

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

WRIT PETITION NO. 11903 OF 2022

Mistry Park CHS Ltd., 77
Bhulabhai Desai Road, Mumbai-
400 026.

...PETITIONER

: V/s. :

1. Dr. Bharat Prem Shivdasani
2. Dr. Haresh Prem Shivdasani
R/at. Flat No.9/26, Shyam
Niwas, 77, Bhulabhai Desai
Road, Mumbai-400 026.
3. Deputy Registrar, Co-
operative Societies, D-Ward,
Mumbai.
4. The Divisional Joint Registrar
of Co-operative Societies,
Malhotra House, GPO, Mumbai.

...RESPONDENTS

Mr. G.S. Gobbole, Senior Advocate i/by. Mr. S.P. Kanuga a/w. Ms. Sapna Math, for Petitioner.

Mr. Mustafa Doctor, Senior Advocate a/w. Mr. Lalan Gupta a/w. Mr. Rohit Iyengar i/by. Mr. Shardul Amarchand Mangaldas co. for Respondents No.1 and 2.

Mr. P.P. Pujari, AGP for State-Respondents No.3 and 4.

CORAM : SANDEEP V. MARNE, J.

Resd. On : 28 August 2023.

Pron. On : 7 September 2023

JUDGMENT :

1. Petitioner, a Co-operative Housing Society, is aggrieved by order dated 18 October 2021 passed by the Deputy Registrar of Co-operative Societies declaring that Respondents No.1 and 2 have become its members and directing it to record their names in the Membership Register, Share Certificate etc. Aggrieved by the decision of the Deputy Registrar, Petitioner-Society filed Revision before the Joint Registrar of Co-operative Societies, which is rejected by order dated 22 March 2022 upholding the decision of the Deputy Registrar. Petitioner-Society is accordingly challenging the decisions of the Deputy Registrar and the Divisional Joint Registrar in the present Petition.

2. It is Petitioner-Society's case that on 8 March 1966, lessors of the plot executed a lease in favour of the Society and one of the conditions for lease in Clause-2(f) was not to use the building for any purpose other than as private residences and further not to use motor garages for any purpose other than for garaging the motor cars. The Developer-Mistry Construction Company constructed two buildings consisting of residential flats on upper floor and garages on the ground floor. One Dr. Prem Kalyandas Shivdasani purchased

garage 'A' from the Developer. He does not own any residential flat in the building. The occupiers of the building have formed Petitioner Co-operative Housing Society and have adopted Bye-laws, which are registered with the Registrar on 18 February 1965. Bye-law No.6 limits admission of membership to the number of tenements or plots available for allotment. It is Petitioner-Society's case that only a flat owner or plot owner can become member of the Society. Under Clause-7(a), there is a provision for admission of nominal member, who does not enjoy any right of membership or receive any advantage or benefit of dividend. Dr. Prem Kalyandas Shivdasani was admitted as a nominal member of the Society.

3. Dr. Prem Kalyandas Shivdasani was using the garage for running his clinic, which according to the Society is not permissible in law. He expired in the year 1992, leaving behind his wife Nirmala and two sons, Dr. Bharat and Dr. Haresh. Smt. Nirmala Prem Shivdasani held a nomination from her husband and was brought on record as a nominal member. Smt. Nirmala Shivdasani expired on 9 September 2018. On her death, Respondents No.1 and 2 made an application on 10 October 2019 stating that the mother had nominated them to hold 60% (Dr. Bharat) and 40% (Dr. Haresh) shares in the garage. They requested the Society to add them as nominal members by submitting applications in the prescribed format. On 28 November 2020, Respondents No.1 submitted an application for issuance of Share Certificate/Sinking Fund Certificate.

4. On 25 March 2021, Respondents No.1 and 2 filed Appeal before the Deputy Registrar of Co-operative Societies for grant of regular membership and issuance of Share Certificate. The Appeal was resisted by the Petitioner-Society by filing reply.

5. After hearing both the sides, the Deputy Registrar passed order dated 18 October 2021 and declared that Respondents No.1 and 2 have acquired membership in Petitioner-Society in respect of Shop No.1. The Society has been directed to enter their names in various records including Share Certificate.

