

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

WRIT PETITION NO. 9475 OF 2026

The Salsette Catholic Cooperative
Housing Society Ltd.

.....Petitioner

: Versus :

1. The Divisional Joint Registrar,
Co-operative Societies, Mumbai Division
2. Deputy Registrar, Co-operative Societies,
H-West Ward
3. Grace Pinto

....Respondents

Mr. G.S. Hegde, Senior Advocate with Mr. Clive D'souza, Ms. P.M. Bhanushali and Mr. Arafat Siddiquie, for the Petitioner.

Mr. A.V. Anturkar, Senior Advocate with Mr. Ashok M. Saraogi and Mr. Kashish Chelani and Mr. Niraj Yadav, for Respondent No.3.

Ms. M.S. Srivastav, AGP for State.

CORAM : SANDEEP V. MARNE, J.

JUDG. RESD. ON : 8 SEPTEMBER 2026

JUDG. PRON. ON : 30 SEPTEMBER 2026

JUDGMENT :

1) The Petitioner-Society has filed the present petition challenging the Orders passed by the Deputy Registrar, Co-operative Societies, H-West Ward under Section 22(2) of the Maharashtra Co-operative Societies Act, 1960 (**MCS Act**) directing the Society to grant provisional membership to Respondent No.3. The Order passed by the Deputy Registrar is confirmed in Revision by the Divisional Joint

Registrar vide order dated 20 May 2026, which is also the subject matter of challenge in the present petition.

2) The Petitioner-Society is the owner of several plots of land situated under the scheme popularly known as 'Kantwadi Scheme' at Bandra, Mumbai. The plots are leased to the members of the society by execution of various lease deeds. By Indenture dated 31 January 1934, Petitioner-Society leased Plot No. 177 and portion of Plot No. 176 admeasuring 943.33 sq.yds. to one Anthony Gonsalves and Victor Danny Gonsalves (*original lessees*), who were admitted as members of the Society. The original lessees passed away and the legal heirs of the original lessees executed agreement dated 28 August 1995 in favour of one Allen D'Silva for redevelopment of the plot. The agreement was cancelled vide Deed of Cancellation dated 3 September 2004.

3) By Agreement to Assign dated 27 October 2004 and MOU dated 28 January 2005 executed with various legal heirs of the original lessees, Respondent No.3 claims to have acquired interest in respect of the plot. Allen D'silva filed a suit against the heirs of the original lessees and the suit remained pending. Petitioner-Society received letter from Respondent No.3 on 14 March 2023, claiming that all the disputes were settled. Respondent No.3 filed Suit No. 565 of 2025 before the City Civil Court against Allen D'silva and others. In the above background, Respondent No.3 filed Appeal under Section 22 of the MCS Act before the Deputy Registrar for grant of membership. By order dated 11 March 2026, the Deputy Registrar passed order directing Petitioner-Society to grant membership to Respondent No.3. Petitioner filed Revision

Application No. 171 of 2026 challenging Deputy Registrar's Order dated 11 March 2026. By Order dated 20 May 2026, the Divisional Joint Registrar has dismissed the Revision. Accordingly, the Petitioner has filed the present petition challenging the orders passed by the Deputy Registrar and the Divisional Joint Registrar.

4) Mr. Hegde, the learned Senior Advocate appearing for the Petitioner-Society submits that Respondent No.3 is a rank trespasser on the property of the Society and cannot be granted even temporary or provisional membership. That there is no relationship between the Society and Respondent No. 3, who has not acquired valid title to the plot. That after the death of the original lessees, the legal heirs never applied for membership of the Society. That, upon securing membership of the Society, the legal heirs proceeded to assert multiple rights in respect of the plot. That, they first sought to illegally create rights in favour of Mr. Allen D'Silva and others. That the Society's consent and/or permission was not obtained while creating such alleged rights in favour of Mr. Allen D'Silva. Without informing the Society, the alleged rights created in favour of Mr. Allen D'Silva were cancelled, and fresh rights are now sought to be created in favour of Respondent No. 3. Again, while executing unregistered documents with Respondent No.3, Society's permission is not taken. He submits that only a member can transfer interest in the property. That since legal heirs were yet to be made members, they cannot bypass the channel and directly induct someone into the plot. That Respondent No.3 has not submitted any documents showing valid purchase of the plot. That the documents on the basis of which rights are claimed by Respondent No.3 are unregistered and

