

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

WRIT PETITION NO.8685 OF 2024

**VASANT
ANANDRAO
IDHOL**

Pramukh Vijay Co-op. Hsg. Soc. Ltd. ...Petitioner

Versus

The Divisional Joint Registrar,
Co-operative Societies, Mumbai & Ors. ...Respondents

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Mr.Kunal Bhange with Sonal Hemant Mishal, Akshay Pawar and
Mohd.Aijaz Sayyed for the Petitioner.

Mr.Pramod Bhosle with Mr.Prashant Chauhan and Mr.Hitesh Dave for
the Respondent Nos.3 and 4.

Ms.Aloka A. Nadkarni, AGP for the Respondent- State.

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CORAM : AVINASH G. GHAROTE, J.
DATE : 1st AUGUST, 2024

P.C.:

1. The petition questions the order dated 19.03.2024 passed by the respondent No.1, rejecting the application for stay filed by the petitioner society in a challenge to the order dated 30.08.2023, passed by the respondent No.2, which directs membership to be granted to the respondent Nos.3 and 4 on account of purchase of apartment No.E-1/41 in the building

owned by the society.

2. The learned counsel for the petitioner upon instructions makes a statement that the grievance is in respect of illegal construction done by the predecessor in respect of the aforesaid flat, which is being constructed by the respondent Nos.3 and 4 in such circumstances, the issue of illegal construction cannot be gone into under the proceedings under the Maharashtra Co-operative Societies Act (MCS Act) and it will be open to the petitioner to take appropriate action against respondent Nos.3 and 4 as well as their predecessor in that regard.

3. The learned counsel for the respondent Nos.3 and 4, upon instructions, makes a statement that his clients do not intend to make any construction altogether, which statement is accepted as the statement to the Court.

4. In view of this, the learned counsel for the petitioner states that the share certificate in respect of flat E-1/41 shall be issued to the respondent Nos.3 and 4 within a week, subject to their right to take proceedings in respect of their claim of there being illegal and unauthorized construction made by the

predecessor of the respondent Nos.3 and 4 by encroaching the common terrace and constructed a room therein.

5. The petition is therefore disposed off in aforesaid terms. Any proceedings by the petitioner society for removal of unauthorized construction, as claimed by it, shall be decided on its own merit.

(AVINASH G. GHAROTE, J.)