6. Aggrieved by the order of the Deputy Registrar, Petitioner-Society preferred Revision Application No.699/2021 before the Divisional Joint Registrar. However, by order dated 22 March 2022, the Divisional Joint Registrar has proceeded to reject the Revision Application. Petitioner-Society has challenged the orders of the Deputy Registrar dated 18 August 2021 and the Divisional Joint Registrar dated 22 March 2022 in the present petition.

7. Mr. Godbole, the learned senior advocate would appear on behalf of the Petitioner-Society and challenge the orders passed by the Deputy Registrar and Divisional Joint Registrar. He would invite my attention to the Bye-laws of the Society, under which garage owner can only become a nominal member and not a regular

member. He would invite my attention to the membership form/Indemnity Bond submitted by Respondents No.1 and 2 in which they sought only nominal membership. That even application dated 28 November 2020 was for issuance of Share Certificate/Sinking Fund Certificate. That Petitioner-Society has been issuing only Sinking Fund Certificate to nominal members. That there was absolutely no cause of action for Respondents No.1 and 2 to file any proceedings before the Deputy Registrar as their request for grant of nominal membership was acceded to by the Society.

8. Mr. Godbole would rely on Section 23 of the Maharashtra Co-operative Societies Act, 1960 (**Act of 1960**) in support of his contention that Appeal under sub-section (2) of Section 23 would lie to the Registrar only against a decision of the Society to refuse admission to its membership. That since the Society has not refused admission to membership, there is no decision and therefore Appeal filed by Respondents No. 1 and 2 was clearly not maintainable. He would then submit that on the other hand, if the Society fails to take any decision on application for membership, there is a remedy under sub-section (2) of Section 22 for seeking a declaration of deemed membership. That in the present case, application was filed by Respondents No.1 and 2 for admission as nominal members which is not refused but infact granted and therefore there is neither a failure to take decision, in respect of which declaration could be sought under Section 22(2),

nor a refusal which could be challenged by filing Appeal under Section 23(2). That no application was filed for grant of regular membership and therefore even jurisdiction under Section 22(2) could not have been exercised by the Registrar. He would therefore submit that the impugned order passed by the Deputy Registrar is wholly without jurisdiction.

9. Mr. Godbole would then invite my attention to Section 13 of the Act of 1960 providing for amendment of Bye-laws. That under Section 14, the Registrar has a power to direct amendment of Bye-laws. He would submit that as of today, there is no amendment to the Bye-laws. Without directing an amendment to Bye-laws in any proceedings filed under Section 14, Registrar could not have granted membership against the provisions of Bye-laws by a sidewind. That if a specific order was passed under Section 14 of directing amendment of Bye-laws, the Society could have exercised remedy of filing Appeal under Section 152 of the Act. He would therefore submit that the order passed by the Deputy Registrar purportedly under Section 23(2) has the effect of directing amendment of Bye-laws under Section 14 in absence of any proceedings seeking such an amendment.

10. Mr. Godbole would then submit that garage is not covered by expression 'flat' and therefore occupiers of garage cannot become members of a Society. In support of his contention, he would place reliance on the judgment of the Apex court in

Nahalchand Laloochand Pvt. Ltd. Vs. Panchali Co-operative Housing Society Ltd., 2010 9 SCC 536. That despite inviting attention of both the Registrars to the said judgment, there is no discussion on this aspect in the impugned orders passed by the Deputy Registrar and Divisional Joint Registrar. He would further submit that the Divisional Joint Registrar has erroneously relied upon Model By-laws which have not been adopted by the Petitioner-Society. That the findings of the Divisional Joint Registrar that garage is a flat is in teeth of the judgment in *Nahalchand Laloochand* (supra). He would therefore pray for setting aside both the impugned orders.

