear this distinction in mind. In *Usha Arvind Dongre*, the transfer of shares was in pursuance of a

binding arbitral determination. The issue was limited to the legal effect of that award and whether its enforcement demanded registration. The Court was not examining the validity of a sale transaction of a flat based on an unregistered agreement. Nor was it concerned with unauthorized possession, non compliance with bye laws, or the absence of succession formalities.

23. Therefore, the ratio of that decision must be read in the light of the issue actually decided. A precedent answers the specific question that was raised before the Court. It cannot be extended to situations which present additional legal issues and factual differences. In the present matter, the foundation of the claim is an unregistered agreement executed by legal heirs and not an arbitration award. The legal consequences flowing from these two situations are not identical.

24. The revisional order dated 26 February 2013 is set aside. The society's resolution rejecting admission of respondent No.1 stands confirmed.

25. The writ petition is allowed. The petition is disposed of accordingly. No order as to costs.

(AMIT BORKAR, J.)