unstamped documents. That no lawful transfer of any interest in the plot has been effected in favour of Respondent No. 3, and consequently, there can be no question of the Society admitting Respondent No. 3 as its member. He submits that though the Society had initially objected to the capacity of Respondent No.3 from being admitted as a member since he is a non-Roman Catholic, the said ground is no longer pressed. He, however, submits that there is no valid application by Respondent No. 3, who neither filled up the prescribed statutory forms nor submitted the same to the Society. That therefore, in absence of any application, there cannot be deemed membership under Section 22(2) of the MCS Act. He therefore submits that the orders passed by the Deputy Registrar and the Divisional Joint Registrar are erroneous and liable to be set aside. Mr. Hegde submits that the point of absence of registration, despite being raised, has not been decided either by the Deputy Registrar or by the Divisional Joint Registrar. In support of his contention that there cannot be deemed membership in absence of a valid application, Mr. Hegde relies on judgment of this Court in Jay Anant Sagar Co-op. Housing Society Versus. Divisional Joint Registrar, Co-operative Societies & Ors.¹

5) Mr. Anturkar, the learned Senior Advocate appearing for Respondent No.3 opposes the Petition. He submits that Respondent No.3 has acquired valid interest in the plot by virtue of various documents executed by the legal heirs of original lessees. That the Society cannot go into the issue of acquisition of valid title. For securing membership of a society, it is not necessary to conduct a detailed enquiry into the valid

1 2019 SCC Online Bom 1419

acquisition of title. He further submits that the requirement for registration of a document for acquisition of interest in the property of the society is introduced by way of Chapter XIII-B w.e.f. 9 March 2019. That Section 154B-12 does not have retrospective operation. That acquisition of rights in the plot is vide agreement dated 21 October 2004 when there was no requirement for registration of the agreement. He relies on judgment of Full Bench of Gujarat High Court in **Mulshanker Kunverji Gor & Ors. Versus. Juvansinhji Shivubha Jadeja**² as followed by this Court in **Usha Arvind Dongre Versus. Suresh Raghunath Kotwal**³ in support of his contention that in a tenant co-partnership society, where the society is the owner of both, land as well as structure, transfer of shares does not require registration of the agreement. He also relies on judgment of Division Bench of this Court in **Sadbuddhi Brahmesh Wagh & Ors. Versus. Satish Raghvendra Wagh & Ors.**⁴ in support of his contention that no title is transferred to the purchasers with purchase of shares and that therefore the documents of purchase of shares does not require registration. He relies on provisions of Section 41 of the MCS Act in support of his contention that it is not necessary to register the instrument relating to transfer of shares in the society. He submits that all documents of purchase are produced before the Society and Society's membership was also applied for. Mr. Anturkar submits that the two authorities have concurrently ruled in favour of Respondent No.3. Ultimately, what is granted is merely provisional/temporary membership. That therefore there is no warrant for interference in the impugned orders. He prays for dismissal of the Petition.

2 1979 SCC OnLine Guj 54

3 1990 Mh.L.J. 306

4 2004 (1) Mh.L.J. 890

6) Rival contentions urged on behalf of the parties now fall for my consideration.

7) The Petitioner-Society has challenged Orders passed by the Deputy Registrar and Divisional Joint Registrar, which contemplated grant of provisional membership to Respondent No.3. It would be appropriate to clarify the reason why provisional membership is granted by the Deputy Registrar. The Deputy Registrar was informed about pendency of S.C. Suit No. 968 of 2021. Since the said Suit was pending, it appears that the Deputy Registrar had directed grant of provisional membership. However, Mr. Anturkar has brought to the notice of the Court the fact that the said suit has been compromised by filing of Consent Terms in this Court in Appeal from Order No. 187 of 2021 between Mr. Allen D'silva, Respondent No.3 and legal heirs of the original lessees. The Consent Terms are placed on record at page-504 along with the Affidavit-in-Reply filed by Respondent No.3. It is not necessary to go into the details of the Consent Terms. Suffice it to observe that the Suit appears to have been compromised by the parties. In any case, grant of membership in a society does not decide the issue of ownership and the records of the society can always be changed depending upon the outcome of a civil suit.