11. *Per-contra*, Mr. Doctor the learned senior advocate would appear on behalf of Respondents No.1 and 2 to oppose the petition. Inviting my attention to the reply filed by the Society before the Deputy Registrar, he would submit that all the points argued by Mr. Godbole were never raised in the application. That the only defence taken before the Deputy Registrar by the Society was that garage is not a flat. That therefore the points of jurisdiction now sought to be argued is nothing but an ingenuity on the part of the Petitioner-society directly before this Court. He would rely on the provisions of Section 154B-5 of the Act of 1960 under which an Housing Society is permitted to admit to its membership, persons equivalent to the number of flats. He would then invite my attention to the definition of the term 'flat' under Section 154B-1(13), under which every separate and self-contained part of any immovable

property constitutes a flat. He would submit that the premises in question have always been used as a Dispensary and have never been used as a Garage even as per the admission of the Society. That being a self-contained unit, the premises are infact a flat. That Chapter-XIII-B in the Act of 1960 has been inserted w.e.f. 9 March 2019 i.e. after the judgment of the Apex Court in *Nahalchand Laloochand* and therefore the definition of the term 'flat' under Chapter XIII-B would prevail over interpretation made by the Apex Court based on the provisions of the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act of 1963 (**MOFA Act**). That there is no concept of nominal member under Chapter-XIII-B of the Act of 1960 as definition of 'Member' under Section 154B-1(18) includes only Associate Member, Joint Member or Provisional Member. That the Registrars have recorded a finding of fact to the effect that the premises concerned is a flat and therefore this Court would be loathe in disturbing the said finding of fact in exercise of its jurisdiction under Article 227 of the Constitution of India.

12. Mr. Doctor would then rely on the application dated 15 December 2020 preferred by four shop owners including Respondents No.1 and 2 for grant of original/regular membership alongwith the Share Certificate. He would submit that Respondents No.1 and 2 have thus infact made an application for grant of regular membership and therefore all objections of jurisdiction raised by the Petitioner are untenable. That though the factum of submission of

application dated 28 November 2020 is specifically raised in para-5(xii) of the Affidavit-in-reply, Petitioner-Society has maintained silence about the same in its rejoinder. He would pray for dismissal of the petition.

13. After considering the submissions canvassed by the learned Counsels for the parties, two issues that arise for my consideration are about Deputy Registrar's jurisdiction to pass order directing admission of Respondents No.1 and 2 as Society members and entitlement of Respondents No.1 and 2 to become Members of the Society.

14. So far as the first issue of jurisdiction is concerned, the objection of jurisdiction is premised on absence of cause of action to file Appeal under the provisions of Section 23(2) of the Act of 1960. It is the contention of the Petitioner-Society that Respondents' application for grant of nominal membership was granted and that therefore there was no cause of action for them to file Appeal under the provisions of Section 23(2). It is contended that an Appeal under sub-section (2) of Section 23 would lie only against a decision of the Society refusing to admit to the membership. It would therefore be necessary to refer to the provisions of Section 23 which reads thus :

23. Open membership.- (1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor

under the provisions of this Act and its bye-laws.

(1A) Where a society refuse to accept the application from an eligible person for admission as a member, or the payment made by him in respect of membership, such person may tender an application in such form as may be prescribed together with payment in respect of membership, if any, to the Registrar, who shall forward the application and the amount, if any so paid, to the society concerned within thirty days from the date of receipt of such application and the amount; and thereupon if the society fails to communicate any decision to the applicant within sixty days from the date of receipt of such application and the amount by the society, the applicant shall be deemed to have become a member of such society.] [If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.

(2) Any person aggrieved by the decision of a society, refusing him admission to its membership, may appeal to the Registrar [within a period of sixty days from the date of decision of the society]. [Every such appeal, as far, as possible, be disposed of by the Registrar within a period of three months from the date of its receipt:

Provided that, where such appeal is not so disposed of within the said period of three months, the Registrar shall record the reasons for the delay.]

(3) The decision of the Registrar in appeal, shall be final and the Registrar shall communicate his decision to the parties within fifteen days from the date thereof.

(4) Without prejudice to the foregoing provisions of this section, in the case of agro processing societies or any other society for which a definite zone or an area of operation is allotted by the State Government or the Registrar, it shall be obligatory on the part of such society to admit, on an application made to it, every eligible person from that zone or the area of operation, as the case may be, as a member of such society, unless such person is already registered as a member of any other such society, in the same zone or the area of operation.”

