

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present :

The Hon'ble Justice Raja Basu Chowdhury

WPA 13617 of 2025

**The Peerless General Finance and Investment Company Limited &
Anr.**

versus

The Joint Registrar of Co-operative Societies & Ors.

For the petitioners : Mr. N.C.Bihani, Sr. Adv.
Mr. Tapan Nag Chowdhury
Mr. Soumya Mukherjee

For the respondent nos. : Mr. Tanish Ganeriwala
5 & 6. Mr. Debabrata Das
Mr. Saptarshi Mukherjee
Mr. Tirthankar Nandi

For West Bengal Housing: Mr. D. Sengupta
Board. Mr. Ayan Chakraborty
Ms. Sohini Mukherjee

For the respondent nos. : Mr. Srijan Nayak
1 to 4. Mr. Ankit Sureka
Mr. Biplab Das

Heard on : 26.08.2025.

Judgment on : 26.08.2025

Raja Basu Chowdhury, J (Oral):

1. The instant writ petition has been filed, inter alia, calling upon the respondents to withdraw and / or cancel the impugned communication dated 20th July 2022 being annexure P-14 to the

instant writ petition. According to the petitioners on the basis of an application made by the petitioners even before formation of the respondent no. 5 being the cooperative society, an allotment was made by the West Bengal Housing Board on 19th October 1995, thereby provisionally allotting the petitioner no.1 with 6 (six) several flats at East Calcutta Township Project, Phase-IV 'B' type, upon deposit of the sum indicated therein, and on the condition that the petitioner no. 1 becomes a member of the cooperative society.

2. According to Mr. Bihani, learned Senior Advocate appearing on behalf of the petitioners the State Government being otherwise empowered, while making over prior possession of the aforesaid flats had exempted the provisions of Rule 135(2) of the West Bengal Cooperative Societies Rules, 1987 (hereinafter referred to as the "said Rules") thereby, authorizing the petitioner no.1 to be entitled to retain the above 6 (six) flats. He submits that now the petitioners are interested to sale the above flats to individuals and in this regard insists for allotment of individual, membership numbers.
3. Heard the learned advocates for the respective parties and considered the materials on record. To appreciate the scope of the aforesaid claim, it is necessary to consider the scope of exemption granted by the State Government. In this context, Rule 135 of the said Rules is extracted hereinbelow:-

“Rule - 135. Membership.

(1) Every applicant for membership of a co-operative housing society shall, as the case may be, submit along with his application for membership

- (i) two recent passport size photographs,*
- (ii) income-tax clearance certificate or profession tax certificate, and*
- (iii) salary certificate (in case of persons employed by others).*

(2) In a co-operative housing society the number of members shall not exceed the total number of plots, houses or apartments proposed by a society to be allotted to members under any scheme or project of such society:

Provided that a member shall be eligible for allotment of only one plot, house or apartment in a housing co-operative society.

(3) (a) For the transfer of land or house or apartment a member shall obtain a written consent of the society and before giving such consent the society shall satisfy itself that

- (i) the transferee is eligible for being a member of the society;*
- (ii) the transferee has genuine need for residential accommodation;*
- (iii) the transferor has paid off his outstanding liabilities to the society or, the transferee has undertaken to take over such liabilities of the transferor;*
- (iv) the transferee formally applies for membership of the society.*

(b) Where a society refuses or fails to give consent to the transfer referred to in clause (a) and the member intends to appeal to the Registrar against such refusal by or failure of the society, an appeal may be preferred within thirty days from the date of communication of the refusal or within sixty days from the date of receipt of the proposal by the society.

(4) A person who does not own a house or apartment in his own name or in the name of a member of his family but possesses a plot of land in his own name, shall be eligible to be a member of a co-operative housing society comprising plot holders, if he intends to build a house thereon with the assistance of such society and if his plot stands adjacent to a plot within the jurisdiction of the society.

(5) No person shall be admitted as a member of a co-operative housing society who is not considered by a board thereof as one having genuine need for housing or additional accommodation from such society.