8) Coming to the core issue of grant of membership to Respondent No.3, the main opposition by the Petitioner-Society for admission of Respondent No.3 was the objection about she not being a Roman Catholic. This was the main plea urged by the Society before the

Deputy Registrar and Divisional Joint Registrar. Even in the present Petition, the main objection is about absence of capacity of Respondent No.3 as a Roman Catholic. However, during the course of his submissions, Mr. Hegde has fairly not pressed this objection and has submitted that the Petitioner-Society has given up the said objection.

9) Mr. Hegde has, however, raised three objections to admission of Respondent No.3 as a member of the Society. Firstly, he has sought to suggest that Respondent No.3 has never applied for membership and therefore there is no question of taking any decision on grant of membership to Respondent No.3. Secondly, he has submitted that Respondent No.3 cannot directly seek membership without the legal heirs of the original lessees first securing membership of the Society. Thirdly, he has submitted that the Agreement, on the basis of which Respondent No.3 claims right in respect of the plot, is an unregistered instrument.

10) I proceed to take up the objection of failure to submit any application or document by Respondent No.3 to seek membership. Alongwith the Affidavit-in-Reply, Respondent No.3 has produced Society's letter dated 29 October 2008, by which the Society clearly informed the Managing Committee's decision not to approve the sale of plot to Respondent No.3. The letter dated 29 October 2008 reads thus:

Date 29 October 2008

Ms. Rosanna Maria Noronha
(for self and as C.A. to
Mr. Paul James De Souza

Flat No. 7, Ish Kripa B'wing
Mulgaon Near Selma Chicken Center
Vasai West Thane District.

Dear Madam,

Re: Plot No.177 & 176 (part), St. Andrew Road, Bandra

Thank you for your letter. of 15 October 2008 in response of our letter of 16 April 2008. At the outset we would not be able to take any action in respect of para one in view of Pardiwala & Company Advocates & Solicitors' letter ref. MRP/S-573/2028/2008 dated 31 March 2008.

It is pertinent to note that we have now come to know that Mrs. Nasnim D'Souza still stays on part of the property in an extension built by her at her own cost has been given to her on a 99 year lease under Consent Terms filed in the High Court by Joe D'Souza and others as part of the divorce proceedings, without our consent. This was also not brought to our attention earlier.

We wish to confirm that the Managing Committee has not approved the sale to Mrs. Grace Pinto in view of the various issues raised in our earlier correspondence of 16 April 2008 and letter of even date.

Yours faithfully

For THE SALSETTE CATHOLIC CO-OP. HOUSING SOCIETY LTD.

CORNEL K. GONSALVES SECRETARY

(emphasis added)

11) Thus, the application of Respondent No. 3 for grant of membership is considered and rejected by the Society. It therefore cannot lie in the mouth of the Society that Respondent No.3 never applied for membership.

12) Coming to the second objection of failure on the part of the legal heirs to secure membership of the Society, in my view, the same cannot be a ground for denial of membership to Respondent No.3, who has now secured rights in respect of the plot from the legal heirs of the

original lessees. There may be procedural irregularity in legal heirs not seeking transfer of membership, which is their right. However, since the procedure for securing membership with the society is not followed, the right of the legal representatives in respect of the plot does not get extinguished. This right in the plot is assigned by the legal heirs in favour of Respondent No.3. In that sense, mere failure on the part of the legal heirs to transmit the membership in their names would not render the transaction of purchase by Respondent No.3 *ipso facto* illegal. The case does not involve assignment of plot by a member and such assignee not applying for membership and directly transferring/assigning the plot to a third party. What is involved in the present case is the legal heirs of the deceased member assigning the rights in the plot to Respondent No.3. Since the assignment has occurred 22 years ago on 27 October 2004, in the peculiar facts of the case, the non-following of the procedural requirement by the legal heirs first securing membership, needs to be ignored. Also, the situation is now irreversible. Now, there is no point in the legal heirs applying for membership with the society for removal of technical/procedural requirement and after transfer of the share certificate in their name, the society expecting Respondent No. 3 to apply for membership. Also, there are multiple heirs of the original deceased member and the society itself would have found it difficult to grant membership to a particular person. This is not to recognise right in favour of parties to bypass the society and execute assignments. But the arrangement is recognised due to peculiar facts of the present case.