15. The other submission is that the Registrar is also vested with jurisdiction to make a declaration of deemed membership under the provisions of sub-section (2) of Section 22 on Society's failure to take a decision on membership application. Provisions of Section 22 read thus :

"22. Person who may become member

(1) Subject to the provisions of section 24, no person shall be admitted as a member of a society except the following, that is to say--

(2) Where a person is refused admission as a member of a society, the decision (with the reasons therefor) shall be communicated to that person within fifteen days of the date of the decision, or within three months from the date of receipt of the application for admission, whichever is earlier. If the society does not communicate any decision to the applicant within three months from the date of receipt of such application the applicant shall be deemed to have been admitted as a member of the society. If any question arises whether a person has become a deemed member or otherwise, the same shall be decided by the Registrar after giving a reasonable opportunity of being heard to all the concerned parties.

16. Thus, statutory scheme is such that Section 22 deals with eligibility of a person to become member of a Society. Sub-section (2) of Section 22 provides that where the Society refuses admission to the membership of Society, the decision shall be communicated within fifteen days of the date of the decision or within three months from the date of application for admission. There is a deeming fiction where failure to communicate the decision to the Applicant

within three months from the date of receipt of application entails deemed membership to the Society. The Registrar is empowered to decide any dispute about coming into effect deemed fiction and can make a declaration as to whether such applicant has become a deemed member or not. Thus, Section 22 deals with a situation where the Society accepts an application and either rejects it or fails to take a decision within a period of three months.

17. Situation where the Society fails to accept the application from an eligible Applicant for admission as a member is dealt with in Section 23, in which case the Applicant can approach the Registrar and tender his application and the Registrar forwards the application to the Society. The Society is required to decide the application and failure to take decision entails deemed membership. The Registrar is again empowered to declare whether the Applicant has become a deemed member or not.

18. Cases where Society refuses to admit a Member by taking a decision is dealt with by sub-section (2) of Section 23 where a remedy is created against the Society's decision. The decision of the Society refusing to admit an Applicant to membership can be challenged by filing an Appeal before the Registrar.

19. Thus the provisions of Section 22(2) deals with a situation where the Applicant can approach the Registrar for a declaration of deemed membership, when Society fails to take a

decision on his application within prescribed period. On the other hand, sub-section (2) of Section 23 deals with a situation where the Society has taken a decision of refusal to admit the Applicant to membership of the Society, in which case, such an Applicant can file Appeal before the Registrar. For the purpose of present controversy, we need not discuss the situation where Society fails to accept the application for membership in which case, Registrar can forward such application to the Society.

20. In the present case, Respondents Nos. 1 and 2 initially submitted Form in Appendix-III on 10 October 2019 intending to become nominal members of the Society. The purpose of the Form is to declare that Applicants would use the unit for the purpose of which the same was originally allotted by the Developer and that no change of user would be made. It appears that there is another document of Indemnity Bond by which Respondents No.1 and 2 informed the Society that they were nominated by Late. Nirmala Prem Shivdasani under Rule 25 of the Maharashtra Co-operative Societies Rules, 1961 to the extent of 60% and 40% shares respectively in the Garage/Shop No.1. In that document, Respondents No.1 and 2 made a statement that as per Bye-law No.34 of the Society, they are entitled to make an application for nominal membership and accordingly they have made such an application for nominal membership. They indemnified the Society and the Office Bearers in respect of any proceedings arising out of transfer of nominal membership in their name. A statement was

made in the said writing that Respondents No.1 and 2 were fully aware of the fact that they were being admitted to the nominal membership only on the basis of Indemnity Bond and Undertaking.

21. It appears that on 28 November 2020, a letter was submitted by Dr. Bharat Shivdasani-Respondent No.1 to the Secretary of the Society stating that subsequent to the earlier application resulting in transfer of Shop No.1 in the name of Respondents No.1 and 2, the Society bills were being generated and paid by them and therefore a request was made to issue the Share Certificate/Sinking Fund Certificate in their names.

22. Based on the Form and documents dated 10 October 2019 and 20 November 2019, Mr. Godbole has contended that application made was for admission of Respondents No.1 and 2 to the nominal membership of the Society, which has been granted to Respondents No.1 and 2.