(6) A person who has entered or intends to enter into any contract with a co-operative housing society in the matter of any work, constructional or otherwise, relating to a project of the society shall not be eligible to be a member:

Provided that where a person conveying a plot of land in favour of a co-operative housing society intends to become a member of such society without any additional consideration and is otherwise eligible for such membership, he may be admitted as a member of such society.”

4. It would transpire that by a notification dated 23rd June 1999 in exercise of powers conferred by sub-Section (1) clause (d) of Section 69 of the West Bengal Cooperative Societies Act, 1983 (hereinafter

referred to as the “said Act”) the Government had been pleased to allow the petitioner no. 1 to obtain membership for 6 (six) flats of Abhyudoy Cooperative Housing Society Limited. The said notification, however, records that the Governor is further pleased to exempt the above society from the provisions of Rule 135(2) of the said Rules by granting exemption under Section 7 of the said Act. Thus, to understand the scope of Section 7 of the said Act, the same is also extracted hereinbelow:-

“Section 7 :

The State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification, for reasons to be recorded,—

(a) exempt any co-operative society or class of co-operative societies from the application of any of the provisions of this Act or the rules, or

(b) direct that any of the provisions of this Act or the rules shall apply to any co-operative society or class of co-operative societies to such extent as may be specified in the notification:

Provided that no notification to the prejudice of any cooperative society or class of co-operative societies shall be issued without an opportunity being given to it to represent its case.”

5. As would appear from the above, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification, for reasons to be recorded, exempt any co-operative

society or class of co-operative societies from the application of any of the provisions of this Act or the rules framed thereunder.

6. Having regard to the above, I am of the view that the State Government being otherwise competent and empowered under Section 7 of the said Act, had exempted the petitioner no. 1 from the provisions of the said Act. There appears to be no irregularity in this regard, at least no one had questioned such exemption.
7. Records reveal that since the matter relates to splitting up of membership, this Court by order dated 5th August 2025 had directed the petitioners and Mr. Ganeriwala, learned advocate appearing for the respondent nos. 5 and 6 to put up a notice intimating the other members of the cooperative society that the aforesaid matter shall be taken up for further consideration today.
8. Today, Mr. Ganeriwala by placing before this Court a notice dated 10th August 2025, a copy whereof has been taken on record, would submit that the contents of the aforesaid order dated 5th August 2025 was, in fact, put up in the notice board of the society. According to him, the society has not received any objection nor has anyone come forward to object the same.
9. In view thereof, there being no impediment in granting permission to the petitioner no. 1 to sell the 6 (six) flats individually which had been provisionally allotted to the petitioners by the West Bengal Housing Board vide letter dated 19th October 1995 being Flat nos.1/4, 2/2, 3/10, 12/10, 13/13 and 19/15 of 'B' type East

Calcutta Township Project, Phase- IV, I am of the view that the aforesaid communication dated 20th July 2022 issued by the respondents cannot be sustained.

10. Since, the Government had exempted Rule 135(2) of the said Rules and as rightly pointed out by Mr. Bihani the proviso to the said rule also stood exempted and accordingly, there could not be any impediment for the petitioner no. 1 being allotted, multiple number of housing plots in the said society. Be that as it may, since the petitioners intended to transfer the aforesaid flats and since Mr. Ganeriwala does not raise any objection, I am of the view that the petitioners may do so subject to concurrence of the society in the manner as prescribed by law by allotting individual membership numbers upon transfer of the shares held by the petitioner no.1 to the purchasers. It is, however, made clear that if the petitioner no.1 wishes to forgo the exemption by transferring any share to a third party, all provisions of the said Act and Rules would apply, the petitioner no.1 in such case shall not be entitled to retain more than one flat as a member of the respondent no.5.
11. With the above observations and directions, the writ petition is disposed of.
12. All parties shall act on the basis of the server copy of the order duly downloaded from this Court's official website.

(Raja Basu Chowdhury, J.)

A.R. (Court)