13) So far as the aspect of registration is concerned, Section 41 of the MCS Act provides for exemption from compulsory registration of instruments relating to shares. Section 41 of the MCS Act provides thus:

41. Exemption from compulsory registration of instruments relating to shares and debentures of society.—

Nothing in clauses (b) and (c) of sub-section (1), of section 17, of the Indian Registration Act, 1908, shall apply-

(a) to any instrument relating to shares in a society, notwithstanding that the assets of the society consist in whole or in part of immovable property ; or

(b) to any debentures issued by any society and not creating, declaring, assigning, limiting or extinguishing any right, title or interest to or in immovable property, except insofar as it entitles the holder to the security afforded by a registered instrument whereby, the society has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property, or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

(c) to any endorsement upon, or transfer of, any debentures issued by any society

14) However, Chapter XIII-B has been added to the MCS Act w.e.f. 9 March 2019 and provisions of Section 154B-12 now require registered document for the purpose of transfer of shares, right, title and interest in the property of the society. Section 154B-12 of the MCS Act provides thus:

154B-12. Transfer of share, right, title and interests:

A Member may transfer his share, right, title and interest of his property in the society by way of registered document by following the due procedure as provided in the rules or bye-laws

15) However, the transaction in the present case has occurred on 27 October 2004, when provisions of Section 154B-12 did not find place in the MCS Act and transfer of shares was governed by the provisions of Section 41 of the MCS Act. Mr. Anturkar has relied upon judgment of Gujarat High Court in **Mulshanker Kunverji Gor** (supra) and judgments of this Court in **Usha Arvind Dongre** (supra) and **Sadbuddhi Brahmesh Wagh** (supra) in support of his contention that registration is not compulsory for purchase of shares in a tenant co-partnership society since transfer of shares does not include transfer of interest in the property. Petitioner has not clarified in the petition as to whether it is a tenant-co-ownership society or tenant-co-partnership society. The objection of absence of registration is not specifically raised in the Petition. In ground clause (j), it is vaguely sought to be suggested that Respondent No.3 'did not produce' any lawful 'registered title documents'. Ground clause (j) of the Petition reads thus :

j. The Respondent Nos.1 & 2 failed to consider that Respondent No.3 had illegally acquired the plots and that she was a rank trespasser on the property of the Society. The Respondent Nos.1 & 2 committed grave error in holding that by various documents the Respondent No.3 had acquired Plot Nos. 177 and 176 (part), without the Respondent No.3 having produced any 'lawful registered title documents' which had written approval from the Petitioner Society.

16) Thus, emphasis in ground clause (j) is about 'non-production of title documents' and not about 'absence of registration'. Therefore, in the facts of the present case, it is not necessary to delve deeper into the aspect of non-registration of the Agreement dated 27 October 2004. The Petitioner society's main objection was about Respondent No. 3 not being Roman Catholic. The objection of non-

registration of the Agreement was neither specifically raised before the Deputy Registrar and the Divisional Joint Registrar nor the same finds place in the present petition. Also, while rejecting the request of Respondent No. 3 for admitting her as member, the Petitioner society did not raise objection about non-registration of the Agreement. The resistance by the society for admitting Respondent No. 3 as a member was essentially due to the legal heirs entering into two transactions (with Respondent No. 3 and with Mr. Allen D'silva) and some extent to the structure and recognition of leasehold rights in divorce proceedings without society's consent. Non-registration of the Agreement was not even remotely suggested in the society's letter dated 29 October 2008. If the instrument of transfer shares and interest in the immovable property of the society required registration in the year 2004, the Petitioner ought to have pleaded the exact class for which it is registered (*tenant co-partnership or tenant co-ownership*) and raised a specific plea to that effect. In absence of foundational pleadings in the Petition, the oral objection raised before me is incapable of being adjudicated. The issue is therefore left open to be decided in an appropriate case.

17) Both, the Deputy Registrar and the Divisional Joint Registrar have concurrently ruled in favour of Respondent No.3 by directing grant of provisional membership to Respondent No.3. As observed above, the main reservation by the Petitioner-Society was about Respondent No.3 not producing any valid document of she being a Roman Catholic. Now that the said objection is given up, there is no warrant for interference in the impugned orders passed by the Deputy Registrar and Divisional Joint Registrar.

18) Writ Petition is accordingly **dismissed** with no order as to costs.

[SANDEEP V. MARNE, J.]

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