23. Respondents No.1 and 2 thereafter approached the Deputy Registrar of Co-operative Societies by filing Appeal under Section 23(2) of the Act of 1960 stating that the Society issued Sinking Fund Certificate No.43 amounting to Rs.4601/- in the name of Mr. N.P. Shivdasani and that the Society has been treating them as nominal members but refuses to accept them as regular members. They relied upon Membership Application dated 28

November 2020 stating that the Society forced them to sign Indemnity Bond for being accepted as nominal members.

24. In the light of the above factual background, the issue that is sought to be raised by Mr. Godbole is that there is neither a failure to take decision nor refusal of membership and therefore there was no cause of action for Respondents No.1 and 2 to file an Appeal under Section 23(2) of the Act of 1960 before the Deputy Registrar. I find this objection to be highly technical. In the Appeal, Respondents No.1 and 2 have relied upon application dated 28 November 2020. The said application is for issuance of 'Share Certificate/Sinking Fund Certificate'. Though it is sought to be contended by the Society that Sinking Fund Certificate is issued only to a nominal member, the application also demands issuance of Share Certificate, which according to the Society is issued to a regular member. Therefore, it would be difficult to hold that there was no cause of action for Respondent Nos. 1 and 2 to approach the Registrar. Whether they could have filed an appeal under Section 23(2) in absence of a refusal or whether they ought to have approached for a declaration under Section 22(2) becomes highly technical as both application/appeal would lie before same authority.

25. Even otherwise, the dispute before the Registrar was whether Respondents No.1 and 2 are entitled to be granted regular membership. Reliance is placed by Mr. Doctor on letter dated 15 December 2020 submitted by occupants of four shop by which

request was made for their admission as regular members. Mr. Godbole is right in contending that there is no reference to this application either in the Appeal or in the order of the Registrar. At the same time, the Society has not denied receipt of the application dated 15 December 2020 in its rejoinder. Be that as it may, a clear dispute was raised before the Deputy Registrar that the Society was refusing to admit Respondents No.1 and 2 as regular members. If submission of Mr. Godbole is accepted, what ought to have been done by Respondent Nos.1 and 2 is to file application for grant of regular membership of the Society and if the Society refused to accept the application, take a route under Section 23(1A) and approach the Society for acceptance of application. On the other hand, if the Society accepted the application, then wait for a decision of the Society. If Society was to reject the application, file an Appeal under Section 23(2). If the Society fails to take a decision on the application, approach the Registrar for declaration of deemed membership under Section 22(2). While Mr. Godbole may not be entirely wrong in insisting for this procedure to be followed, once there is a clear dispute between Petitioner-Society and Respondents No.1 and 2 about entitlement of admission as regular member, in my view, non-following of circuitous route of filing a fresh application for regular membership by Respondents No.1 and 2 could not have been a reason for the Deputy Registrar to reject the Appeal for technical reasons.

26. Also of relevance is the fact that the issue of lack of jurisdiction was never raised or pleaded by the Society before the Registrar. Far from taking a stand that Respondent Nos. 1 and 2 never filed an application for regular membership, the Society joined issue with Respondents No.1 and 2 for their entitlement to become regular members by placing reliance on its Bye-laws. Thus the issue of jurisdiction, which is strenuously canvassed by Mr. Godbole, was never raised by the Society before the Deputy Registrar. This issue was vaguely raised in para-12 of the reply dealing with the issue of limitation wherein the Petitioner-Society stated that '*The Appellants are conspicuously silent about when said application for so-called full- fledged membership was made, when it was rejected by the Society. This is not an accidental mistake but purposely done since the Appellants are aware that there is a time limit prescribed u/s 23(2) of the Maharashtra Co-operative Societies Act, 1960 to file Appeal u/s 23(2) within 2 months from the date of rejection of membership*'. It is difficult to accept that these contentions are raised to contest jurisdiction of the Registrar or to suggest lack of cause of action. They were raised only in the context of limitation.

27. Thus the Registrar did not have an occasion to decide the issue of alleged lack of cause of action or lack of jurisdiction. Having not raised the issue of jurisdiction before the Registrar, the Petitioner-Society cannot now be permitted to raise the said issue directly before this Court. The Petitioner-Society has not placed on

record copy of the Appeal Memo filed before the Divisional Joint Registrar. However, from the order it appears that Petitioner-Society raised the issue of failure to file proper application for membership as required under the law by Respondent Nos. 1 and 2. However, even that assertion does not appear to be made in the context of absence of cause of action or lack of jurisdiction. Even otherwise, even if it is assumed that Petitioner-Society did raise an objection of failure to file application for regular membership and absence of cause of action, in my view, the said objection is highly technical in the facts and circumstances of the present case where both the parties joined the issue on the question of entitlement of Respondent Nos. 1 and 2 for being admitted as regular members of the Society. If the objection raised by Mr. Godbole is upheld, all that will happen is to make Respondent Nos. 1 and 2 to file a fresh application and invite fresh decision of the Deputy Registrar and Divisional Joint Registrar. The objection would merely result in another round of litigation, which can be avoided in view of the fact that both the sides have placed their respective pleas on merits before the Deputy Registrar and Divisional Joint Registrar about right of Respondents No.1 and 2 for being admitted as regular members of the Society. The objection of Mr. Godbole about absence of cause of action and lack of jurisdiction is therefore repelled.

28. Mr. Godbole has also contended that once it is found that jurisdiction did not vest in the Registrar, his mere opinion that a order can be passed would not render the order so passed a valid

order. Since Mr. Godbole's objection about jurisdiction is rejected, this issue sought to be raised by him becomes academic.

28. Coming to the next issue of entitlement of Respondents No.1 and 2 for being admitted as regular members of the Society, regular membership is denied by the Petitioner-Society on the ground that what is occupied by Respondents No.1 and 2 is a mere Garage which does not fall within the definition of 'Flat'. Reliance is placed on Bye-laws of the Society under which a garage owner cannot become a regular member of the Society. By-law-7(a) reads thus :

"A person may be admitted as a nominal member on payment of Rs.1/- only as entrance fee for the purpose of occupying a shop/Godown/Garage in the Society. A nominal member shall not exercise any right of membership or receive any advantage, or benefit of dividend etc."

Thus as per Bye-laws of the Society, a person occupying a Shop, Godown or Garage in the Society can only be admitted as nominal member. Thus, going strictly by the Bye-laws of the Society, even a shop owner cannot be admitted as a regular member and can only be admitted as a nominal member.

14. Mr. Godbole has relied upon judgment of the Apex Court in ***Nahalchand Laloochand*** (supra) in support of his contention that garage cannot be treated as a Flat. In para-41 of the judgment, the Apex Court has held as under :

“41. It is clear to us that stand alone “garage” or in other words “garage” as an independent unit by itself is not a “flat” within the meaning of Section 2(a-1) and we answer Question (i) in the negative. The judgment of the Bombay High Court in *K.R. Agarwal (Dr.) v. Balkrishna Jawar*, 4 AIR 1972 Bom 343 to the extent the expression “or garage” has been read after the word “godown” in para-5. (Clause 2) of the Report does not state the correct legal position in what we have already said above.”

In ***Nahalchand Laloochand***, the Apex Court has decided the issue as to whether the stand alone “garage” can be treated as an independent unit like a flat within the meaning of Section 2(a-1) of the MOFA Act. The said issue arose in the light of the dispute between a member and the Society over possession of parking space in the stilt portion of the building. It is in the context of that dispute, that the Apex Court decided whether a standalone “garage” can be treated as a flat within the meaning of provisions of MOFA. The judgment in ***Nahalchand Laloochand*** was delivered by the Apex Court on 31 August 2010.

15. The provisions of the Act of 1960 came to be amended on 9 March 2019 by inserting Chapter-XIIIB in the Act dealing with Co-operative Housing Societies. The word ‘Flat’ has been defined under Clause (13) of Section 154B-1 as under :

S.154B-1.Definitions

(13) “Flat” means block, chamber, dwelling unit, apartment, office, showroom, shop, godown, premises, suit, tenement, unit or by any other name, means a separate and self-contained part of any immovable

property, including one or more rooms or enclosed spaces, located on one or more floors or any part thereof, in building or on a plot of land, used or intended to be used for any residential or commercial use such as residence, office, shop, showroom or godown or for carrying on any business, occupation, profession or trade, or for any other type of use ancillary to the purpose specified.”

Thus, for the purpose of application of the provisions of the Act of 1960 and for deciding the question about admission of the Applicant to membership of a Society, the definition of Flat under Clause-(13) of Section 154B-1 would be relevant and the interpretation of the term ‘flat’ in *Nahalchand Laloochand* made in the context of provisions of MOFA Act may not apply to the present case. In that sense, reliance of Mr. Godbole on findings recorded by the Apex Court with regard to the definition of ‘flat’ under the MOFA in *Nahalchand Laloochand* would not be of much relevance for the present case.

16. As per definition of the term ‘Flat’ in Clause-154B-1, even a separate and self-contained part of immovable property including one or more rooms or enclosed space is covered by definition of the term ‘Flat’. It is Petitioner’s own case that the concerned garage was always being used by father of Respondents No.1 and 2 for running dispensary. In this regard, following statement is made in the petition.

“The present Petitioner now learnt that the said purchaser started using the said garage for running a Clinic which is not permissible in terms of law.”

For the purpose of the present petition, the issue as to change of user of the garage is not relevant and the same can be decided in appropriate proceedings as and when filed by either by the parties. The Society admitted Respondents' father as a nominal member in terms of its Byelaws. Therefore, the issue whether holder of a garage (which has always been used as a clinic) can be admitted to the membership of the Society is not disputed in the light of readiness on the part of the Society to admit them as nominal members. The only issue is whether they can be treated as regular members or not.

17. Both, Deputy Registrar and Divisional Joint Registrar have made reference to the Model Bye laws under which "Flat" includes a "Garage". Model Bye-law No.3 referred to by the Divisional Joint Registrar in his order reads thus:

"3. Interpretations of the words and terms.

(vi) 'Flat' means a separate and self-contained set of premises used or intended to be used for residence, or office, or showroom, or shop, or godown and includes a garage, or dispensary, or consulting room, or clinic or flour mill or coaching classes, or palnaghar, beauty parlour, the premises forming part of a building and includes an apartment."

It is true that the Society has not yet adopted the Model Bye-laws. Mr. Godbole has submitted that the Registrar has a power to direct amendment of Bye-laws under Section 14 and as long as the Byelaws are not amended, the provisions of the existing Bye-laws would continue to apply. This submission of Mr. Godbole about non-

amendment of Bye-laws is also referable to provisions of Section 154B-31 of the Act of 1960 which contains a saving clause providing that the Bye-laws existing on the date of commencement of the Amendment Act, 2019 shall continue to apply till expressly modified. Thus here again, Mr. Godbole expects Respondents No.1 and 2 to first take the route of filing proceedings for amendment of Bye-laws and then apply for regular membership. The question again is whether the findings recorded by the Deputy Registrar and Divisional Joint Registrar would be rendered perverse for failure on the part of Respondent Nos. 1 and 2 in not seeking amendment of Bye-laws.

18. In my view, the findings recorded by the Deputy Registrar and Divisional Joint Registrar about entitlement of Respondents No.1 and 2 to become regular members cannot be treated as perverse as the same appear to be in tune with the provisions of Clause-13 of Section 154B-1 as well as Model Bye-laws. Though Mr. Godbole may be technically right in contending that without seeking direction to amend Byelaws to bring it in tune with the Model Bye-laws, Respondents No.1 and 2 cannot directly seek membership as per the Model Bye-laws. The Deputy Registrar and Divisional Joint Registrar cannot be faulted in giving relief to Respondents No.1 and 2 which appear to be in tune with not just the Model Bye-laws but also with definition of the term 'Flat' within the meaning of Clause-(13) of Section 154B-1. Since no perversity can be found in the findings recorded by the Deputy Registrar and

Divisional Joint Registrar and since the view taken is plausible, it would be difficult for this Court to reverse their decisions and arrive at a conclusion that Respondents No.1 and 2 cannot be admitted as regular members of the Society.

19. The orders passed by the Deputy Registrar and Divisional Joint Registrar appear to be unexceptional. Writ Petition, being devoid of merits is **dismissed** without any order as to costs.

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SANDEEP V. MARNE, J.

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